



NATIONAL FRAMEWORK FOR ELECTRICITY AND GAS DISTRIBUTION AND RETAIL REGULATION

**Submission to the Ministerial Council on Energy Standing
Committee of Officials on the Foreword and Issues Paper**

Ergon Energy Corporation Limited

29 October 2004



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1. INTRODUCTION

In August 2004, the Ministerial Council on Energy Standing Committee of Officials released its "Foreword and Issues Paper on the National Framework for Electricity and Gas Distribution and Retail regulation" (the "Issues Paper"), seeking comments by 29 October 2004.

This submission, which is available for publication, is made by:

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2. EECL SUBMISSION

EECL's views, as set out in this submission, represent the views of EECL only, and not necessarily the views of the Queensland Government or any Queensland Minister including EECL's Shareholding Ministers.

EECL notes that the Queensland Government recently commissioned an Independent Panel to conduct a review into the current state of Queensland's distribution networks, capital and operating expenditure levels, internal systems and the future reliability of electricity supply. The Independent Panel released its report "Detailed Report of the Independent Panel: Electricity Distribution and Service Delivery of the 21st Century" in July 2004 (the Report).

In the Report, the Independent Panel made a number of recommendations, the implementation of which is being overseen by a second Independent Panel.

EECL intends to comply with those recommendations.

None of the views expressed in this submission should be interpreted as showing an intention that EECL does not intend to comply with those recommendations.

Rather, this submission is made in the context of debating and raising issues about what might be the most appropriate way to move in the future to a national regulatory regime - given that Jurisdictional Governments have made a commitment to implement such a national regime.

3. CRITERIA FOR ASSESSING NATIONAL REGULATORY FRAMEWORK PROPOSALS

EECL's overarching comment is that the Issues Paper commences an evaluation of matters of detail inherent in a regulatory framework without firstly:

1. Structuring the Objectives and Measures against which the various options of a framework might be assessed; and
2. Establishing and clearly articulating the Hierarchy & Separation of Functions between the various parties (Jurisdictional Governments, MCE, AEMC, AER and Participants).

EECL believes that the consideration of a new national regulatory regime should be in the context of the "light-on-the-hill" principle – that is to say, "where do we want to get to ? – and how will we know when we're there ?".

We need to clearly articulate what it is that is to be achieved and also how it is we can measure whether the goal has been reached.

Our submission is that failure to firstly do these things will mean that parties risk becoming entrenched in low-level detail debates and probably also in tactics of self-interest, rather than considering the energy industry as a whole and working collectively towards common goals.

Objectives that might be agreed may include:

A truly National Regulatory Framework

Distinction between policy determination (MCE), rule making (AEMC) and rule enforcement (AER) and transparency of any Jurisdictional Governments' social or other objectives

Least overall cost & compliance burden

Allows transparent rule changes

Provides investment certainty

Fosters competition in parts of the energy market where that is possible

Has robust accountability and appeals mechanisms

Is equitable

Measures (of whether the Objectives are met) that might be agreed may include:

Enhanced long-term interests of consumers and investors

Avoidance of disputes and disharmony between the Regulators and the regulated entities

Elimination of regulatory overlap

Defined regulatory discretion and mechanisms for review of decisions

Alignment, to the extent relevant, of gas and electricity regulation

Clear linkages between economic regulation and other technical & Jurisdictional obligations

Our comments in the following pages about each of the matters raised in the Issues Paper are made with the caveat that, once high level objectives and measures are determined and agreed, it may be necessary to amend our commentary about the individual issues.

4. DISTRIBUTION PRICING - ELECTRICITY

Issue 1 – Regulatory Objectives and Principles: Electricity Distribution Pricing

Is the set of regulatory objectives and principles relating to electricity distribution pricing and described in the annexure to this Section 3 appropriate for all jurisdictions?

What other regulatory objectives and principles (if any) should the Australian Energy Regulator be required to apply in regulating prescribed electricity distribution service charges and excluded electricity distribution service charges?

Are there any particular jurisdiction-specific characteristics that need to be accommodated in the regulation of electricity distribution pricing? If so, can they be accompanied as part of a national set of electricity distribution pricing principles or only as specific jurisdictional deviations?

4.1. Regulatory Objectives & Principles

EECL's opening comment about the objectives and principles proposed in the Issues Paper (being those that are primarily currently contained in the current National Electricity Code with the addition of 2 additional criteria), is that the existing electricity distribution regulatory regime has resulted in a wide range of outcomes from Regulators and differing levels of satisfaction amongst regulated entities.

It is a matter of fact that different Regulators have managed to determine quite different outcomes from the same rulebook. We cannot see that the addition of 2 new criteria will resolve this.

There has been no attempt to review or analyse the merits or shortcomings of the National Electricity Code's long list of objectives and principles before proposing in the Issues Paper to continue to utilise them.

On the other hand, such a review has been conducted by the Productivity Commission into the merits and shortcomings of the Gas Code – and its recommendation is to streamline the objectives and principles with a view to eliminating regulatory conflict. EECL considers that the Productivity Commission's detailed work in this area, together with the Trade Practices Act Part IIIA review should not be left unconsidered.

EECL is inclined to the view that, rather than the Issue Paper's Annexure 3, a streamlined suite of objectives and principles combined with a propose-respond form of regulation will:

1. Allow an effective truly national rulebook to be established; and
2. Achieve consistency in decisions of the Regulator, whilst
3. Accommodating variations between regulated entities' particular Jurisdictional situations.

4.2. Prescribed/Excluded Distribution Services

The stated goal of the National Electricity Code has been to allow light-handed regulation of excluded services. EECL submits that the new national regulatory regime should explicitly foster light-handed regulation of excluded and prescribed distribution services and encourage innovation in implementation of the delivery of those services.

4.3. Jurisdictional Variations

EECL's view is that a national set of objectives and principles combined with a propose-respond model enables those best placed to take proper account of Jurisdictional variations into account (ie. the regulated entities themselves) when putting forward their price-service offerings.

This would satisfy the criteria of a national model being implemented that accommodates Jurisdictional nuances.

