

Manager – MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
CANBERRA ACT 2601

By Email: MCETMarketReform@Industry.gov.au

13 January 2006

Dear Sir/Madam,

SUBMISSION ON THE DEVELOPMENT OF A NATIONAL FRAMEWORK FOR ENERGY DISTRIBUTION AND RETAIL REGULATION

We refer to the paper prepared by NERA Economic Consulting and Gilbert + Tobin (**Consultant's Paper**), which sets out a proposal for a nationally legislated framework for distribution and retail regulation rules made and administered by the Australian Energy Market Commission (**AEMC**) and enforced by the Australian Energy Regulator. The EA-IPR Retail Partnership (ABN 67 269 241 237), a partnership comprising Energy Australia Pty Limited (ACN 070 374 293) and IPower Pty Limited (ACN 111 267 228) (**EA-IPR**) welcomes the opportunity to comment on the issues raised within the Consultant's Paper and asks that the Ministerial Council on Energy (**MCE**) Standing Committee of Officials (**SCO**) accepts this letter as our submission.

As a retailer of gas and electricity in Victoria and South Australia, EA-IPR's submission focuses primarily on Part C and some of Part D of the Consultant's Paper, and only on those issues that we consider require comment.

PART C CONSUMER PROTECTION

2. DISTRIBUTOR OBLIGATION TO PROVIDE CONNECTION SERVICES

EA-IPR supports the adoption at a national level of the most common existing regulatory framework, being a "triangular relationship" between distributor, retailer and end-customer, such that a direct contractual relationship exists between retailer and distributor and between end-customer and distributor. EA-IPR agrees that network risk should be allocated directly against the party who is best able to manage the risk, being the distributor, and that network related disputes in relation to loss of supply would be more efficiently resolved between a distributor and end-customer.

However, EA-IPR notes that adoption of this preferred approach nationally will necessitate a change in Victoria, where a linear contractual chain between

distributor, retailer and end-customer currently exists. EA-IPR queries the impact upon associated legislative and regulatory requirements in this jurisdiction, and in particular the wrongful disconnection legislation that was introduced in December 2004, if such a change is implemented. As the wrongful disconnection legislation makes retailers liable to pay compensation in the amount of \$250 per day to customers where disconnection occurs in breach of the terms and conditions of the contracts specifying the circumstances in which the supply of electricity to premises may be disconnected, EA-IPR submits that if a triangular relationship is introduced in Victoria and distributors are consequently made directly liable for the disconnection of customers, like amendments will need to be made to the wrongful disconnection legislation, or the legislation will need to be repealed.

3. DISTRIBUTOR DISCONNECTIONS AND RECONNECTIONS OF SMALL END-CUSTOMERS

EA-IPR refers to its comments in section 2 above in relation to the shifting of liability for disconnections in Victoria from retailers to distributors, and queries again whether it is envisaged that the Victorian unlawful disconnection legislation be amended or repealed. EA-IPR supports the amendment or repeal of this legislation due to the overly onerous obligations that it imposes upon retailers, which do not have ultimate responsibility for continuity of supply.

Where distributors are made directly responsible to end-customers for supply, EA-IPR agrees that, for more vulnerable customers, the circumstances in which they may be disconnected, and must be reconnected, should be regulated. This regulation should mandate relevant customer protections in any standard form contract conditions.

4. DISTRIBUTOR: SMALL END-CUSTOMER DISPUTE RESOLUTION

EA-IPR agrees that small end-customers should have access to informal, fair and efficient dispute resolution arrangements, but considers that a national alternative dispute resolution (**ADR**) scheme would provide greater efficiencies, for distributors and end-customers alike, than jurisdictional based ADR schemes. Such a scheme could also deal with retailer and end-customer issues, which would further increase efficiencies. If ADR schemes are to be jurisdictional, EA-IPR submits that they should at least be nationally consistent.

5. RETAILER OBLIGATION TO SUPPLY SMALL END-CUSTOMERS

As a general comment, it is important to note that an obligation to supply to an end-customer who is not party to a Market Contract extends to scenarios where an end-customer chooses to cancel their Market Contract within the contract term, or where a contract term ends and an end-customer chooses not to enter into a new Market Contract. In both of these circumstances, a retailer must still continue to supply the end-customer until they enter into a new Market Contract or transfer to another retailer.

It is also important to note that, in both of the above scenarios, and in the scenario enumerated in the Consultant's Paper, where "the customer has taken occupancy of "energised" premises and may consume energy (by turning on an appliance) before they have effectively chosen a retailer (where choice is available)", it cannot be said that the end-customer has "no effective choice of supplier". The end-customer has choice, but does not exercise it.

That said, EA-IPR supports the approach recommended in the Consultant's Paper, being that:

- the retailer who is the “financially responsible party” for consumption at a site should remain the retailer for that site, to supply any end-customer who is not on a Market Contract; and
- in these circumstances the retailer and the end-customer need to have in place a legal arrangement that sets out their rights and obligations, including the basis for charging for consumption, and regulation should provide for such an arrangement, as well as notification by the retailer to the new end-customer that:
 - (a) the new end-customer is subject to the default legal arrangement; and
 - (b) the new end-customer may enter into a Market Contract with the retailer or any another retailer.

However, while the Consultant's Paper appears to use the terms “Default Contract” and “Deemed Contract” interchangeably, EA-IPR would like the SCO to note that it does not support the Victorian concept of a “Deemed Contract”. In particular, it does not support a contract that exists for only a limited period of time, as this type of contract is too difficult to manage both operationally and administratively. A Default Contract like that which exists within South Australia would be EA-IPR's preferred approach.

