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20 July 2007

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Manager, MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601

Dear Sir / Madam

UED/Multinet Response to Retail Policy Working Group Composite Paper June 2007

United Energy Distribution Pty Ltd and Multinet Gas Pty Ltd (UED/Multinet) appreciate the opportunity to make this submission on the RPWG composite paper of June 2007.

Please direct any enquiries on this submission to the undersigned. I can be contacted on 03 8540 7888 or email hglees@ue.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Hugh Gleeson'.

Hugh Gleeson
Chief Executive



Key messages in this submission:

The essential messages of this submission are -

- The overriding need for MCE/SCO to provide clear and continuing guidance on matters of policy direction and framework design for the RPWG process;
- There is a need for MCE/SCO to ensure that commercial relationships and contracting remain essential components of the access framework, and which must be a fundamental platform for the MCE/SCO's national framework for Retail and Distribution;
- MCE/SCO must comprehend the strong link between price regulation (being addressed by one part of the MCE process) and non-price regulation being handled by the RPWG. Non-price regulation is a fundamental component of economic regulation;
- It appears that the MCE's separate work streams have created an artificial division between these components;
- Under the economic regulatory framework, each distributor's price determination or access arrangement and associated terms and conditions form a complete package. Consequently, it is necessary for all these elements to be considered together as a consistent package - and not in isolation or at different times as appears to be the direction of consultants' recommendations presented so far to SCO.

Policy and framework design

1. Lack of MCE/SCO guidance

- The lengthy consultative process which the RPWG has followed thus far in developing a national non-price framework is acknowledged and appreciated. But UED/Multinet consider that there has been and continues to be a major deficiency in the process; namely, the lack of overall guidance and direction from the MCE/SCO concerning the overarching policy objectives of the framework, including:
 - the long term vision and expectations for the framework;
 - key issues of framework design and content which the RPWG process was anticipated to deliver.
- Stakeholders have not been made aware of the relevance of the consultants' proposals to MCE/SCO policy development. UED/Multinet therefore question how their views of options, recommendations or policy positions presented by the consultants would effectively influence ongoing policy development.



2. Consultants' criteria

- In UED/Multinet's view, consultants have had only very high level guidance to develop their proposed frameworks. As a result, consultants have been obliged to limit themselves to a framework based on more mechanistic policy objectives such as implementation options.
- UED/Multinet submit that the Allens Arthur Robinson composite paper has adopted a framework directed to a strong focus on consistent outcomes between jurisdictions, electricity and gas (where consistency has generally been equated with uniformity). In addition, there has been a focus on:
 - what is perceived to be the main form of non-price jurisdictional regulation (leading to a focus on electricity);
 - a preference for approaches which require a major reliance on and increase in regulatory powers (to be developed in new laws and rules) which increase regulatory control and minimise reliance the benefits of a commercial access process in accordance with the criteria of the National Access Regime (NAR)¹.

3. Consistency of frameworks

- In UED/Multinet's view, consistency as a policy objective may produce some practical benefits, but is far too limited to be an overarching goal as used in the composite paper.
- There is no link between the overarching framework of Part IIIA of the *Trade Practices Act 1974* which provides a relevant guiding policy approach to national access regulation – whether price or non-price.
- UED/Multinet submit that:
 - the RPWG policy development process has never sought or intended an outcome of all-out uniformity between electricity and gas. Each sector has its own drivers and characteristics.
 - UED/Multinet submit that a policy direction from the MCE to guide the RPWG process should provide for overall consistency in a national regulatory framework subject to bigger picture policy objectives which have guided the development Part IIIA, the Competition Principles Agreement and the AEMA, particularly:
 - simplicity and cost-effectiveness;
 - maximising the potential for distributors and retailers to contribute to economic welfare²;
 - facilitating operational consistency for retailers across jurisdictional boundaries;
 - maximising the use of commercial processes to meet these objectives.

An emphasis on commercial processes is particularly important, given the MCE intention to submit access-related parts of the law and statutory rules for certification under Part IIIA.³ It is therefore

¹ Part IIIA of the *Trade Practices Act 1974*

² in terms of economic efficiency, particularly dynamic efficiency



disappointing to note the composite paper's lack of vision for relationships between contracting parties under an access framework, preferring instead to replace commercial outcomes with highly prescribed law and rules. UED/Multinet observe that the gas access framework has evidenced greater understanding and use of commercial relationships, whereas historically the electricity regulatory framework has not had this focus.

