



26 August 2004

NE Rule Change Process
c/- MCE Market Reform
Department of Industry, Tourism and Resources
GPO Box 9839
CANBERRA ACT 2601

Re: Proposed National Electricity Rule Change Process – Consultation Paper

I am writing on behalf of the Energy Intensive Industries Alliance, an alliance of Australia's largest energy users.

The Alliance appreciates the opportunity to comment on the Ministerial Council on Energy and Standing Committee of Officials Consultation Paper, *Proposed National Electricity Rule Change Process*. We acknowledge the open and transparent manner that has been applied to the reform program thus far and the opportunity for energy users to be involved.

Summary

The proposed process is a significant step forward. A3P suggests specific amendments to ensure the intent of the reforms is not lost when translated into practice. These are:

- Inclusion of a secondary market objective to remove the potential for the unreasonable exercise of market power;
- The incorporation of formalized mechanisms for addressing impacts of each code change proposal on end users at key stages during the NE Rule Change Process; and
- Provision of adequate resources to enable end users to participate effectively in the code change process.

Background

The major energy intensive manufacturing sectors account for about one quarter of primary energy consumption, and about a third of electricity consumption in Australia. These sectors contributed 12 per cent of gross domestic product, 12 per cent of full-time employment and 20 per cent of capital investment. They are heavily trade exposed, depend on competitively priced energy to maintaining their competitive edge and are unable to readily pass costs through to their customers. Energy supply and pricing is absolutely critical in the formula that determines industry growth and investment.

In many cases, it is the large industrial users that provide the loads that stimulate the level of investment necessary for the reliable supply of competitively-priced energy to the Australian community. Consequently, the infrastructure of the national energy production and supply network is strongly influenced by the demand and location of major users who ultimately pay for much of the infrastructure cost. Energy costs and supply are a fundamental consideration in planning for new investment in energy-intensive industries.

The Alliance supports the completion of the Council of Australian Governments' program to make energy markets truly efficient, delivering reliable energy supplies at prices that enable energy-intensive industries to remain internationally competitive. Consequently, large end users are determined to ensure that final positions, processes and administrative arrangements adequately reflect the end-user dynamic.

The Alliance and its members have maintained an active and constructive role in the energy market reform program and, as a basic principle, believe that the maximum benefit will only be achieved if the policy and regulatory processes effectively integrate end users and facilitate more constructive engagement between energy users and energy suppliers.

General Comments

The Alliance strongly supports the Ministerial Council's energy market reform program. Of particular interest are proposed reforms that will:

- Simplify regulatory structures and processes;
- Clarify the roles and responsibilities of regulatory bodies;
- Ensure end-users participate in the code change process on equal terms to energy suppliers, and are adequately resourced to do so;

- Ensure that the regulatory agencies understand the impacts of their decision-making on end-users and are adequately exposed to, and take account of, end-user perspectives; and
- Improve the accountability of regulatory decision-making to end-users.

In developing its response, the Alliance has been guided by two broad statements.

The first is the proposed Market Objective (1) (at 6.1) for assessing rule change proposals, that is, that *“the primary market objective of the national electricity market is to promote the long term interests of consumers of electricity with respect to price, quality and reliability of electricity services, and economically efficient investment and innovation”*. This is strongly supported by the Alliance and provides a valuable statement of intent against which the Alliance will be assessing all reform proposals, criteria development and processes.

The second, known as the ‘beneficiary principle’, encapsulates the notion that those who benefit from the provision of an activity or product should pay for it. In relation to the cost recovery by Government agencies a useful discussion on the topic is provided in the Productivity Commission’s Inquiry Report 15, *Cost Recovery by Government Agencies*, 16 August 2001. The Alliance is not opposed to the principle, contained in the PC’s report, that the price of a regulated product should incorporate the efficient costs of its production, including regulation. This support, however, is conditional on its application only in circumstances where *the regulation is designed to benefit the consumer, and can be demonstrated to do so to the consumer’s satisfaction*.

The MCE has flagged that an industry levy will be used to fund the new institutional arrangements. If end users are to benefit from regulatory processes they must effectively be integrated into them. They must have confidence that their perspectives and views are given adequate and thoughtful consideration and that the processes, in some way, must be accountable to them. To ensure the intent of the primary objective is not lost and to ensure that the ‘beneficiary pays’ principle is given adequate effect a number of specific comments are outlined below.

Options to streamline and manage TPA risk

Insufficient justification has been provided to move away from the status quo. The Alliance supports streamlining and removing duplication provided end-users are not disadvantaged. In relation to option 1, the Alliance is not aware of any challenge to the legal validity of the code that could support the claim of unacceptable legal risk that has led the MCE to prefer Option 3. Since Option 3 provides for less scrutiny of code change proposals, the Alliance is strongly of the view that it is incumbent on the MCE to provide further and stronger justification for moving away from ACCC

authorization for all code change proposals. Accordingly, the Alliance will not support Option 3 until it can be demonstrated that end-user interests will not be affected by removing the necessity for the Rules to be authorized.