Issue 2 – Consistency with Gas Distribution Price Regulation

To what extent should the principles relating to electricity distribution pricing be the same as those that relate to gas distribution pricing?

Gas and electricity distribution are clearly different products that are relied upon by consumers in different ways. However, EECL considers that it is possible to structure regulatory regimes for both services that have common philosophies and processes.

EECL's view is that electricity distribution regulation has now reached a level of maturity that will permit a move from the current prescriptive approach (in the National Electricity Code) to a more flexible arrangement. This is not to say that the role of the Regulator is usurped – but rather it is more clearly defined and contained within a regime that provides better certainty to network owners/investors.

EECL advocates that the concept of propose-respond contained in the Gas Code is a desirable move. However it would be contingent upon an appropriate regime being structured around the concept.

We would not want to move from an existing model that has its problems (ie. the existing National Electricity Code) to another model that also has problems (ie. the existing Gas Code).

To this end the Productivity Commission's recommendations need to be given unfeigned legitimate consideration.

In particular, the aspects of the Gas Code (read in conjunction with the Productivity Commission recommendations) that EECL supports are:

1. Separation of powers between the rule maker and enforcer.
2. Merits review of the Regulator's decisions – and containing the Regulator's discretion and information collection powers – regulatory intervention should only occur where benefits outweigh costs.
3. Reducing risk for regulatory conflict – by paring back the number of "objective" clauses.
4. Propose-Respond model – and limiting the use of highly intrusive forms of regulation (ie. price regulation based on cost-of-service).
5. Robust code change process – that includes separation of functions.

Obviously the merits of the Productivity Commission's recommendations are a matter of speculation at this time, since they cannot be tested and proven unless implemented.

What is clear though, is that there is dissatisfaction with the Gas Code as it currently stands – and likewise there is dissatisfaction in some areas with the National Electricity Code. EECL contends that an extraction of the best features of both, together with implementation of recommended improvements, are more likely to deliver a satisfactory outcome than limiting ourselves to one existing code or the other.

Issue 3 – Principles for Electricity Distribution Pricing Methodologies

What are the principles that should be included in any electricity distribution pricing methodology that may be applied in all jurisdictions?

Please refer to our comments in response to Issue 1.

EECL would oppose any moves to unwind the cost reflectivity contained in our existing pricing. As a principle, we should not degrade the economic and cost reflective principles for the sake of national uniformity.

Having said that, EECL submits that as a high level philosophy, prices should be derived in accordance with whatever the economic regime is determined to be – and the price setting process should not be distorted by either historical tariffs, historical customer segmentation, nor other Community Service Obligation policies.

EECL also notes the Productivity Commission's Recommendation 7.1 regarding the pricing principles for gas networks which is aimed at reducing regulatory error by redistributing efficiency gains to users on an ex-post basis¹, recognising that replicating competitive markets is unachievable and instead workable competition should be the goal² and replacing existing reference tariff objectives with pricing principles that the Australian Government has agreed to adopt for the national access regime would then provide more specific and operational guidance for setting tariffs and ensure consistency with the national access regime³.

RECOMMENDATION 7.1

In order to provide more specific and operational guidance for setting reference tariffs under the Gas Access Regime, and ensure consistency with the national access regime, s.8.1 of the Gas Code should be replaced with the following:

s.8.1 A reference tariff or reference tariff policy should be designed with regard to the overarching objects clause, s.2.24 and the following principles:

(a) that reference tariffs should:

- (i) be set so as to generate expected revenue for a reference service or services that is at least sufficient to meet the efficient costs of providing access to the reference service or services*
- (ii) include a return on investment commensurate with the regulatory and commercial risks involved*

(b) that reference tariff structures should:

- (i) allow multi-part pricing and price discrimination when it aids efficiency*
- (ii) not allow a vertically integrated service provider to set terms and conditions that discriminate in favour of its associated businesses in upstream or downstream markets, except to the extent that the cost of providing access to non-associates is higher*

(c) that reference tariffs should be set so as to provide incentives to reduce costs or otherwise improve productivity.

RECOMMENDATION 7.2

To ensure there is no conflict with the pricing principles specified in recommendation 7.1, the following should be deleted from the Gas Code:

- the overview in italics at the beginning of s.8*
- ss8.2(c), 8.3(a), 8.38–8.43 and 8.45.*

¹ Productivity Commission Finding 7.1

² Productivity Commission Finding 7.2

³ Productivity Commission Finding 7.3

Issue 4 – Role of Governments in Electricity Distribution Pricing

Should Governments be able to impose requirements in relation to the regulation of electricity distribution pricing, eg. by way of rules made with the agreement of all Governments or by way of jurisdiction-specific rules made by the Government of that jurisdiction?

Should existing Government-imposed rules relating to electricity distribution pricing, as set out in any Government-imposed tariff or pricing order or in any Government direction, be retained? If so, how should the responsibility for their administration be transferred to the Australian Energy Regulator?

Should additional rules relating to electricity distribution pricing, eg. under a tariff or pricing order or in a direction, be able to be made by Governments in the future?

4.4. Government Imposed Requirements

This question will potentially draw varying responses due to the mixture of Government and private ownership of regulated distribution entities. We note however that Governments have themselves agreed to moving to a national regulatory framework and in that context we make the following comments.

The hierarchy agreed to provides Governments collectively with the power to develop policies and philosophies to be outworked in the regulatory framework. It is at the MCE level that Governments have the opportunity to impose their requirements for regulation and price setting. The regulatory framework under discussion has not been envisaged to accommodate direct interaction between Jurisdictional Governments and the Australian Energy Regulator.

A system that had an economic Regulator attempting to take into account the intermittent desires of a number of Jurisdictional Governments would seem fraught with high risk of distortion and regulatory risk to regulated entities.

However, we stress that we consider it imperative that if policies of Jurisdictional Governments result in increased costs to regulated entities, then the Jurisdictional Governments must be obliged to clearly and transparently notify the AER of those policies and costs, and the AER needs to take them into account in its considerations as the economic regulator and overseer of prices.

