

3 March 2005

Mr John Ryan
Deputy Secretary
Department of Industry, Tourism and Resources
GPO Box 9839
CANBERRA ACT 2601



EnergyAustralia™

570 George Street
Sydney NSW 2000
Telephone (02) 9269 2112
+ 61 2 9269 2112
Facsimile (02) 9264 2982
Office of the Managing
Director

Address all mail to
GPO Box 4009
Sydney NSW 2001
Australia

Dear Mr Ryan

**EnergyAustralia submission to the MCE on the
Exposure Draft of the National Electricity (South Australia) Regulations 2005**

I am writing to submit EnergyAustralia's comments to the Ministerial Council of Energy Standing Committee of Officials on the draft National Electricity Regulations.

Limitation on Liability of NEMMCO and System Operators

Clauses 8 and 9 of the draft Regulations seek to carry over the current arrangements to limit the liability of NEMMCO and System Operators. These provisions are due to expire on 13 November 2005. EnergyAustralia requests that the MCE publish without the delay the proposed process for the extension of these provisions and for a review of these provisions so that they can operate without the need for an annual extension.

Treatment of existing determinations and determinations commenced under the Code and finalised under the new National Electricity Rules

There are several anomalies in the proposed treatment of existing determinations and those commenced under the Code but finalised under the Rules.

Clauses 14(1) and 15(1) provide that pricing determinations made under the Code and in force at the time the new NEL and Rules commence will continue in effect under the Rules. This is obviously appropriate. These provisions also provide that these determinations may be revoked, amended or varied by the relevant regulator under the relevant provisions of the National Electricity Law and Rules.

EnergyAustralia has no objection to the new NEL and Rules being applied to existing determinations. However, EnergyAustralia has previously submitted that it does not support regulators being conferred an unconfined power to amend, revoke or vary determinations, which would be the result if clause 20 of Sch 1 to the NEL is applied to the Rules as currently proposed by clause 1.7.1 of the Rules. To preserve the certainty required in relation to such determinations, they should not be able to be revoked, amended or varied without the consent of the network operator.

The operation of clauses 14(3) and (4) and 15(3) in relation to determinations commenced under the Code but finalised under the Rules is not clear but appears to be inconsistent with the treatment of existing determinations. Clauses 14(4)(b) and 15(3)(b) appear to provide that any revocation, amendment or variation of such determinations would occur in accordance with the Code and not the new NEL Rules.

Subject to EnergyAustralia's comment above about the unconfined nature of the power, it is appropriate for determinations finalised under the Rules to be treated in the same way as determinations made under the Code and continuing under the Rules. Consideration should also be given to whether use of the word "such a determination" in these clauses clearly references the determinations being referred to given that two types of determinations are being dealt with under clauses 14 and 15.

A further and more important issue arises in relation to the actual effect of the provisions on determinations completed under the Rules. The apparent effect of clauses 14(4) and 15(3) is that any appeal or review of determinations finalised under the Code will be determined as if the Code applied to all actions of the regulator "unless otherwise provided in that determination or by the Rules made after the commencement date". This means that if a determination process is commenced under the Code in a very limited way, but all the substantive work is carried out under the Rules, then the Code would apply to any review of the regulator's actions "unless otherwise provided in that determination or by the Rules made after the commencement date".

This is clearly inappropriate as the actions of a regulator must be judged in light of the Rules that applied at the time they were carried out. Whilst there appears to be scope for this to be addressed in the determination or Rules, it is not clear how the regulator could be relied upon to address this in the determination or what the process would be for the Rules to be made after the event. It should not be left to the relevant network operators to seek Rule changes to address an issue which should be the subject of clearly established and understood rules.

EnergyAustralia submits that there should be a clear mechanism so that the actions of a regulator can be judged against the provisions of the Code or Rules which applied at the time the actions were carried out.

Consultation commenced under the Code

Clause 17 of the draft Regulations seeks to save any consultation commenced under the Code Consultation procedures so that it can be completed under the Rules as if it had been commenced under the Rules consultation procedures. This provision is confined to consultation in accordance with the Code consultation procedures. It fails to extend to consultation under the Code which is not required to be in accordance with the Code Consultation Procedures. An example of consultation under the Code which does not need to be in accordance with the procedures is consultation carried out by network operators under clause 5.6.2(f), 5.6.6(b) and 5.6.6A. Whilst it is arguable that such consultation would be caught by the broad provisions of clause 19, given that consultation is addressed specifically in clause 17, it would be preferable if clause 17 clearly applied to all types of consultation under the Code.

Disclosure of information held by NECA

EnergyAustralia has no objection to the disclosure of information by NECA to the AER and AEMC which is relevant to the carrying out of each of those bodies functions.

Further, EnergyAustralia supports the limitation placed on the use of that information to the corresponding function under the new Rules and submits that such limitation should apply to any information disclosed between NEMMCO, AEMC and the AER. EnergyAustralia has previously submitted that the proposed arrangements whereby information provided to the AER for its economic regulatory functions may be disclosed to other bodies and used for unrelated functions is an inappropriate and unjustified change to the existing arrangements, without appropriate safeguards.

EnergyAustralia offers these comments to provide assistance to the MCE. Further enquiries can be directed to Ms Nives Matosin on (02) 9269 4257 or email nmatosin@energy.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "George Maltabarow". The signature is written in a cursive, flowing style.

(GEORGE MALTABAROW)
A/Managing Director