Rather than attempting to develop a national framework based on a narrowly focused examination of jurisdictional regulatory practice, UED/Multinet consider that policy objectives and an overall framework design must be established first. On that basis, UED/Multinet submit that a workable starting point for national policy development would be to examine what elements of a national framework already exist which can be immediately applied consistently to both electricity and gas.

Commercial relationships and contracting in an access framework

4. Hybrid model in composite paper

- The composite paper's lack of vision for relationships between contracting parties under an access framework appears to have guided its overall approach to relationships between distributors, retailers and end users. The composite paper makes a series of recommendations for a 'hybrid' model to apply to the dealings between distributors and end-users on one hand, and distributors and retailers on the other. This model assumes that distributors have a direct relationship with end-users, to be expressed in a formal contract. There are major concerns with this concept as it would apply to gas networks in a national framework. In UED/Multinet's view, the composite paper does not evidence a conceptual understanding of the relationship between parties in an access framework and the use of contract law.
- Consistent with an objective of simplicity and cost-effectiveness, UED/Multinet submit that the existing linear contractual model between distributors and retailers should continue to apply in gas. Distributors may elect to arrange with retailers to deal directly with end users on certain network matters, but this should be an optional arrangement and not an enforced one.
- The tripartite relationship generally prevailing in electricity is an established one, and would be difficult to change in the short term without disruption. UED/Multinet note that electricity distributors do have a technically focused relationship with end-users, but would not agree that this relationship arises out of the application of a contracting model under a well-understood third party access framework.

5. Distributor relationship with retailers

- The composite paper makes a series of recommendations to apply to the relationship between distributors and retailers. The essential feature of these recommendations is that certain terms and conditions which accompany a pricing proposal (in electricity) or an access arrangement (in gas) will be determined by a regulator controlled process under the Law and Rules. There are slightly different versions of the recommendations proposed for electricity and gas. UED/Multinet submit that:

³ as stated in SCO *Statement of Scope for a National Legislative Framework for Gas and Electricity*, July 2006 page 7



- the composite paper's treatment of this issue does not reflect an accurate understanding of the nature of the access framework currently prevailing in gas (and its expression in Part IIIA) and which is not yet properly recognised in electricity. Despite the composite paper's disclaimer that its recommendations do not affect established economic regulation, UED/Multinet consider that the paper's suite of recommendations for the distributor-retailer relationship are not sympathetic with (and consequently overlap) the existing economic regulatory framework for gas, and (in some jurisdictions) for electricity;
- the paper's recommendations override the concept of a negotiated distributor-retailer contract or of a distributor proposing full terms and conditions accompanying a regulatory proposal. The retailer interface recommendations of the composite paper require fundamental reconsideration following clarification from the MCE that commercial contracting remains a primary element in an access framework capable of certification under Part IIIA of the Trade Practices Act.

6. Link between price and non-price regulation

- UED/Multinet submit that it is vital to recognise that there is a strong link between price (ie economic) regulation and the non-price regulation being handled by the RPWG. Non-price regulation is a component of economic regulation. The MCE's separate work streams have created an artificial division between these components.
- Under the economic regulatory framework, each distributor's price determination or access arrangement and associated terms and conditions form a complete package. Consequently, it is necessary for all these elements to be considered together and not in isolation or at different times.
- UED/Multinet consider it essential that the access pricing rules developed by MCE/SCO recognise at an early stage any potential impact arising from RPWG recommendations on non-price terms and conditions.

OTHER HIGH LEVEL ISSUES

- Some recommendations in the composite paper are new or have been revised from earlier working papers, and UED/Multinet's submission offers comment on these. In addition, UED/Multinet consider it may be useful to summarise generally its position on major RPWG issues.
- However, as noted in the submission, there would seem little point in UED/Multinet commenting on each of the very detailed recommendations in the composite paper until the future policy direction of the RPWG framework development process is made clear.



UED/Multinet Response to Retail Policy Working Group Composite Paper June 2007

Part A – General

1. Background to UED/Multinet

This submission is from United Energy Distribution P/L (Vic.) and Multinet Gas P/L (Vic.) (UED/Multinet). United Energy Distribution (UED) is one of five electricity distribution businesses operating under licence within the State of Victoria. UED's network provides services to customers in Melbourne's southern and eastern suburbs. Multinet Gas Distribution (Multinet) is one of three gas distribution businesses in Victoria and is the only urban distributor servicing gas connections in Melbourne's eastern suburbs.