4.5. Existing Government Imposed Rules

EECL's view is that a national distribution price determination process is an economic exercise that involves the AER – whereas Jurisdictional Government policies should be overlaid transparently after the economic exercise has been completed.

The AER must be required to accommodate & recognise regulated distribution entities' costs that arise from Jurisdictional Governments' decisions in the economic regulation and price setting process.

4.6. Should Governments Be Able to Make Additional Rules

Consistent with our comments above, EECL believes that once the regulatory regime and the rulebook is established, then Jurisdictional Governments' additional requirements, that occur from time to time should be overlaid transparently after the economic regulation and distribution price setting has been worked through.

Issue 5 – Impact of Existing Electricity Distribution Price Determinations

In making a future electricity distribution price determination, should the Australian Energy Regulator be required to conform with the statements of intention made by a jurisdictional economic regulator in the context of an existing pricing determination, or should the Australian Energy Regulator merely be required to consider whether to apply them?

If the Australian Energy Regulator is to be bound by statements of intention by a jurisdictional regulator in an existing price determination:

- What is the nature of these statements of intention; and
- Should these statements of intention be incorporated in any national set of electricity distribution pricing principles, either as a nationally applicable pricing principle or as a specific jurisdictional deviation?

4.7. For Future Price Determinations, Should AER Confirm Existing Statements of Intention – Or Just Consider Whether to Apply Them ?

If every future pricing determination was bound to take into account earlier decisions of disparate Jurisdictional Regulators, then EECL considers that we would be propagating differentiation – and not moving to our "light-on-the-hill" of uniform national regulation. However, we would not like to end up in a circumstance whereby existing economic efficiencies and cost reflectivity is degraded.

If a future pricing determination results in a step-change in prices seen by customers, then the policies of the relevant Jurisdictional Regulator could be overlaid transparently after the economic regulation and price setting has been worked through.

The ultimate aim for future regulation is that it is free of distortions.

4.8. For Existing Price Determinations, Should AER be Bound by Existing Statements of Intention – Should they be in Pricing Principles ?

For existing pricing determinations, the regulation of which transfers to the AER mid-way through a regulatory period, EECL is of the view that the principles and philosophies published by the Jurisdictional Regulator in making the decision must be administered without distortion by the AER until the expiration of the regulatory period unless requested by the regulated entity. To this end any statements of regulatory intention made by the Jurisdictional Regulators in handing down their regulatory determinations must be a primary consideration of the AER for the regulatory period.

For new regulatory determinations, investment certainty is one of the "Objectives" that we propose in our introductory comments in Section 3. Adoption of a propose-respond model would enable regulated entities to articulate what is necessary to deliver investment certainty, including during periods of transition between different regulatory periods and regimes.

Issue 6 – Interaction of Australian Energy Regulator with Other Bodies

What consultation requirements should be put in place between the Australian Energy Regulator, on the one hand, and other regulators and Government departments and agencies, on the other hand, on matters that may impact on the Australian Energy Regulator's price regulation function, eg. should the Australian Energy Regulator be required to enter into memoranda of understanding with such other bodies in relation to such matters and for the purpose of obtaining information that is necessary for the performance by the Australian Energy Regulator of its functions?

EECL considers that it is a matter for Government to determine the nature of the consultation arrangements that are put in place between the AER and other regulators and Government departments.

However, EECL insists that appropriate arrangements are put in place, and that the AER is obliged to take into account the cost of complying with the various Jurisdictional based obligations in making any regulatory determinations.

It is imperative that the AER does not discount nor dismiss jurisdictional costs based on its own judgement.

It is also important that any Jurisdictional based obligations on regulated entities are clearly set out in legislation or transparent Government policies – and that costs arising from legislation or policies of jurisdictions are quantified by the jurisdiction, confirmed with regulated entities, and taken into account in their entirety by the AER.

This process will support a propose-respond model since regulated entities are included in the consultation and quantification steps during the development of Jurisdictional legislation or policy, and then are able to transparently incorporate the quantified costs into their price-service offering, and the AER is able to confirm the proposal back via the Jurisdiction.

As noted above, EECL thinks it is best that Jurisdictional Governments and their departments comment about the most legally effective way to implement consultation obligations between themselves and the AER – however we would make the comment that the proposed raft of MOUs, on the face of it, would seem a cumbersome approach with the high probability of inadvertently missing departments that are relevant to regulated entities costs (especially given the propensity for Jurisdictional Governments to create, abandon and shuffle responsibilities of departments).

5. DISTRIBUTION PRICING - GAS

EECL is an electricity distribution entity that has not been directly involved with gas as a regulated entity. For this reason we make limited comment about this section.

Our comments are for the most part contained elsewhere in this submission regarding the philosophies and synergies about regulation of gas and electricity regulation are relevant, as are our comments about the Productivity Commission's review of the existing Gas Code – see Sections 1, 2 & 3 above.

Issue 7 – Pricing Objectives and Principles: Gas Distribution

Should the pricing objectives and principles set out in the National Gas Access Code continue to apply under any national framework for the regulation of gas distribution pricing?

Should any of the existing objectives or principles (including as recommended to be amended by the Productivity Commission) be modified or removed, or should any new objectives or principles be added?

Are there any particular jurisdiction-specific characteristics that need to be accommodated in the regulation of gas distribution pricing?

Issue 8 – Consistency with Electricity Distribution Price Regulation

To what extent should the principles relating to gas distribution pricing be the same as those that relate to electricity distribution pricing?

Issue 9 – Impact of existing Gas Distribution Pricing Arrangements

Should any of the existing fixed principles, or any existing requirements of any Government-imposed tariff or pricing order, be incorporated into the pricing objectives and principles contained in the National Gas Access Code?

