

MINISTERIAL COUNCIL ON ENERGY

ISSUES

Standing Committee of Officials Forum on 24 March 2004 regarding:

- **MoU between Australian Energy Regulator (AER) and Australian Energy Market Commission (AEMC) with ACCC**
- **Code Change,**
- **Funding AER & AEMC**

Response from:

- **Electricity Consumers Coalition of South Australia**
- **Energy Consumers Coalition of Victoria**
- **Energy Markets Reform Forum**

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A. The Process being followed:

	ISSUE	RESPONSE
1	NECA will disappear and replaced by a commission (AEMC) which will have 3 members (2 from the states and one from the commonwealth) with the Chair from one of the state commissioners	Supported
2	The AER will be a commission and have 3 members (2 from the states and one from the ACCC) located separately from the ACCC	Supported
3	The commissioners of AEMC and AER will appoint their own CEO's. Staff for the AER will be seconded from the ACCC, and AEMC can either source their own staff or second them from AER and/or ACCC	Supported
4	Governance of both the AER and AEMC will be an issue for the commissioners and the respective CEO's of the two new organizations	This raises an issue for end users as governance is critical to ensuring a fair and equitable approach is taken by the two groups. We expect that in setting the governance regimes both organizations will carryout a transparent process so that end users can be satisfied that the governance regime reflects an equitable approach the needs of both supply and demand sides.
5	There has been a real issue between NECA and end users, as there has been traditionally little confidence in the NECA process and positioning. Governance of NECA was seen as a problem, and consumers have no say in the NECA governance.	The new structure appears to address this concern
6	Governance of AEMC needs to be addressed to ensure that consumers have equal footing with market participants. Governments have their say through the MCE, so they need less involvement in AEMC.	One of the AEMC commissioners must have a strong background in consumer advocacy

7	There will be a three year transition to bring the state regulators within the purview of the AER.	The introduction of the state based regulators into the AER is supported. The transition needs to be carefully managed to ensure there is minimal negative impact on the continuing operation of the state based regulatory processes
8	MCE has advised the AER and AEMC will be funded by users but provides no direction on how	This issue is addressed in a following section.

B. MoU between AER and AEMC with ACCC:

	ISSUE	RESPONSE
1	There will be an MoU between ACCC, AER and AEMC which will define the roles of each	The MoU as drafted proposes a sensible cooperative approach between the three commissions
2	AEMC is the rule maker and has a market development roles, AER is the market regulator. The ACCC remains responsible for Part IIIA, and competition regulation. There is no clear direction as to who “supervises” the market operations on a regular basis to see if there are transgressions	Supported. The market monitoring and enforcement functions of NECA need to be clearly allocated. The AER is supported as the most appropriate body for managing these functions
3	The states will have to sign onto the MoU as they move state based regulation into the AER	Supported
4	There is an explicit expectation of having staff cycle through ACCC and the AER	Supported as this addresses a number of identified shortcomings such as regulatory capture, growth potential and development of staff
5	There is the expectation of having staff seconded to AEMC from ACCC/AER	Supported
6	The role and location of the Reliability Panel has not been formalized	This needs to be resolved
7	The role and location of the Advocacy Panel has not been formalized	The Advocacy Panel rules and structure need to be modified to remove the influence of the

		supply side on its decisions and to reduce the current restrictions on its ability to award funding.
8	Coverage of the Advocacy Panel	There is a need to ensure that end use advocacy funding covers gas and electricity and is simplified
9	There is no clarification of funding for end user advocates on AER and AEMC working groups.	Funding of end user advocates in AER and AEMC working groups must be formally addressed