UED/Multinet's comments on the composite paper are made from the viewpoint of a distribution network owner and operator, and comment is made on retail issues only where there is significant interaction between retail and distribution.

2. Process to date

Given that there has been no MCE guidance thus far as to how the outworking of the RPWG process should result in a clear national framework, UED/Multinet suggest that there have been very few landmarks which could be relied upon by consultants to develop their proposals. As a result, consultants have limited themselves to basically focusing on one mechanical objective: consistency.

The composite paper (in section 1.4) lists the evaluation criteria used throughout the previous five Allens Arthur Robinson working papers, including:

- consistency across jurisdictions, and between gas and electricity regimes;
- existing jurisdictional arrangements, which were '*used to identify options for the national framework and to propose a recommended approach and an implementation architecture*'.⁴

UED/Multinet therefore submit that the two most significant factors guiding the Allens Arthur Robinson recommendations have been:

- a strong focus on consistent outcomes between jurisdictions, electricity and gas (where consistency has generally been equated with uniformity);
- the examples of current jurisdictional practice - particularly examples of what are perceived to be the prevalent forms of non-price jurisdictional regulation (which has frequently led to a focus on electricity).

⁴Composite paper section 1.3



3. Policy, philosophy, vision and objectives

UED/Multinet acknowledge that there is an objective of 'national consistency' in the broad AEMA objectives for the initial rules to be developed by MCE/SCO for non-price regulation.⁵ But by itself, it is a mechanical and limited objective. 'Consistency' is far too narrow as a policy goal and does not take into account more significant policy objectives, namely:

- simplicity and cost-effectiveness;
- maximising the potential for distributors and retailers to contribute to economic welfare⁶;
- facilitating operational consistency for retailers across jurisdictional boundaries;
- maximising the use of commercial processes to meet these objectives.

UED/Multinet submit that the RPWG policy development process has never sought or intended an outcome of all-out uniformity between electricity and gas. Each sector has its own drivers and characteristics.

UED/Multinet consider that a policy direction from the MCE to guide the RPWG process should provide for overall consistency in a national regulatory framework subject to bigger picture policy objectives which have guided the development of Part IIIA, the Competition Principles Agreement and the AEMA. UED/Multinet particularly note that the RPWG process has not established a clear link with the overarching framework of Part IIIA of the *Trade Practices Act 1974* which provides a relevant guiding policy approach to national access regulation – whether price or non-price.

In UED/Multinet's view an emphasis on commercial processes is particularly relevant, given the MCE intention to submit access-related parts of the law and statutory rules for certification under Part IIIA.⁷ UED/Multinet particularly note the composite paper's preference for highly prescribed law and rules rather than commercial outcomes. UED/Multinet observe that the gas access framework has evidenced greater understanding and use of commercial relationships, whereas historically electricity regulation has not had this focus.

The composite paper (and its predecessors) has essentially tried to develop a national framework from a narrowly focused examination of jurisdictional regulatory practice based on consistency. UED/Multinet urge that the superior (and easier) course would be to first establish the relevant policy objectives and overall framework design. In that light, UED/Multinet urge that a workable starting point for national policy development would be to examine what elements of a national framework already exist which can be readily applied consistently to both electricity and gas.

⁵ Australian Energy Market Agreement (Amendment) 7 June 2006: Clause 14.5 begins: *In order to ensure national consistency, the Parties agree, to the extent possible and where effective regulation is not impeded, that the initial rules will (a) Provide common regulatory arrangements for the electricity and natural gas sectors.*

⁶ in terms of economic efficiency, particularly dynamic efficiency

⁷ as stated in SCO *Statement of Scope for a National Legislative Framework for Gas and Electricity*, July 2006 page 7



Part C – COMMERCIAL RELATIONSHIPS AND CONTRACTING

4. Distributor relationship with end users

The composite paper has repeated the recommendation of Working Paper 2 which provided for a 'modified linear' model (now called a 'hybrid' model) to apply to the relationships between retailers, distributors and end-users.⁸ This model assumes that distributors have a direct contractual relationship with both retailers and end-users, to be expressed in a formal contract between:

- the distributor and each end-user connected to the network;
- the distributor and each retailer using the network to supply end-users;
- retailers and end-users.