6. LICENSING

EECL has the following overarching comments regarding licencing of Participants in the National Electricity Market:

1. Irrespective of who is the developer, issuer and enforcer of licences – there should be no overlap between a national regime and the Jurisdictional regimes.
This raises the question as to what happens for activities that Jurisdictions require to be licenced, but who do not operate in the National Electricity Market ?
2. We should not end up with national licence conditions that are a combination/collection of the most onerous conditions in each of the current State based licensing regimes.
3. The philosophy should be that licences are minimalist instruments – that do not impose more onerous obligations on regulated entities than arises from the legislation under which they are issued. The detail of entities' obligations should be contained in either the legislation itself (eg. regulation) or Codes that are subsidiary to legislation.
4. Retail licences should be a national licence since:
 - Retail activities cross State borders; and
 - Retail activities do not attract varying external impacts (like WH&S, environmental, cultural heritage and planning obligations) since they are "financial" or "non-physical" activities; and
 - Retail activities are truly a "market" and should therefore have limited scope for varying Jurisdictional restraints to be imposed on some Participants – since this results in a playing field that is not level.

Issue 10 – Activities to be Licensed

What activities should be licensed under a national licensing scheme for the electricity and gas industries?

As noted above, EECL considers that Retail licencing should be a national licence.

As regards licencing of "physical" activities, such as owning and operating a distribution network, EECL's concern is less with who is the licence developer, issuer and enforcer, than about ensuring there is no duplication of the activity resulting in having to comply with more than one licence.

Distribution entities operate (generally) within State boundaries, so it is conceivable that licencing could happen either nationally (perhaps to criteria developed by Jurisdictional Governments) or Jurisdictionally.

EECL also considers that there should be either licencing or registration – not both – since this sets up a regime of duplication.

EECL has another extraneous matter for consideration (at least by the Jurisdictional Government) – and whilst this is a matter for the Queensland Government to determine, EECL makes the comment that consideration will need to be given to the licensing requirements for EECL's network that is not connected to the main grid (ie. the Mt Isa/Cloncurry network and the remote networks supplied from small generators). We understand that Western Australia has a similar situation.

Issue 11 – Suggested Licence Conditions

Is the allocation and coverage of existing licence provisions between the various regulatory instruments, as suggested in Appendix 1 to this Issues Paper, satisfactory?

Are the suggested licence conditions for electricity and gas retail licences and electricity and gas distribution licences, as described in Appendix 2 to this Issues Paper, satisfactory?

6.1. Appendix 1 – Existing Licence Conditions & New Destination

EECL reserves comment on the allocation and coverage of existing licence provisions between the various regulatory instruments as set out in Appendix 1 since we believe firstly we need to establish the philosophy about who is going to be the licence developer, licence issuer and licence enforcer.

There also needs to be consideration about what existing licence conditions are really needed under a national licensing regime.

6.2. Appendix 2 – Suggested Uniform Licence Conditions

We make the following comments regarding Appendix 2 on the basis of if we were to have a national licence, what might it contain:

1. EECL considers it is important that in setting licence conditions, a "highest common denominator" approach is not followed – and the content of a national licence as drafted in Appendix 2 would appear to support this philosophy.
2. Licences should contain minimalist high level permissions and obligations – and not impose more onerous obligations on regulated entities than arises from the legislation under which they are issued. The detail of entities' obligations should be contained in either the legislation itself (eg. regulation) or Codes that are subsidiary to legislation
3. Licence conditions should not be replicated via a requirement for registration or by requiring entities to hold more than one licence for the same activity.
4. EECL agrees that it should be required to co-operate with Retailer-Of-Last-Resort schemes to the extent of not hindering the implementation of the scheme. However, EECL does not believe it is appropriate that distribution entities should assume the role of Retailer of Last Resort (see condition 11 in the Distribution Licence section page 253) other than to recognise and process any changes arising when it is necessary for a Retailer of Last Resort to step in. Distribution entities do not have the necessary market trading skills or experience to perform this role – and the whole philosophy of distribution entities is that they never "own" or "trade" energy, but rather just "transport" it about.

5. EECL's current Distribution Authority (as amended effective from 1 October 2004) obliges it to comply with various guaranteed service level, auditing, reporting and information sharing requirements. By giving consideration in this submission to the suggested national licence conditions, EECL is not suggesting that it should not be required to comply with its existing obligations. EECL intends to comply with these obligations. It is a matter yet to be determined whether these obligations should be administered through the MCE/AEMC/AER under a national regime or through the Jurisdictional Regulator under the Queensland *Electricity Act 1994*.

Issue 12 – Mandatory Licence Conditions

Are there any existing or suggested licence conditions which, as a matter of Government policy, should be included in electricity or gas retail licences or electricity or gas distribution licences and therefore should be specified in legislation as mandatory licence conditions?

EECL is inclined to the view that, if licences are to be national licences, then Jurisdictional Governments have the opportunity to fix policy as to the content of the licences at the MCE level and it would be for the MCE to take advice as to whether this requires legislation or not.

EECL reserves comment as to whether particular Governments' policies about licence conditions should be mandated – since this would depend on whether or not a national approach is ultimately adopted – we think this matter needs to firstly be resolved.

Whatever is resolved, there should not be a conflict in licence conditions and objectives of a national regulatory regime or the National Electricity Code (soon to be Rules).

A typical example of conflict would be a licence or ring-fencing condition that prevents a distribution entity from owning generation – when the National Electricity Code (soon to be Rules) provides that generation might be used by distributors as a more efficient and effective solution to network augmentation, a matter that the economic regulator is to take into account when determining prices⁴.

Issue 13 – Form and Variation of Licence Conditions

Should the Australian Energy Regulator be required to issue licences in an agreed form containing specified conditions?

Under what circumstances (if any) should the Australian Energy Regulator be able to vary a licence condition that is included in any agreed form of licence, eg. only with the approval of the Government of the relevant jurisdiction(s) or of all of the Governments?

Under what circumstances (if any) should the Australian Energy Regulator be able to include licence conditions that are in addition to those included in any agreed form of licence?

⁴ NEC clause 5.6.2(m)

6.3. Should AER be Required to Issue Licences in Agreed Form Containing Specified Conditions ?

This question assumes that there is firstly an agreement to have nationally issued licences. Contingent upon such an agreement being made, EECL would contend that national licences are not truly "national" unless they have a standardised and common format and conditions. The AER would be an appropriate body to issue national licences.

