



April 4, 2004

Streamlining of the Code Change Process  
C/- MCE Market Reform  
Department of Industry, Tourism and Resources  
Canberra ACT

Email: [MCEMarketReform@industry.gov.au](mailto:MCEMarketReform@industry.gov.au)

Dear Sir/Madam,

**Re: Streamlining of the Code Change Process**

EnergyAustralia is pleased to provide comment on this paper and welcomes the response by the Council to address a concern that the industry has held for some time.

We understand that a number of industry participants will be raising issues about the potential uncertainty regarding the ACCC authorisation process, and questioning if the new streamlined code change approval mechanism adequately resolves this issue. We will however rely on the advice received by the MCE and the necessary amendments to the TPA to decide this matter, and therefore will not consider this further.

A suggestion to improve the proposal could be to reconsider the need for 'Step 6'. Specifically, we note that at this point – in some instances, the culmination of up to nine months of consultation, the AMEC will make the, “decision on whether to refer the code change proposal to ACCC for authorisation”.

If the AEMC decides to refer the matter to the ACCC for Authorisation this will extend the consultation process. It is unclear how long the deliberation by the ACCC will take. We feel that the danger is that where the need to authorise becomes an issue, and the more contentious the longer to decide, that it will frustrate the objective of a streamlined code change process.

If the ACCC or the AER decides against authorisation or approving the code change, it might have been better to resolve this earlier in the process. This would prevent the effort of taking

the consultation all the way through to the final stage only to have it rejected by the ACCC or questions raised about authorisation status.

Given that there are numerous informal discussions between AMEC and the ACCC/AER, all through the process, and that the initial assessment has been vetted by the AEMC, there appears to be ample opportunity for the regulators to make these decisions, early in the process. In fact para 5.2 of the paper does provide for the ACCC “to promptly consider and advise any potential competition issues”. We would have thought that a better approach would be to have the ACCC assessment working in conjunction with the industry consultation, and that if competition issues are discovered that these be notified immediately. As opposed to formally reaching this conclusion at the last stage of the process.

EnergyAustralia is aware of a proposal prepared by the NGF. An underlying concept of the NGF proposal is that the code change is defined according to its nature – a change relating to a ‘market principle’ is given more attention than one that is more procedural in nature. This inturn dictates the degree of involvement on the part of the regulators, and the manner in which the code change is dealt. This is a similar concept to the Council’s categorisation approach. A suggestion could be to make the categorisation process more prescriptive by incorporating some of the principles of the NGF proposal.

Should issues arise about ACCC authorisation uncertainty, it may be possible to use the more prescriptive framework to overcome this uncertainty. This could be affirmed through the amendments made to the TPA or in the Memorandum of Understanding between the regulatory bodies. This may provide more definition and certainty as to those types or categories of code changes that will require full ACCC or AER consideration. This process could then run in parallel to the wider industry consultation. This should positively contribute to an overall shortened consultation and approval process.

Finally, we reinforce the importance and commend the Council for recognising and encouraging the need for the move towards more industry involvement. This should assist in the resolution of code change issues, by providing for the input of industry stakeholders who have a personal stake in these market outcomes.

If we can be of further assistance please contact Mark Bourne on 9269 2459.

Yours Sincerely,

{signed}

Tim O’Grady  
General Manager – ERM