The composite paper puts the view that the model preferred in Working Paper 2:

- was most consistent with current arrangements;
- best facilitates a consistent model across the electricity and gas sectors; and
- should not involve material costs in establishing a consistent approach.⁹

UED/Multinet have considerable difficulty with these generalisations and the fact that they appear to ignore major aspects of the requirements of the Part IIIA National Access Regime.

In UED/Multinet's view, the composite paper does not evidence a conceptual understanding of the relationship between parties in an access framework and the use of contract law. The policy objective of an access framework is that retailers and distributors have specific roles, whereby the distributor is required to operate efficiently and provide non-discriminatory access to the network. The retailer is able to contact with the distributor for use of the network to deliver competitive services to its customers. This relationship encourages the two parties to do what they are best able to do, and thereby maximise economic welfare.

Working Paper 2 itself observed that *'it is evident ---that different contractual models currently apply to the delivery of distribution services in the electricity and gas sectors'*.¹⁰ The paper recognised that while jurisdictions sought to apply a direct contractual relationship between the distributor and end-user in electricity, this was not the case in gas where the linear model applied through the operation of the Gas Access Regime¹¹.

In gas, while any party can theoretically seek access to the network, it is only retailers, wholesalers and large users who are able to negotiate upstream supplies of gas and arrange pipeline transmission and network distribution to effect delivery of those supplies. Retailers are the access seekers on behalf of the very large numbers of end-users they supply, and it is retailers who are parties to access contracts with the monopoly elements of the supply chain (pipeline and distributor), not the end-user.

Individual gas retailers supply to end-users a delivered product, and are therefore able to compete with other retailers and provide diversity and choice to end-users. Individual retailers are the natural

⁸ Composite paper section 5

⁹ Composite paper section 5.3 p 34

¹⁰ RPWG Consultation Paper No 2, December 2006, section 4.4 p 32

¹¹ Ibid



primary interface with their customers. There is no reason why, under this approach, the distributor *must* have any contractual relationship with the end-user. However, UED/Multinet acknowledge that the distributor may be best placed to deal directly with end-users on network matters when this is the most efficient approach; eg for safety issues and emergencies on a non-contractual basis. There could perhaps be a more formal relationship for connection issues (but this should be optional).

The view has been put by Allens Arthur Robinson that a contractual distributor-end user relationship is necessary in gas in order to continue rights which would disappear with the demise of certain jurisdictional legislation – eg right of entry to end-user premises for meter reading. But there other effective ways of dealing with this matter –such by direct contracting between the distributor and retailer, or by revised legislative provisions.

The reasons for jurisdictions establishing a formal distributor/end-user interface in electricity are varied. UED/Multinet observe however that this practice does not accord with or exhibit an understanding of an access framework. A useful comparison may be with telcos and access. In a highly technical operating environment, customers do not have any relationship at all with the infrastructure owner but only with the retailer.

UED/Multinet therefore submit:

- that the existing linear contractual model between distributors and retailers should continue to apply in gas. Distributors may elect to arrange with retailers to deal directly with end users on certain network matters, but this should be an optional arrangement and not an enforced one.
- that the tripartite relationship generally prevailing in electricity is generally an established one, and would be difficult to change in the short term without disruption. UED/Multinet suggest retaining a stakeholder-agreed form of tripartite relationship in electricity. However, this relationship should be capable of being reviewed in the future under a rule-change process.

5. The distributor relationship with retailers

UED/Multinet consider that the composite paper's treatment of this issue (which covers essentially the same ground as Working Paper 2) does not reflect an accurate understanding of the access framework (established by Part IIIA and the Competition Principles Agreement) which is currently fully operating in gas and partially so in electricity. The paper's reasoning needs to be itemised to explain why this is so.

The paper begins by observing that the key commercial and financial terms relating to distribution services are established in contractual arrangements between distributor and retailer, and that this is part of economic access regulation which is outside the scope of the paper.¹²

The paper then observes that there is also '*a range of operational and coordination issues that relate to the joint provision of services to retail customers*'.¹³ Leaving aside for the moment the contention that there is a 'joint provision of services' to retail customers, certainly in gas, the paper draws a distinction between:

¹² Op cit section 8.2 p 48

¹³ Ibid



- contractual provisions (and regulation) relating to economic access regulation; eg pricing, contracted capacity and capacity management, curtailment, compliance with technical standards, metering and ancillary services;
- contractual provisions (and regulation) relating to interface issues; eg connection, disconnection and reconnection of customers, information exchange between retailer and distributor, referral of customer complaints between retailer and distributor, allocation of liability with reference to end-users.