6.4. Under what circumstances (if any) should the AER be able to vary a licence condition ?

This question assumes that there is firstly an agreement to have nationally issued licences. Contingent upon such an agreement being made, EECL's view is that the AER should not have discretion to vary licence conditions.

Instead, consistent with its role as the rule enforcer, the AER should simply apply the rules developed by the AEMC to apply the policies of the MCE (whilst also noting that the intention of Ministers was to not be involved in the day-to-day operations of the market).

EECL considers that the question as to the circumstances in which the AER is able to vary a licence condition is a matter for MCE and Jurisdictional Governments. There should never be a situation where an entity's obligations under its licence are inconsistent with its obligations under some other Jurisdictional Government policy or legislative requirement.

6.5. Under what circumstances (if any) should the Australian Energy Regulator be able to include licence conditions that are in addition to those included in any agreed form of licence?

See our comments in section 6.4 above. Consistent with the response above, EECL believes that the AER's role is only to apply the rules developed by the AEMC. As such, the AER should not be able to include additional licence conditions.

Issue 14 – Ability of Governments to Vary Licence Conditions

Under what circumstances (if any) should the Governments be able to require that issued licences be varied to include additional specified conditions?

See our comments in section 6.4 above. Consistent with the response above, and EECL's belief that there should be a clear separation of powers, the only role for Government is through the MCE as policy maker. The MCE may make submissions to the AEMC to vary licence conditions. The AEMC is the only body that should be able to vary licence conditions, and only after a formal consultation process.

Issue 15 – Triangular or Linear Approach

Should a triangular or linear approach be adopted, on a national basis, to the relationship between retailers, distributors and end-use customers? Should the customer be able to decide which form this relationship is to take or should the form of the relationship be mandated under the regulatory regime?

EECL considers that the triangular approach is a more appropriate structure for the reasons set out at the bottom of page 54 of the Issues Paper.

EECL considers that the form of relationship should be mandated under the regulatory regime as most customers have little understanding of the difference between the 2 approaches.

EECL is however concerned about not imposing additional costs or administrative complexity on to distributors, retailers or customers in achieving a national triangular relationship. This will require careful drafting of legislative (any other) provisions. However we believe it is achievable.

In connection with reaching agreement on the contractual framework, the current jurisdictional inconsistency on the use of terms such as "sale" and "supply" should also be rectified. For example, the New South Wales *Electricity Supply Act 1995* (NSW) uses the term "supply" in relation to the retail sale of electricity. In the Queensland *Electricity Act 1994*, the term "supply" refers to the physical connection of premises to a network.

Issue 16 – Suggested Licence Administration and Enforcement Arrangements

Is the suggested licence administration and enforcement regime described in section 5 suitable for application as a national regime? If not, in what respects should it be modified?

What role (if any) should the Governments play in the administration or enforcement of the licensing regime?

What role should the Australian Energy Market Commission (in its rule making and market development capacity) have in any licensing arrangements?

See our comments in section 6.4 above.

If a national licence regime is to be adopted, then consistent with our comments above, there needs to be recognition of the distinct roles of Ministers/MCE, AEMC and the AER. As such, Jurisdictional Governments through the MCE should set the legislative framework for licence administration and enforcement, the AEMC should develop and amend licences and the AER should issue and enforce licences.

Issue 17 – Suggested National Exemption Regime

Is there benefit in adopting a national system of exemptions from licensing requirements? Is the suggested national exemption regime described in Section 5 acceptable? If not, in what respects should it be modified? In particular, should only the Governments be able to grant or authorise the granting of such exemptions?

See our comments in section 6.4 above.

EECL supports the development of a minimalist high level licence which may make an exemption regime unnecessary. However, if an exemption regime is developed it would need to fit within the distinct roles of licence developer, issuer and enforcer. The model agreed for a national framework (assuming that it includes national licencing) does not accommodate individual governments making decisions on licence exemptions. Neither does the model accommodate the AER itself setting exemption criteria or making decisions unless there is a guiding set of principles that the AER is adhering to or administering.

However there are activities that are currently carried out within each Jurisdiction under exemptions for persons who are not participants in the National Electricity Market (eg. on-sellers, small generators). Presumably these would need to continue to be managed by the Jurisdiction.

Issue 18 – Process for Introducing New Licences and Exemptions

Should the replacement of existing licences and exemptions with the new agreed forms and licences and exemptions (if any) be effected through legislation or by way of a voluntary surrender and replacement, in either case with a transitional period?

EECL considers that the replacement of existing licences and exemptions preferably should be effected through legislation. However this decision should only be made once it has been determined that the affected entities will not suffer detriment (eg. relating to arrangements with financial institutions, contracts that might attract penalties etc).

Issue 19 – Alternatives to Licensing

Is there any alternative form of regulation (eg. registration) that would be preferable to adopt instead of the licensing of electricity and gas retailers and distributors?

EECL considers that regulation through a licensing system is appropriate.

7. INDUSTRY CODES AND RULES

Issue 20 – Single Consumer Protection Code

Is there benefit in adopting a single consumer protection code that applies in respect of electricity and gas retail and distribution in each jurisdiction? If so, are all the relevant matters for inclusion in such a code listed in Table 9? What are the areas in respect of which justifiable jurisdictional differences are likely to arise?

7.1. Single Consumer Protection Code

EECL considers that there might be benefit in the adoption of a single consumer protection code or as an alternative, standard customer contracts.

EECL's preferred position is to include the relevant matters in standard customer contracts, thereby increasing the transparency, and to that extent, the enforceability of customer obligations as well as setting out relevant customer protection mechanisms. This would enable customers to be clear about who is responsible for what (ie. distribution entities for "physical" matters, and retailers for "financial" matters).

7.2. Does Table 9 List All the Relevant Matters ?

EECL would argue that consumer protection matters should relate to the interactions between the contracted parties (information exchange, meter reading, billing, payments, penalties for non-payment etc).

