



Major Energy Users Inc.

18 September 2008

The Manager
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Dear Sir

MAJOR ENERGY USERS: COMMENTS ON AEMO ESTABLISHMENT – LEGISLATIVE FRAMEWORK: STATEMENT OF PROPOSED APPROACH

The Major Energy Users Inc (MEU) welcomes the opportunity to provide comments on the statement of proposed approach in relation to the legislative framework for the Australian Energy Market Operator (AEMO). The MEU is pleased with the extent that consumer concerns expressed in the working group on the establishment of AEMO have been carried into the statement of proposed approach.

1. Introduction

Whilst it is noted that the MCE has agreed that a 'minimal changes' approach is to be adopted involving legislative amendments to the national framework reflecting the tight timetable, it would be unwise to delay important actions "to achieving national consistency where feasible and potentially reduce the regulatory burden on businesses" (p.2). In this regard, the MEU considers that transactions costs should be minimised, but not to the extent that key actions needed to ensure national consistency are delayed. It would also be equally unwise to delay establishing significant accountability mechanisms, such as in AEMO's corporate structure and governance.

The MEU considers AEMO's corporate structure and governance arrangements to be the most important matters of substance that need careful and early structuring, especially in the context that a number of governments are also owners of energy supply side businesses. This ownership dichotomy (having both government and industry affiliations) has the potential to impact AEMO and its related board membership.

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Notwithstanding the above, the MEU strongly supports the requirement that the instruments to be incorporated into the national framework ensure “that the broad public interest is appropriately considered” (p.4).

Against the above background the MEU provides specific comments on the issues raised in the statement of proposed approach.

2. Accountability Framework

The MEU agrees that:

“...a robust comprehensive compliance and enforcement regime is an integral part of a well functioning regulatory framework. A weak enforcement framework undermines public confidence in the regulatory regime and may create perceptions ‘that an otherwise appropriate regulatory tool is not working properly’ (p.6)

2.1 Compliance and Enforcement in the NEL and the NGL

The MEU generally supports the current enforcement frameworks to ensure compliance with the Law and Rules. Consideration, however, should be given to instituting time-lines for the AER to examine and report on investigations into possible breaches of the Rules. In this regard, the MEU is aware that the AER, as of 7 September 2008, has still to publicly report on its investigations into certain of AGL/TIPS’s generator bidding practices during the summer of 2008. Such extended delays do raise questions about the robustness of the compliance and enforcement regime. It seems, to the MEU, that timelines (where they do not currently exist) should be clearly specified, and the opportunity taken to have these under the current process of establishing the AEMO.

In general, the MEU agrees with the recommendations of the statement of proposed approach, as the regulation of AEMO’s functions should be subject to the current national compliance and dispute resolution frameworks, as well as the proposed National Energy Customer Framework.

3. Cost Recovery

The MEU generally supports the recommendations covered on pages 14 to 16 of the statement of proposed approach.

As consumers ultimately bear the cost of AEMO, the MEU is concerned to ensure that AEMO does not simply operate as a cost-plus agency, but has strict guidelines, such as in its corporate statement of intent, for efficient operation. As in every newly established agency of this nature, there is a tendency – with reference to the establishment and the early operation of NEMMCO – for budgets to escalate. In the case of NEMMCO, budgetary costs (and hence fees levied on market participants and ultimately paid for by consumers) rose significantly in the early years reflecting its establishment costs. In this regard MEU would expect that as much as possible of the existing infrastructure that NEMMCo, VENCORP, REMCo and GMC have, be

utilised rather than starting fresh all over again. It should be a long term plan to harmonise infrastructure between electricity and gas operations.

Against that background, the MEU would wish to be ensured that the revenue recovery for AEMO beyond the transitional period of 3 years would be one based on a tightly, efficient operation with the following principles:

- Appropriate transparency
- Appropriate consultation with stakeholders
- Appropriate corporate statement of intent
- Appropriate benchmarking against overseas practice

4. Information Gathering Powers

The MEU strongly supports the recommendations in the statement of proposed approach, especially:

- Maintaining the existing provisions in the NER, NGR and relevant procedures providing for information gathering
- A single set of information gathering and confidentiality provisions to be used by AEMO and that these be established through statute across all functions

The MEU raises for consideration the issue of breaches of the confidentiality provisions and suggests that there is merit in providing for specific penalties for breaches of the confidentiality provisions. This should assist in strengthening the overall governance of AEMO as well as protect AEMO in its dealings with related agencies and the MCE, with some of the latter, also owners of energy assets.

5. Immunity and Indemnity Provisions

The MEU agrees with the recommendations. Perhaps there should be a fixed point of time, going forward, whereby a comprehensive review of all immunity and indemnity provisions is undertaken in light of experience in the operations of AEMO.

6. Emergency Management

The MEU agrees with the ISC's proposal to establish a working group to review current emergency management arrangements and to consider the circumstances in which MCE might act and the actions it might take.

7. Transfer of Gas Retail Market Operator Functions – Legal Framework

The MEU agrees with option 3 whereby the existing rules would be re-enacted but with technical details largely left to procedures to be made by AEMO and not enacted as rules.

8. Rules and Procedures for Retail Gas Within The National Framework

The MEU agrees with the recommendations.

9. Gas Retail Market Procedure Change Process

The MEU agrees with the recommendations.

We trust that the above is clear but should there be any further clarification required please contact the undersigned

Yours sincerely

A handwritten signature in black ink, appearing to read "David Headberry", with a checkmark at the end of the signature.

David Headberry
Public Officer