UED/Multinet observe that this distinction drawn in the composite paper is not correct. In respect of gas, the paper does not understand the access framework.

In electricity, the paper suggests that both types of provisions are currently dealt with together in the form of Use of System Agreements (UoSA) or coordination agreements.

In gas, the paper suggests that there is a split of provisions, whereby economic matters are addressed through terms and conditions in a distributor's access arrangement and the interface issues are dealt with primarily in regulatory obligations.

As a result, the paper recommends:

- in electricity, provision for a UoSA between the relevant distributors and retailers;
- in gas, provision for an interface contract which would be distinct from the contract dealing with access terms and conditions.¹⁴

UED/Multinet make the following observations that apply equally to electricity and gas:

- the paper's assumption that so-called 'economic' and 'interface' elements are somehow different and can be addressed in separate contracts does not recognise that both elements involve a cost and must be considered together in determining prices for the total distribution service provided to retailers;
- the distinction between 'economic' and 'interface' contracts is entirely artificial – for example information provision and liability issues arise equally in respect of technical and customer-related matters. They are both elements of economic regulation;
- regulatory obligations of any kind must be factored in to the prices and terms and conditions forming part of any complete regulatory proposal – it does not matter whether the obligations sit in law, regulations, rules, licence conditions, codes or 'deemed contracts';
- UED/Multinet consider that the recommendation in the composite paper to essentially de-link components of economic regulation exhibits a misunderstanding of access (including its application to the Gas Access Regime). This has been facilitated by the artificial division between price and non-price regulation under MCE's separate work streams (see section 7 below).

UED/Multinet recognise that, to date, the commercially focused nature of a distributor-retailer contract has not operated as distinctively in electricity, and is therefore less effective than it has been in gas. Electricity distributors have not operated under a national access regime. Jurisdictional legislation has given regulators the power to unilaterally set prices and associated terms and

¹⁴ Op cit section 8.2 p 50



conditions, subject to some elements of the National Electricity Code/Law, without a requirement for complete and independently-developed proposals from DNSPs.

However, even in electricity some jurisdictions have adopted elements of the gas framework. In Victoria, electricity distributors are required under their licence conditions to prepare and submit to the regulator for approval a default Use of System Agreement.¹⁵ The stated requirements for the UoSA are very broad. The default UoSA must contain terms and conditions which:

- Are fair and reasonable; and
- Do not unreasonably discriminate between retailers or customers of any retailer.

The distributor is permitted to negotiate with any retailer a written UoSA with terms and conditions different from those in the default agreement.

The main difference between gas and electricity in the Victorian case is that the UoSA is developed separately outside a price determination, unlike gas where all terms and conditions are developed within the access framework. But electricity is changing significantly at a national level. The proposed amendments to the NEL for distribution and the proposed electricity distribution Rules will introduce clearer elements of an access framework into electricity distribution. These will include a requirement for a DNSP to make a complete regulatory proposal and the potential for negotiation/arbitration in some services.

However, electricity is changing. The proposed amendments to the NEL for distribution and the proposed electricity distribution Rules will introduce more clearly defined elements of an access framework in electricity distribution. These will include a requirement for a DNSP to make a complete regulatory proposal and the potential for negotiation/arbitration in some services.

Despite the paper's disclaimer noted above, UED/Multinet consider that the paper's suite of recommendations for the distributor-retailer relationship ignore and overlap with the existing economic regulatory frameworks - very substantially so for gas. This is evident from the compulsory nature of the paper's recommendations which override any concept of a negotiated contract or of a distributor proposing terms and conditions, including:

- The composite paper's use of nomenclature, with the word "interface" itself indicating a poor understanding of the value of a contractual relationship;
- The Law to provide for a deemed interface agreement to arise between relevant distributors and retailers rather than an initial negotiation (recommendation 33);
- The Law to provide for the Rules to make provision for the approval of the terms and conditions of a deemed interface contract, including matters specified in a Schedule to the Law (recommendation 34);
- The Rules to include several provisions for a deemed interface contract, including model terms for adoption by distributors as contractual terms (recommendation 35);
- The Rules to include an obligation on distributors and retailers to comply with the terms of deemed interface contracts. Compliance would be both a contractual obligation enforceable between the parties and a regulatory obligation enforceable by the AER (recommendation 36);
- A corollary of recommendation 36 is that, in the context of an access dispute, the terms of a deemed interface agreement could not be varied by arbitration.