We believe that matters such as quality and reliability of supply should be kept separate from any Consumer Protection Code since they relate to the outcomes of the broader economic regulatory regime for the entities' entire customer-bases – as opposed to being relevant between distribution entities and individual customers.

7.3. Justifiable Jurisdictional Differences

EECL considers that the areas in which justifiable jurisdictional differences are likely to arise will relate primarily to geographical differences.

For example, given the remoteness of parts of EECL's distribution network, it would not be practical to impose the identical service standards in all parts of this network as those imposed in urban areas (some areas are inaccessible during the wet season; some areas require flying in).

Departures may be appropriate for things such as reliability and quality of services, obligations in relation to the frequency of meter reading and billing and the timing of connections and re-connections.

Issue 21 – Responsibility for Making Industry Codes and Rules

Should industry codes or rules (such as a consumer protection code) be developed by, or be subject to the approval of, the Australian Energy Regulator or the Governments, or should the Australian Energy Market Commission be responsible for making such industry codes or rules?

EECL firstly considers that the critical issue in the development of any rules and codes is to ensure that there is appropriate consultation.

As stated elsewhere in this submission, we note that Governments have themselves agreed to moving to a national regulatory framework and in that context we make the comment that the hierarchy agreed to provides Governments collectively with the power to develop policies and philosophies to be outworked in the regulatory framework. It is at the MCE level that Governments have the opportunity to impose their requirements for regulation and price setting (including any rules or codes). The regulatory framework (including the rule change process) charges the AEMC with the role of rule or code development and changes, after taking into account policies of the MCE and consultation with participants. The AER's role should be limited to administering or enforcing the rules or codes.

The approach whereby Jurisdictional Ministers agree about the policy is not dissimilar to the existing arrangements for Chapter 9 Derogations from the National Electricity Code whereby if a Jurisdictional Minister seeks a derogation, he/she must consult with his/her counterparts prior to seeking the approval of the change by the ACCC. For the future, the MCE would fix the policies, and the AEMC would process the consultation and rule or code changes.

- 9.1.1(g) *Any change to the jurisdictional derogations of a jurisdiction can only be made by the Minister of that jurisdiction and that Minister must give notice to and consult with the corresponding Minister of each other participating jurisdiction about any proposed change within a reasonable time prior to seeking the approval of the change from the ACCC.*

Issue 22 – Variation of, and Exemptions from, Industry Codes

If the Australian Energy Regulator is to have responsibility for making an industry code (such as a consumer protection code), under what circumstances (if any) should it be able to vary or add to the terms of that code, eg. only after a process of public consultation? Are there any consumer protection measures, that could be included in a consumer protection code, which should not be able to be varied without the approval of the Governments (eg. Because they implement a particular policy or are of particular significance to one or more jurisdictions) and so should be enshrined in legislation?

Under what circumstances (if any) should the Australian Energy Regulator be able to exempt an electricity or gas retailer or distributor from complying with a provision of a consumer protection code?

7.4. AER Making Industry Codes

EECL has consistently stated in this submission that the AER should not have the power to make rules or codes – and correspondingly neither should it have the power to vary or add to rules or codes, even with consultation.

The hierarchy under discussion dictates that the AEMC is the rule maker.

7.5. Jurisdictional Government Variations

If Jurisdictional Governments require certain consumer protection matters to be implemented and fixed – then it is for them to make such policies at the MCE level, or alternatively, if the matter is relevant only to the jurisdiction, then it should be legislated for at that level.

7.6. AER Exemptions from a Consumer Protection Code

EECL's contention throughout this submission is that the AER should administer the rules. If the rules provide for exemptions, then the AER would administer accordingly. However the AER should not be determining the policy about when exemptions might apply.

Issue 23 – Minimum Terms and Conditions for Distribution and Retail of Electricity and Gas

Should there be a form of nationally uniform regulation that applies to the minimum terms and conditions that must apply in relation to the distribution and retail of electricity and gas to (small) consumers? Should there be less prescription of such terms and conditions in relation to contestable customers as opposed to distribution customers and franchise customers?

EECL's view is that if minimum terms and conditions were embodied into "standard" contracts, then there is scope to vary the suite of conditions to accommodate the class of customer.

We think it reasonable to consider the following differentiating points when considering classes of customers:

1. Philosophically, all customers will have the right to become contestable at some time in the future (as they are able to do in some jurisdictions already) – therefore a customer being contestable or franchise is not an appropriate way to differentiate between minimum terms and conditions. Instead customer size (ie. Authorised Demand size) would be more appropriate.
2. There are 2 comments to make about small-sized customers (eg. domestics):
 - (1) They are usually deeply embedded in a distribution network that is not capable of providing individually tailored services (apart from single phase versus three phase supply). For example, distributors cannot provide better (or worse) reliability or service quality to an individual customer – instead it is provided at feeder level to all customers on that feeder or by other solutions that are customer specific (not distinguishing between contestable or franchise).
 - (2) These small customers do not properly understand the complexities of the electricity market nor even their own demand and energy usage – and need the most detail (and minimum terms, conditions and consumer protection clauses) to be specified. EECL argues that their "standard" contract is the appropriate place for this.
3. Once customers are large enough to have demand metering and network prices – then they theoretically should be capable of modifying their usage with enough understanding to be able to start "trading-off" their usage pattern for better prices and for particular service and supply related matters.
4. Queensland customers who remain on franchise tariffs do not see cost-reflective prices and a significant number of them are the beneficiaries of the Government's tariff equalisation policy. These customers cannot trade off price for different services. In any

event, as noted in Point 2 above, small customers can never properly trade off prices for services as individual customers. If customers are large franchise customers, then they are of a size where they can elect to be contestable customers in the event they seek to negotiate about price versus services – so large customers do not need the additional protection of mandated terms and conditions.

In making the above comments we also consider that:

- It is important that in setting minimum terms and conditions, a "highest common denominator" approach is not followed - in other words, the terms and conditions should not be a combination/collection of the most onerous terms and conditions from each of the current State based regimes
- a minimum standard should be "minimum" and allow for a trade off for large customers between cost and standard provision
- the minimum terms and conditions must take into account geographical differences impacting on electricity distributors.