Functions of the AEMC in Rule Making

The Alliance supports the functions of the AEMC in rule making.

Rule making criteria

The Alliance strongly supports the application of a net benefits test and commends the MCE for acknowledging the value of including the consideration of prospective market outcomes as part of the test.

The Alliance strongly supports the primary Market Objective but believes the support provided by the secondary objectives to be insufficient. While the Alliance does not disagree with any of them, an objective to remove the potential for the unreasonable exercise of market power must be included while-ever the generator competitiveness issues highlighted by the Parer Review remain unaddressed. Such an objective would strengthen the relationship between the primary and secondary objectives. It might also be a suitable subject for an MCE Statement of Policy Principles as proposed.

Proposed Code Change Process

The Alliance also broadly supports the revised code change process as articulated at page 19 subject to the comments outlined below including that the process provide for a clear articulation of impacts on end-users. This is considered to be an essential element for translating the 'beneficiary pays' principle into practice, providing a degree of accountability to end users, operationalising the intent of the primary objective and delivering greater transparency.

Initiation

The Alliance strongly supports the proposal that code changes can be initiated by any person.

End user impact assessment

Given the primary market objective, the Alliance proposes that Rule Change Proposal applications (7.1.5), submissions on Rule Change Proposals (7.2.4), Draft Determinations (7.3.1) and Final Determinations (7.4) all be linked to the Market Objectives through an explicit assessment of their impact on "the long term interests of consumers of electricity". Specifically this could be achieved by:

1. Inserting “*prima facie demonstration that the proposed Rule change solution is in the long term interests of consumers of electricity*” between (b) and (c) in 7.1.5; and
2. Inserting “*whether the Proposed Rule Change would be in the long term interests of consumers of electricity*” between (b) and (c) in the second list of points in 7.2.4; and
3. Inserting “*an assessment of the impact of the Rule Change Proposal on the price, quality and reliability of electricity supply to consumers in the short and long term*” between (b) and (c) in 7.3.1; and
4. Inserting “*an assessment of the impact of the Rule Change Proposal on the price, quality and reliability of electricity supply to consumers in the short and long term*” between (b) and (c) in 7.4

or

The requirement for the preparation of an End User Impact Assessment Statement could be inserted as a stage in the Proposed NE Rule Change Process prior to the Draft Determination. The content of the End User Impact Assessment Statement should be defined to capture the principles covered in the suggestion above.

Content of a Rule Change Proposal

Section 7.1.5 of the Consultation Paper, dealing with the requirements of a Rule Change Proposal application, and section 7.2.4, dealing with submissions on a Rule Change Proposal, both specifically outline the content of applications and submissions. This is necessary to ensure that sufficient information is provided to allow proper assessment of the proposal. It will also minimise spurious rule change proposals.

However, the specified content requires that applicants have a comprehensive understanding of the NE Rules and detailed knowledge on the working of the market. A user (whether large or small) may be greatly impacted by the current Rules, or a proposed change to the Rules, and would have a significant constructive contribution to make to the Rule Change Process, but may lack the capacity (knowledge, information, expertise and/or resources) to provide the information in the form required or to fulfill all the criteria under 7.1.5 or 7.2.4.

While large energy users are more exposed to the energy market than small users, it is still not the core focus of their business and they may be impacted by only a narrow part of the market (geographically or sequentially). They are unlikely to possess the

specific skills or knowledge to submit, or respond to, an application that comprehensively deals with all the items listed in 7.1.5 or 7.2.4.

To ensure the process benefits from the input of the user, there is a potential role for a consumer energy research institution. The Alliance is aware of proposals to resource a consumer advocate for small and medium consumers. Whilst acknowledging the need for small and medium consumers to be adequately supported, the submission of a Rule Change application or response to a Rule Change Proposal will create instances where specific expertise should be made available to all end users, irrespective of size, to enable them to participate in the process with equal skills, knowledge and information to energy suppliers.

A structure that is open to energy users of all sizes may also highlight paucity of issues where the interests of large and small users diverge. Planned energy use by large users helps to drive the development of infrastructure that benefits small users. Equally, actions taken by large users to manage demand allow for more economic energy supply to all users.

Concluding Remarks

Overall, the Alliance views the process and reforms outlined in the Consultation Paper as a significant step forward, particularly the explicit inclusion of end-users in the rule change process. We have proposed a number of suggestions that will ensure the intent of the reforms is not lost when translated into practice.

The Alliance is particularly concerned to ensure that a statutory requirement to assess impacts on end-users be incorporated into the process.

Once again, thank you for the opportunity to comment on the Consultation Paper. If you have any queries please contact me at the address below or e-mail belinda.robinson@a3p.asn.au.

Yours faithfully

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