



Hydro Tasmania

1 April 2004

Streamlining the Code Change Process
C/- MCE Market Reform
Department of Industry, Tourism and Resources
GPO Box 9839
CANBERRA ACT 2601

Via email: MCEMarket Reform@industry.gov.au

Dear Sir

Streamlining of the Code Change Process

Please find attached Hydro Tasmania's submission in relation to the above.

If you have any queries, please contact David Bowker on 03-62305775

Yours faithfully

G L Willis
Chief Executive Officer

Hydro Tasmania Submission on Streamlining the Code Change Process

We support the basic approach outlined in the MCE Discussion Paper and would like to raise the following issues and points of clarification.

Firstly there are two major issues for us

- AEMC's ability to submit code changes
- The need for a clear benchmark for Code changes

AEMC's Ability to Submit Code Changes

There is a weakness in the Governance arrangements whereby AEMC has the dual roles of being able to propose Code Changes (eg in its Market Development role) and evaluating Code Changes.

There is a very limited safeguard in that AEMC is only able to develop Code changes which the MCE will submit. This process has an element of conflict in it. However, the real conflict will arise as a result of AEMC's role in market development which has not been directed as a result of an AEMC policy direction. As the market matures, there will be ongoing market development and much of it is of a very technical and operational nature. One of the recent market development initiatives, for example, was the local settlement of contingency FCAS services. Under the new process, this change would have been developed by AEMC and submitted by the MCE. This is an entirely inappropriate arrangement.

The best solution to this is for the market development role to be with NEMMCO, as recommended by the Parer Report. NEMMCO have the technical expertise to undertake this role which needs to exist in any case whether the market development role is within NEMMCO or not. AEMC need not develop any Code changes in this case as NEMMCO would be quite capable of submitting Code changes related to manifest errors or typographical changes. In all likelihood, they will be the ones to discover them during their operation of the market.

In the rare event that MCE require a Code change for some reason, they can have a consultant or an individual jurisdiction develop the change. It does not need to have market development in AEMC.

This change will lead to a much improved Governance model and clearer roles for the market.

The need for a clear benchmark for Code changes

The document is not clear on the benchmark which must be met by a Code change proposal for it to be accepted.

The footnote on page 7 of the Discussion Paper indicates that the proposal must contain a prima facie demonstration that a net benefit will result. Page 8 indicates that a proposal must be assessed against the “Prescribed Criteria” but makes no mention of the net benefit test.

There needs to be a clarification possibly along the lines that any proposal must demonstrate that it passes a net benefit test and does not conflict with the Market Objectives or MCE Policy Framework. There would need to be some explicit definition of the working of the net benefit test.

Unless this is done, there can be no effective merits appeal process.

In addition, there are several secondary issues where the process can be improved in our view:

Transparency

The Code Change process would have additional transparency if the proposed Code Change as submitted to AEMC was published as a part of Step 1. This would allow participants to understand the proposal prior to any changes by AEMC/ACCC which might occur in Steps 1 and 2.

In addition, any submissions received should be published immediately on the website.

Appeal Rights

The paper mentions appeal rights on “questions of law”. It is vital that there are merit appeal rights as well which should be settled by the Competition Tribunal.

AEMC Proposal Assessment

A part of AEMC’s assessment of a code change proposal should be to assess whether the identified problem is actually a problem or not. One major source of additional regulation is the introduction of additional regulation to address a possible problem. AEMC should be satisfied that a real, not potential, problem exists.

Code Change Proposal Amendment

Where AEMC chooses to amend a Code Change Proposal, the proponent of this proposal must be the one who determines whether the AEMC’s improvement still maintains the original intent of the proposal.