EA-IPR is also of the view that the conditions of any Default Contract that is created should be nationally consistent, to enable ease of application and compliance by retailers who operate across jurisdictions, as well as provide end-customers with greater certainty about their energy market rights and obligations should they move between states. To facilitate this, some aspects designated for determination by jurisdictional Ministers in the Consultant's Paper (such as specified classes of customers) should be made the responsibility of the AEMC, unless it can be guaranteed that Ministerial consistency will be reached. Some aspects of associated consumer protection regimes, such as the Fair Trading regimes that exist in each jurisdiction, would also need to be harmonised for consistency, so that this general application consumer protection legislation can apply in its own right, without need for duplication in any Rules made by the AEMC, or in any Default Contract conditions.

EA-IPR reserves any further comment on the scope of the Default Contract conditions proposed in the Consultant's Paper until the next round of consultation on the matter. EA-IPR requests further industry consultation before any Default Contract conditions are finalised.

6. RETAILER: SMALL END-CUSTOMER MARKET CONTRACTS

As indicated in section 5 above, EA-IPR is of the view that, if existing general application consumer protection legislation (namely the *Trade Practices Act 1974 (Cth)* and the Fair Trading Acts of each state) can be harmonised between jurisdictions, it will be sufficient to ensure small end-customers are treated “fairly”, and that no energy specific regulation of this area is therefore necessary. Accordingly, consumer protection issues such as cooling-off periods and contract termination rights, should be dealt with through general consumer protection laws.

As with Default Contracts, EA-IPR supports the creation of standard form Market Contract conditions that are nationally consistent as far as practicable and that are limited in coverage to energy specific issues, such as calculation of charges, billing,

payment difficulties, meter reading, etc. EA-IPR reserves any further comment on the scope of the standard form Market Contract conditions proposed in the Consultant's Paper until the next round of consultation on the matter. EA-IPR requests further industry consultation before any standard form Market Contract conditions are finalised.

7. RETAIL: SMALL END-CUSTOMER MARKETING

EA-IPR refers to and affirms the views expressed in sections 5 and 6 above in relation to existing general application consumer protection legislation, which also apply to the issues raised in the Consultant's Paper under this section.

8. RETAILER – SMALL END-CUSTOMER DISPUTE RESOLUTION

EA-IPR refers to and affirms the views expressed in section 4 above in relation to an ADR scheme for distributors, which also apply to the issues raised in the Consultant's Paper under this section.

PART D: OTHER DISTRIBUTION AND NON-PRICE RETAIL REGULATION

2. BUSINESS AUTHORISATION

EA-IPR agrees that licensing/authorisation regimes create barriers to entry and impose onerous regulatory costs on new energy market entrants. Consequently, obligations imposed by the current licensing/authorisation regime, if deemed to continue to be necessary, should be established in legislation and overseen by a national body. This national body should have the responsibility of ensuring that all new energy market entrants meet the requirements of the legislation and demonstrate sufficient commercial competency (on both an initial and on-going basis) to operate as a retailer or distributor, including satisfy relevant prudential requirements.

3. DISTRIBUTOR RETAILER INTERFACE

EA-IPR agrees that, as distributors are generally suppliers of monopoly services, they do not face a strong incentive to negotiate balanced contractual arrangements with retailers. As EA-IPR currently operates under Use of System Agreements with distributors in both Victoria and South Australia, it is happy to continue to do so, provided that new opportunity is provided to retailers to negotiate the terms of any Default Use of System Agreements made by the AEMC, particularly in relation to appropriate service levels and standards, and dispute resolution. Once a Default Use of System Agreement is agreed, EA-IPR is of the view that only a retailer should be able to initiate any negotiations to change it. Restricting negotiations in this way would alleviate the potential for unfair terms being imposed upon a retailer by virtue of a distributor's monopoly position.

6. METERING

EA-IPR agrees that establishment of a national regime for the regulation of energy distribution and retail must take into account the metering regime. EA-IPR also agrees with the high level policy criteria detailed in the Consultant's Paper, but reserves comment on the recommended approach until the next round of consultation on the matter. EA-IPR requests further industry consultation before any metering arrangements are finalised.

7. LOAD SHEDDING

EA-IPR agrees that a national framework in respect of load shedding / curtailment should be created for both electricity and gas. This will enable retailers and distributors who operate across jurisdictions to implement a consistent approach to emergency management, and thereby facilitate better management of electrical and gas emergencies. However, while EA-IPR supports the high level policy criteria detailed in the Consultant's Paper, it reserves comment on the recommended approach until the next round of consultation on the matter. EA-IPR requests further industry consultation before any national framework for load shedding / curtailment is finalised.

8. RETAILER FAILURE ARRANGEMENTS

EA-IPR supports the establishment of one or more "Step-in Retailers" for each jurisdiction, appointed or designated by the AEMC, but reserves comment on the rest of the recommended approach in the Consultant's Paper until the next round of consultation on the matter. EA-IPR requests further industry consultation before any retailer failure arrangements are finalised.

9. JURISDICTIONAL DIRECTIONS

EA-IPR agrees that policy should be decided on a national basis by the MCE and reflected in the national regulatory approach, but is of the view that this should occur sooner rather than later. If a national approach is to be adopted and implemented in the short term, consistency is also needed in government policy directions. Unless consultation is undertaken, and agreement reached nationally, on specific policies of individual jurisdictions, EA-IPR does not believe that they should be incorporated into the national framework in the manner suggested in the Consultant's Paper. Incorporation otherwise has the potential to undermine the overall national framework.

EA-IPR would be pleased to elaborate on any aspect of this submission. If any further information is required, please contact me on (03) 8807 1132.

Yours sincerely,

Liesel Koelmeyer
Head of Compliance