C. Code change process:

	ISSUE	RESPONSE
1	Code changes can be initiated by anyone except the AEMC. If the AEMC in its role as market development agency sees the need for a change to the Code, then it must recommend this to the MCE which will then initiate the code change	Supported
2	Timeframes are nominated. However there is flexibility for the AEMC to change the timetable for review process but it must get MCE approval first	Care needs to be taken with the timeframes suggested as too short a time has a bigger impact on end use advocacy than on supply side advocacy due to resourcing and funding asymmetry – getting AP funding takes time
3	The code change process.	The process suggested is a sensible one and is supported as it has the potential to eliminate the current NECA/ACCC duplication
4	The ACCC still retains the right to institute a second review process for a change as the ACCC still has responsibility as the TPA regulator.	The close liaison should limit the frequency of such double reviews
5	Inclusion of anyone to be involved. The MCE advises merits/judicial reviews can be sought by anyone.	As the process specifically and formally includes end users, this is seen as a distinct improvement

		on the current process.
6	Both gas and electricity appeals will be heard by the NET	Supported for the consistency this brings
7	The AEMC structure and approach needs to be more “end user friendly”.	If an end user identifies a problem and it is seen as real, then AEMC should be “chartered” to assist the applicant in identifying a solution. Many advocates might not be competent to carry the issue through the whole process
8	Any changes to the policy framework must go through the MCE	Supported

D. Funding AER and AEMC:

	ISSUE	RESPONSE
1	MCE states that funding for AER and AEMC must come from users by way of a levy, licence fee or fee for service	Ultimately will consumers pay for everything and so must continue to have a significant say in the processes and changes.
2	The amount of funds sought. We are advised that the funding for 2004/05 year will be based on the Commonwealth funding AER through the ACCC budget and AEMC being funded through the existing NECA levy funded through NEMMCo. In future years both the AER and AEMC will prepare budgets for approval, effectively by the MCE. The actual method of collection of funds will have to be approved by the MCE	There is a need to ensure there is oversight of the funding requested by AER and AEMC, and of the way the funding is garnered.
3	The AER and AEMC will need to have end user input to their working groups.	This activity should be funded through the AER and AEMC budgets rather than using AP funds
4	It was stated AEMC costs and NECA costs of \$6m were equivalent and initially ~\$10m	The level of funding needs close monitoring and control

	for the AER was seen as needed, although appeals could add to this amount significantly. The AER amount would rise as the states come in but this would be offset by state funding costs which are already levied on the industry.	
5	How should funding be allocated?	By dissecting the funding requirement into discrete sectors this will give an indication as to the most appropriate method. As a rule, the most direct approach should be used for identifying and attributing the fund source. Materiality of amounts should be a consideration – it may not be worthwhile seeking a complex method for allocation accurately if the amount is relatively small.
6	Network costs are more related to peak usage (ie MW or GJ/d), management is more related to customer numbers (big customers get more attention than small customers), operation is more related to usage (ie MWh or GJ)	As a starting point the costs of AER and AEMC should be allocated in proportion to the <u>benefit</u> each consumer has from regulation. This is most equitably identified (and therefore allocated) on a \$/MWh or \$/GJ basis relative to consumer usage, unless there is a reason to claim costs from other market participants.
7	Allocation between gas and electricity	The bulk of the cost allocation between gas and electricity can be readily identified as most of the costs relate to specific activities. It may be worthwhile reviewing this issue further when the impact (materiality) of the amounts can be identified.
8	Allocation of costs geographically has problems	It is almost as costly to review the gas distribution of SA as for the three gas DB's in Victoria, yet to apply these costs purely to SA will result in a higher cost allocation. It is probably overall more equitable to allocate costs on a usage basis
9	Regulated businesses are	Cycling the cost through the regulated

	able to recover their costs for regulatory reviews.	businesses has potential of risk of under/over recovery. Source this element directly from consumers
10	Costs of market surveillance	This work protects consumers from the potential of loss by the exercise by others of market power. Source this element directly from consumers
11	Distribution of fines and financial penalties	Fines and penalties should benefit those who have suffered. Such income should be used to reduce the costs of regulation to consumers.
12	Costs for appeals	Appeals against decisions are invariably by a business to claim greater revenue, therefore the ipso facto view is that the regulator is either defending itself and/or acting for the consumer. Source this element initially from consumers. The court decision will direct the recovery of costs to either the business or the consumer. If found to be wrong, a business should not be able to recover costs and penalties through its revenue cap