¹⁵Licence condition 4



Acceptance of the above recommendations would, in UED/Multinet's view, cast strong doubt on compliance of a non-price framework with the Competition Principles Agreement. UED/Multinet submit that the recommendations of the composite paper requires fundamental reconsideration to ensure that commercial contracting remains a primary element in a access framework capable of certification under Part IIIA of the Trade Practices Act.

UED/Multinet's former proposal

In their submission on Working Paper 2¹⁶, UED/Multinet proposed an alternative interface model which better fitted a consistent national framework for both electricity and gas without overlapping established economic regulation:

Current gas regulation, under the National Gas Access Regime, is based on a principle of negotiation between distributors and users around reference tariffs and reference services. Further, distributors propose their reference tariffs and reference services, within broad regulatory guidelines, that reflect the commercial and physical needs of their network. This approach has been very effective in the past. UED/Multinet cannot see any justification for the Paper's proposal of including model terms for the deemed Distribution Contract and default Use of System Agreement in the Rules. To the contrary, the approach proposed is likely to stifle negotiation and innovation. UED/Multinet strongly oppose over-prescription in the Rules.

In electricity, the components of the Price Determination, Default Use of System Agreements and Deemed Distribution Contracts define the price and services the distributor delivers and the relationship between the parties. Similarly, in gas, the reference prices and proposed terms and conditions define these matters.

Components of an Electricity Price Determination

<p style="text-align: center;">REGULATED PRICES + USE OF SYSTEM AGREEMENT + DISTRIBUTION CONTRACT =</p> <p style="text-align: center;">PRICE DETERMINATION</p>
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Components of a Gas Access Arrangement

<p style="text-align: center;">APPROVED REFERENCE PRICES + TERMS AND CONDITIONS + STANDARD CONTRACT =</p> <p style="text-align: center;">ACCESS ARRANGEMENT</p>

UED/Multinet believe that the current overarching approaches to regulation of gas and electricity distribution can be developed into a nationally consistent framework without the very significant upheaval that would result from the proposal in the Paper.

¹⁶ UED/Multinet response to Retail Policy Working Group Working Paper 2, 9 February 2007, page 5



6. Link between price and non-price regulation

UED/Multinet submit that it is vital to recognise that there is a strong link between price (ie economic) regulation and the non-price regulation being handled by the RPWG. Non-price regulation is a component of economic regulation. The MCE's separate work streams have created an artificial division between these components.

Under the economic regulatory framework, each distributor's:

- price determination or access arrangement;
- terms and conditions forming part of the price determination or access arrangement; and
- particular contracts with customers (if any),

form a complete package which define the prices and services that the distributor provides. Consequently, it is necessary for all these elements to be considered together and not in isolation or at different times. A change in any one element is likely to have an impact on other elements. UED/Multinet consider it essential that the access pricing rules developed by MCE/SCO recognise any potential impact arising from RPWG recommendations on non-price terms and conditions.

PART D – Other high level issues

Some recommendations in the composite paper are new or have been revised from earlier working papers, and these require comment. In addition, UED/Multinet consider it may be useful to summarise generally their positions on major RPWG issues.

However, as noted in section 2, there would seem little point in UED/Multinet commenting on each of the very detailed recommendations in the composite paper until the future policy direction of the RPWG framework development process is made clear.

7. Obligation to provide connection services (Working Paper 2)

UED/Multinet general position

- No distributor, either gas or electricity, should be required to make a connection to a customer that is not commercially prudent. The Rules should recognise this;
- UED/Multinet submit that provision for a connection service can be included in a distributor's regulatory proposal or access arrangement;
- Given that an obligation may be required, a distributor's primary obligation should be to make a fair and reasonable offer to all parties for connection to its distribution system, subject to technical or access requirements. The obligation to connect would arise when the offer is accepted;
- The offer to connect should only include (a) the connection of the premises to the distribution network to allow the supply of energy from the network to the premises; and (b) increasing the maximum capacity of an existing connection;
- The Rules should clarify that energisation of an existing service, or simultaneous connection and energisation, can only be carried out if there is a known attributable retailer.¹⁷

¹⁷ Unless in the case of electricity the customer is a market participant or, in the case of gas, if the customer has capacity reservation for the haulage of gas.