8. ASSOCIATED ELECTRICITY AND GAS SCHEMES

Issue 24 – Uniformity or Consistency in Associated Electricity and Gas Schemes

Should there be a single national approach to or consistency in the terms of:

- The dispute resolution schemes;
- The retailer of last resort schemes;
- The customer transfer schemes; and/or
- The business to business transfer information exchange schemes.

that apply in each of the States and Territories?

What impediments are there to achieving such a national approach or such consistency in respect of any of these kinds of schemes?

EECL considers that it is desirable to have a single national approach to matters that are purely "market" related, or are matters that cross state borders and this would likely include the matters discussed in the Issues Paper:

- dispute resolution schemes (a national dispute resolution scheme has been operating successfully under the National Electricity Code for Code Participants – and a nationally consistent Ombudsman scheme is conceivable)
- customer transfer schemes (a national scheme happens now for the electricity market)
- business to business information exchange schemes (consultation has been progressing on this for electricity – but consideration must be given to accommodating inconsistencies in the implementation and timing of Full Retail Contestability).

Establishment of national schemes needs to be the subject of more detailed consultation, particularly regarding the costs of establishing national systems and the timing of the phasing in of obligations – particularly taking into account the imposition of obligations on entities operating in Jurisdictions which do not yet have Full Retail Contestability.

Issue 25 – Community Service Obligations

How are electricity and gas retailers and distributors to be obliged to perform community service obligations under a national regime, eg. through a licence condition or Ministerial direction?

EECL's comments in this section are related to our role as a distribution entity in Queensland, where the administration and management of Community Service Obligations (CSOs) is currently conducted by retail entities.

EECL submits that CSOs such as pensioner rebate schemes, drought assistance schemes etc should not be a licence condition.

Instead we think that Jurisdictional Governments should legislate or give formal directions to entities required to perform these services and also be clear as to where the funding is derived from to ensure that any national economic regulatory regime for distribution entities does not become distorted.

There should also be a clear mechanism for regulated distribution entities to recover the cost of complying with these obligations.

Please refer also to our comments in 4.5 and 4.6.

9. SERVICE STANDARDS

This section assumes that there is firstly an agreement to have nationally consistent service standards regimes (as opposed to retention of Jurisdictional regimes).

EECL's comments in this section are premised upon such an agreement being reached and in the context of a national regime.

We note that since the Issues Paper was drafted, the Queensland Government's Independent Panel released its report "Detailed Report of the Independent Panel: Electricity Distribution and Service Delivery of the 21st Century" in July 2004 (the Report). This Report has a significant focus on service standards and is currently driving new Queensland Jurisdictional service standards and obligations for EECL's future performance. EECL intends to comply with these obligations.

We draw your attention to the work undertaken by the Utility Regulators Forum on National Regulatory Reporting Requirements including service performance of electricity distributors and retailers.

The report can be accessed at:

<http://www.accc.gov.au/content/index.phtml/itemId/332190/fromItemId/3894>

The report appears to cover off on the majority of issues raised in Section 10 of the Issues Paper and should be used as a basis for future discussion/consultation in this issue.

Issue 26 – Uniformly Defined Service Measures

Are there any advantages in employing a set of uniformly defined service measures to measure the standards of reliability and customer service provided by electricity and gas retailers and distributors in each of the jurisdictions? If so, what are the appropriate measures and are there any issues specific to a particular jurisdiction that might preclude the adoption of these matters? [Note: This is not to be taken as suggesting that the same empirical service standards should be imposed on each retailer or distributor.]

9.1. Advantages of Uniform Set of Service Measures

Regulators have for some time working towards agreement about a set of uniform service standard measures, with "standard" definitions relating to those measures. Refer our comment above EECL supports this concept.

Our concern is not with standardisation of the "measures" but rather with attempting to standardise the "service" as the Issues Paper states in the note to this Issue 26.

Clearly the "service" will be dependent on the characteristics of the particular network and it would be inappropriate to mandate vanilla service standards. Our proposal of a propose-respond model would resolve some of our concerns in this regard.

9.2. What are the Appropriate Uniform Measures?

Determination and implementation of the appropriate uniform measures will require further detailed consultation. The concern is that not all entities will be capable of gathering the necessary data in order to report.

Costs of standardised reporting need to be weighed against the benefits to be derived – and the use to which the information will be put.

We would suggest that consultation should include a detailed summary of measures currently in use, as well as the work carried out to date by the various regulators in their quest to move to standardised measures and reporting, and that participants be given the opportunity to provide feedback.

Issue 27 – Determination of Service Measures and Targets

Should the service measures used, and any related targets, be determined by the Australian Energy Regulator, the Governments or the Australian Energy Market Commission?

EECL submits that, if there is to be a national service standards regime, then the "measures" and "minimum service standards" should be determined by the AEMC in line with the policies of the MCE and subject to the ability of entities to gather and report data and in consideration of the differences in networks.

"Minimum service standards" should be mandated by the AEMC. Dropping below "Minimum service standards" would potentially be a licence infringement.

"Targets" on the other hand, should be something that only regulated entities themselves set in response to the incentive regime fixed by the AER.

That is, "targets" would be the point where entities determine that to spend more money would not be economic, because the improvement of service quality no longer justifies the cost of the works necessary. Customer willingness to pay needs to be balanced against service quality improvements.

"Measures" might be uniform, but "targets" will be tailored by the particular entity in response to its service quality incentive regime.

Following that, it would be appropriate for the AER to monitor and enforce a service standards incentive regime that is linked to the economic regulation of the entities – since provision of the service standard has a cost that must be accommodated and monitored by the regulator.

It is EECL's proposal that any service standards regime should be hinged around the propose-respond model whilst retaining the ability to gather nationally consistent data derived from uniformly described "measures".

A critical matter is that regulated entities should not be required to comply with duplicate minimum service standards (national as well as Jurisdictional). The goal should be to have service quality regimes and obligations fully contained in one place, with robust mechanisms to ensure that the economic regulator takes into account the costs of the regime.

