



7 April 2004

MoU Framework
c/- MCE Market Reform
Department of Industry, Tourism and Resources
GPO Box 9839
CANBERRA ACT 2601

By email: MCETMarketReform@industry.gov.au

Dear Sir/Madam

MCE MARKET REFORM – AER – AEMC – ACCC MEMORANDUM OF UNDERSTANDING (MoU)

Thank you for providing Tarong Energy Corporation Limited (*Tarong Energy*) with the opportunity to comment on the MCE Discussion Paper relating to the Memorandum of Understanding between the AEMC, AER and ACCC dated March 2004 (*the Discussion Paper*).

Tarong Energy is generally supportive of the MCE's efforts in developing a system to avoid duplication of regulatory processes, including the streamlining of the code change and authorisation process. We understand and appreciate that in order to facilitate this process and to reduce the regulatory burden on Participants, that consultation and cooperation arrangements between the AEMC, AER and ACCC need to be described either in statute or by way of MoU between the parties.

While supporting the need for an MoU between the bodies Tarong Energy is concerned at some aspects of the proposed information sharing arrangements.

Information Sharing

The underlying policy premise for the sharing of information between the Institutions appears to be to reduce or eliminate the need for multiple requests for the same information. Tarong Energy agrees that such a framework for information sharing is appropriate **in circumstances where the information gathering powers of the respective bodies are identical**. However we strongly disagree with the proposed framework that provides for essentially unlimited sharing of information between the bodies without first establishing such correlation of information gathering powers.

Tarong Energy believes that information should only be passed from one body to another in circumstances where the recipient body itself would have the power to acquire such information in its own right. Furthermore, when such information was originally provided on a confidential basis it should not be passed on to another body without first advising the party who provided the information of the intention to share the information.

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Such limitations would still give effect to the policy direction of minimising multiple requests for information while preserving the legal rights of all parties.

The Status of AER Staff

These suggested limitations should certainly also apply to the sharing of information between the ACCC and the AER. While the policy decision of the MCE was that the AER should be a constituent part of the ACCC it was also a policy decision that it should be a separate legal entity with its own Commissioners. It is also the case that AER staff, while employed by the ACCC, will be seconded to the AER, be paid for by the AER, and be performing duties specific to the AER.

In these circumstances Tarong Energy can see no compelling case for presuming these staff should have an automatic right to access information held by the ACCC, even if it may be relevant to an AER function. The information should only be shared if the AER itself would have the legal power and right to acquire that information and only after first advising the party who originally provided the information.

As previously mentioned, Tarong Energy supports the need for and use of a MoU between the AER, AEMC and ACCC with a view to improving the efficiency of the regulatory system and reducing duplication. Tarong Energy also believes strongly that such a MoU must contain a system of checks and balances to protect the interests of all parties. The suggestions put forward in this submission are intended to provide for such checks and balances will still achieving the policy goals set by the MCE.

If you have any queries regarding any matter raised in this letter please do not hesitate to contact us.

Yours sincerely



Greg Hesse

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