'Local Network Service Provider'

Working Paper 2 proposed that the connection obligation should be defined in geographical terms, and introduced the concept of a 'Local Network Service Provider'.

Respondents (including UED/Multinet) argued that this concept was not workable for gas. UED/Multinet welcome the composite paper's withdrawal of the concept, and its replacement by defining the obligation in terms of *'any distributor whose network services are subject to access regulation under the Rules'*.¹⁸

Definition of 'distribution services'

The composite paper has proposed a revised definition of distribution services. UED/Multinet do not wish to comment on the definition but rather the observation on page 40 of the paper that the definition *'serves the specific purpose of defining distributor connection obligations and is separate from any associated definitions that may be used in the economic legislative package'*.

This comment appears to suggest a difference between the concept of distribution services proposed for the RPWG process and the definition of distribution services proposed for economic regulation. If so, this is a matter for significant concern. Part C above explained that economic regulation encompasses a total package of services proposed by the regulated entity. UED/Multinet submit that there must be an overall conceptual basis for all distributor services subject to economic regulation. Any confusion of nomenclature needs to be removed by the use of precise terms.

8. Business Authorisation (Working Paper 3)

UED/Multinet general position

- UED/Multinet support a national framework for business authorisation, administered by the AER, for distributors and retailers of gas and electricity;
- Any approach that leads to duplicate national/jurisdictional licensing processes should be avoided;
- Where a jurisdiction has granted an authorisation for a distributor, that distributor should be recognised as licensed for the purposes of the national framework;
- The substantive regulatory obligations of distributors should not be contained in licences.

UED/Multinet agree with the observation that in a national framework there is a need to address ancillary rights and powers granted to distributors under jurisdictional legislation.

UED/Multinet comment on composite paper recommendations

It appears that the majority of UED/Multinet's concerns have been addressed within the framework proposed in the composite paper. UED/Multinet particularly note the comment on page 61 that market registration (whether under a specified national electricity or gas scheme) should not act as an effective substitute for a business authorisation, and therefore endorses;

- Recommendation 40 which details entry requirements to be specified in the Law;

¹⁸ Composite paper, p 39



- Recommendation 41 which correspondingly modifies NEMMCO registration requirements;
- Recommendation 43 which supports current jurisdictional licences being transitioned to a national business authorisation without further process;
- Recommendation 48 which supports jurisdictional ancillary rights and powers being dealt with in jurisdictional legislation.

9. Ring fencing (Working Paper 3)

UED/Multinet comment on composite paper recommendations

The basic recommendation of Working Paper 3 has been retained in recommendation 49 of the composite paper, but with a considerable number of ancillary conditions. The primary condition is that:

Electricity ring fencing requirements should be included primarily in the NEL, modelled on the equivalent requirements included in the exposure draft of the NGL (but incorporating changes proposed to be made to be made by the SCO in response to submissions on the NGL)¹⁹

UED/Multinet observe that ring fencing is a fundamental part of economic regulation and must be addressed within that context.

10. Retail failure (Working Paper 3)

UED/Multinet comment on composite paper recommendations

The composite paper has essentially followed option 2 in Working Paper 3, which UED/Multinet supported. However, it appears certain submissions questioned the suitability of the AEMC to develop the initial rules, citing the AEMC's possible approach to the task and its lack of resources to give priority to the task. As a result, the submissions suggested that the MCE should form an expert panel to advise on the development of a RoLR scheme for implementation in the 2007 package. The composite paper has allowed that this may be a possibility, although the initial recommendation to use the AEMC has not been altered.

UED/Multinet do not see why another process outside established rule making/advisory channels (eg the RPWG itself, the AEMC and NEMMCO) should be brought into rule making at this late stage. UED/Multinet also query what kinds of instructions would be given to this outside body, given that legislation has defined specific rule making processes for the AEMC and an overarching requirement to observe the market objective in rule making. If indeed there is a resource issue for the AEMC in developing a RoLR scheme, then this should be addressed with additional resources, and not by the indirect method which has been suggested.