Issue 28 – Use of Service Measures

Should the performance of electricity and gas retailers and distributors against any target levels for the relevant service measures:

- be published?
- Constitute the basis for an incentive/penalty scheme?

9.3. Publish Service Standards Performance?

EECL is comfortable with the concept of publication of service performance, provided that it is done in a way that enables the reader to clearly understand what is being measured and that avoids erroneous comparisons between networks with differing characteristics.

Network specific characteristics result in divergent performance by individual distribution businesses around any particular service measure. Any publication should be careful to avoid benchmarking distribution businesses against each other without this qualification.

9.4. Basis for Incentive/Penalty Scheme?

Refer to our comments under Issue 27. EECL contends that "targets" should be set by the entities in response to an incentive/penalty regime. Therefore targets are not necessary for a service quality incentive regime.

EECL believes that the same set of "measures" that are reported should be used as a basis of any Service Quality Incentive Regime, but that these should be balanced between input and output measures, and weighted to reduce undue risk to the distribution entity.

It is our view that a propose-respond regulatory model would produce the best outcomes in delivering a robust outcome that takes into account network specific factors and meets the expectations of the various parties (Jurisdictional Governments/MCE, regulated entities and customers).

10. OTHER FUNCTIONS OF JURISDICTIONAL REGULATORS

Issue 29 – Transfer of Ancillary Functions to Australian Energy Regulator

Which of the ancillary functions that the jurisdictional economic regulators currently perform in relation to electricity and gas retail and distribution regulation should be transferred to the Australian Energy Regulator? To the extent any of these ancillary functions (or any retail price regulation functions) are transferred to the Australian Energy Regulator, how should the costs of performing those functions be funded?

EECL notes that the Queensland Jurisdictional Regulator (the Queensland Competition Authority) also performs the following functions:

1. Determines questions of fairness and reasonableness for connection to a distribution network (National Electricity Code clause 9.37.4)
2. Approves Distribution Loss Factors (National Electricity Code clause 3.6.3(i))
3. Be the Metrology Co-Ordinator (National Electricity Code clause 7.2.1A)
4. Regulates the Mount Isa/Cloncurry network which is not connected to the inter-connected national grid (Queensland *Electricity Act 1994* section 89B)

EECL's submission is that, if there is to be national regulation, then the requirement for historical Jurisdictional Regulators (as they get their powers from the National Electricity Code, soon to be Rules) should move to a national regime, including any jurisdictional specific regulation requirements that may need to continue to be dealt with separately.

Issue 30 – Provision of Advice to Governments

Will Governments still require the advice that is being provided to them by their jurisdictional economic regulators in relation to the electricity and gas industries? If so, will those regulators continue to be able to provide that advice once most of their electricity and gas retail and distribution regulation functions have been transferred to the Australian Energy Regulator?

EECL's view is that, once a national economic regulation regime is agreed upon, then all the functions that were previously carried out by Jurisdictional Economic Regulators should move to that regime.

Any other functions they might have performed for State Governments should be explicitly transitioned either to the Governments themselves, or to the national regime under the umbrella of the policies of the MCE.

Under the scenario we've described, there should be no residual role (advisory or otherwise) for Jurisdictional Economic Regulators, and no information to be gathered and passed to Governments. As set out in *The Australian Energy Market Commission Establishment Act 2004*, the AEMC's second function is to provide advice to the MCE as requested by the MCE. This should fulfil any information requirements government may have. If Governments require other information they may set up an advisory body within Government. However it is important

to ensure that businesses are not required to provide information to different bodies (only the AER) as this could result in considerable duplication and inefficiencies would result.

Issue 31 – Impact of National Framework on Jurisdictional Regulators

To the extent that the jurisdictional economic regulators continue to have any functions to perform, will the removal of most of their electricity and gas retail and distribution regulation functions have an adverse impact on:

- their viability and their ability to perform those functions;
- their ability to attract and retain qualified staff;
- the regulatory expertise that they would otherwise gain from regulating a range of industries;
- consistency in the application of a regulatory principle across a range of industries;
- their funding arrangements?

EECL makes no submission on this issue other than to suggest that if a particular Jurisdictional Government considers it necessary to retain the services of former Jurisdictional Economic Regulators to perform specific functions relevant to the Jurisdiction (either as independent entities or as arms of Government) - then it would be a matter for the Government itself to consider the points raised in the Issues Paper when establishing the new role.

11. OTHER ISSUES

Issue 32 – Other Issues

Are there any other issues that are not canvassed in this Issues Paper that should be taken into account in the establishment of a national framework for electricity and gas distribution and retail regulation:

1. Clause 9.37.4(b) of the National Electricity Code provides as follows:

"Despite anything to the contrary in the *Code*, the *Jurisdictional Regulator* appointed under clause 9.38.3 is responsible for the regulation of *connection* to a *Queensland distribution network*, unless the Minister determines that a national body should have that responsibility".

Other jurisdictions have similar derogations.

The Issues Paper does not consider which entity is proposed to have responsibility for this role under the proposed national regime.

EECL also considers it would be appropriate for the exact nature of this regulatory role to be clarified.

2. In addition to owing and operating a substantial proportion of the Queensland interconnected electricity distribution grid, EECL also owns and operates electricity distribution networks in remote parts of Queensland. These remote grids are located for the most part either on islands or in western Queensland. They are currently regulated by the Queensland Government separately to EECL's other networks. We understand that Western Australia has similar networks.

The Issues Paper does not consider whether the regulation of non-grid networks potentially could fall within the proposed national regime or would continue to be regulated under the existing state based regimes.

3. There is an absence of discussion about the regulation of compliance by distribution entities with technical standards in the National Electricity Code (soon to be Rules). Whilst we are not seeking to distract consultation from the main issue (being economic regulation) – we nonetheless consider it vitally important that this function be clearly linked into a reformed national regime – and in particular, that the costs associated with compliance with technical standards be accommodated in the economic regulator's (AER's) considerations.