

23 January 2006

Manager - MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 839
Canberra ACT 2601

PUBLIC CONSULTATION ON A NATIONAL FRAMEWORK FOR ENERGY DISTRIBUTION AND RETAIL REGULATION

Thank you for the opportunity to comment upon the public consultation paper prepared by NERA Economic Consulting and Gilbert & Tobin, on a National Framework for Energy Distribution and Retail Regulation.

In section 8 of Part D titled "Retailer Failure Arrangements", the paper sets out the recommended Policy Criteria and approach to replace the existing retailer of last resort arrangements in each State.

NEMMCO has no comments on the proposed Policy Criteria, however, the proposed approach raises a number of significant issues for the effective operation of the NEM. These are as follows:

1. Practicality of limited liability approach

Paragraphs (i), (j) and (k) of the recommended approach proposes that the liability of the Step-in Retailer be limited to amounts actually received from customers (which are placed in a trust fund).

The current settlement arrangements in the NEM are that settlements occur 20 business days after the last day of the weekly billing period. The NEM settlement timetable does not work effectively with the proposed trust fund approach. The reason for this being that the Step In Retailer may not invoice the customer for up to three months (which is the common billing cycle for domestic customers) and then may not require payment for a further 21 days. This timeframe assumes that there will be no delays in the Step In Retailer being able to issue bills. In addition there is no guarantee that the retail charges will be sufficient to cover the NEM wholesale charges during periods of market stress.

In light of the above, it is foreseeable that NEMMCO would have to short pay generators for a considerable period before funds were available in the trust fund.

M:\NEMMCONationalFrameworkForEnergyDistributionAndRetailRegulation.doc

Carlingford Office
PO Box 3175
Telopea NSW 2117
Tel: (02) 8838 5100
Fax: (02) 8838 5200

Mansfield Office
PO Box 2516
Mansfield QLD 4122
Tel: (07) 3347 3100
Fax: (07) 3347 3200

Melbourne Office
Level 12
15 William Street
Melbourne VIC 3000
Tel: (03) 9648 8777
Fax: (03) 9648 8778

Sydney Office
Level 22, Norwich House
6-10 O'Connell Street
Sydney NSW 2000
Tel: (02) 9239 9199
Fax: (02) 9233 1965

2. Administered spot price approach

The existing administered price regime is triggered by a prolonged period of very high spot prices. Paragraph (h)(ii) proposes that the administrative price regime may also be applied until the Step-in Retailer can secure hedging contracts. Extending the regime to retailer failure risks would appear to be a very blunt instrument impacting all parties in the relevant region and may expose the market to prolonged periods of price caps that is likely to erode confidence in NEM pricing outcomes.

Other considerations with this approach include whether this could make existing hedges of other participants uneconomic and new hedges unavailable, whether administered pricing should be limited in time (rather than being dependent on the ability of the Step-in Retailer to secure hedges), and whether to compensate generators when the administered price is less than their dispatch offer.

3. Consistency between the NEL and the Corporations Act

If this has not already occurred, consideration will need to be given to the interaction between the proposed approach and the Corporations Act, particularly in relation to the insolvency.

As the NEL is State based legislation, it would be overridden by the Corporations Act to the extent of any inconsistency with the Corporations Act.

NEMMCO would be concerned if uncertainty or challenges arose due to this at the time that the proposed scheme was being activated.

4. Requirements for Step-in Retailers

The consultation paper does not contemplate the need for Step-in Retailers to be given advance warning of the regime being activated. This would be desirable so that the Step-in Retailer has time to put its process into place, however, there may be concerns with this approach as the Step-in Retailer would be receiving commercially sensitive information about the operations of another competitor.

Additionally, it would need to be mandated that the Step-in Retailers are existing Market Participants as this simplifies administration of the scheme (eg, able to interact with NEMMCO's systems) and avoids any difficulties with ensuring the Step-in Retailer will comply with the Rules.

Finally, NEMMCO has concerns that few if any retailers would have the sufficient spare capacity to accommodate customer transfers from a failed Local Retailer or even a large, failed second-tier retailer. NEMMCO would recommend that capacity requirements would need to be defined, with obligations for a Step-in Retailer to demonstrate that they can handle the expected volume of data.

5. Management Plans

It is noted that the proposed arrangement would be that the designated Step-in Retailers have 3 months to submit detailed management plans to the AEMC after being appointed. This creates a potential gap between the time of appointment and when the Step In Retailer may be in the position to respond to a Trigger Event to remove this gap, it is suggested that consideration be given to including this requirement as part of the selection process.

6. Moratorium on Consumer Transfers

It may be appropriate for the proposed arrangements to provide for a moratorium on consumer transfers for a period after a trigger event. This would ensure that the Step-in Retailer has time to verify that their consumer related data and processes are synchronised with NEMMCO before consumers transfer to yet another retailer.

Should you have any queries regarding the above please do not hesitate to contact me on 02 9239 9132.

Yours sincerely



Brian Nelson
Head of Regulatory Affairs and Compliance