11. Customer registration and transfer (Working Paper 4)

UED/Multinet comment on composite paper recommendations

The composite paper notes that distribution businesses did not agree with harmonisation of electricity customer transfer requirements prior to incorporation in a national framework. However,

¹⁹ Ibid p 70



the paper has maintained this recommendation, observing that distributors' concerns are 'likely to be of a transitional nature'²⁰.

For Victoria most of the requirements from the Electricity Customer Transfer Code are already reflected in the MSATS procedures which (with minimal change) could easily replace the Code. The MSATS procedures and the underlying working groups have national harmonisation as a focus for their activities. UED/Multinet therefore continue to support the current jurisdictional rules for registration and transfer being incorporated in the NER and MSATS procedures.

12. Metering (Working Paper 4)

UED/Multinet comment on composite paper recommendations

Section 14.2 of the composite paper acknowledges the substantial progress already made by NEMMCO on harmonising metering regulation in the NEM Metrology Program. The paper observes that if the NER can be appropriately amended prior to the 2007 legislative package, no further action would be required by the RPWG (with regard to matters being currently addressed by NEMMCO).

However, the paper expresses concern with timing and the need to avoid complex transitional arrangements. The paper has a revised recommendation which suggests that amendments to the NER could be made via the normal change procedures for the NER/NEM Metrology Program or via a Ministerial Order, depending on timing issues.

Given that there has been a MCE decision to move implementation of the 2007 legislative package back to 1 July 2008, UED/Multinet suggest that timing may not be such a pressing issue for NER metrology amendments. Some considerations are:

- Amendments to the NER²¹ contemplate that the AEMC will have completed its consultation and made a final determination on the incorporation of 1st tier metering installations into the NER. We understand that NEMMCO intend to consult on the 1st tier changes to the metrology procedure in tandem to the AEMC Rule changes consultation. Approximately 10 months is therefore available for the AEMC and NEMMCO consultation processes to be completed, which is consistent with the timeframes achieved for the 2nd tier harmonisation process;
- Immediate legislative changes in anticipation of the 2007 legislative package would therefore appear to be unnecessary.

In any event, UED/Multinet again consider it more important to have a robust and durable set of rules rather than forced 'harmonisation' and therefore maintains that the NEMMCO process should be completed prior to incorporation in the Rules.

13. Enforcement mechanisms (Working Paper 5)

UED/Multinet comment on composite paper recommendations

The composite paper noted comments in submissions that the recommendations on compliance monitoring should provide for: a materiality test, flexible audit requirements and a requirement on

²⁰ Composite paper p 77

²¹ Schedule 7.2 contemplates a 1 January 2008 final determination



the AER to publish results of audits and its enforcement activities generally. To address these matters the composite paper proposes:

- Putting relevant enabling provisions in the Law; and
- Authorising the AER to establish its detailed requirements through guidelines, consistent with the approach adopted in jurisdictional regulation.

UED/Multinet do not consider that this recommendation is an adequate response to issues raised by stakeholders. From UED/Multinet's assessment, stakeholders were seeking greater certainty over the AER's actions in relation to compliance and enforcement, and that these should therefore be matters for the Law and Rules (which could in practice be supported by guidelines). Instead, it is proposed to give the AER total control of these matters through a regulatory instrument, without (it would appear) any overarching guidance in the Law or Rules as to how this power should be used.

One of UED/Multinet's key concerns was to establish a requirement on the regulator to apply an enforcement mechanism that was commensurate with the obligation breached and the nature of the breach, and only allowing the regulator to move to a stronger enforcement mechanism when previous approaches were exhausted. However, the composite paper has rejected any concept of the Law or Rules specifying the order in which particular remedies should be applied.²² The paper appears to suggest that AER guidelines (applying to both electricity and gas) would again be sufficient to address this issue.

Overall, the composite paper does not appear to have adequately addressed stakeholder concerns with the degree of AER discretion to determine which enforcement mechanisms should be used in dealing with particular breaches. UED/Multinet are concerned that:

- There is a risk of the AER considering itself obliged to apply stronger rather than lighter remedial action;
- The fact that there are strong powers available encourages a general view that because they are there, they ought to be used.

UED/Multinet urge that these pressures should be counteracted by clear guidance in the Law and Rules as to how the AER must apply its discretion in the selection of enforcement mechanisms.

²² Composite Paper p 92