



Ministerial Council on Energy (MCE)
“Streamlining of the Code Change Process”
Consultation

TransGrid Submission

7 April 2004

Streamlining of the Code Change Process
c/- MCE Market Reform
Department of Industry, Tourism and Resources
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Dear Sir / Madam

Streamlining of the Code Change Process

TransGrid would like to thank the Ministerial Council on Energy Standing Committee of Officials (SCO) for the opportunity to provide a response on this significant issue in the current energy market reform process. TransGrid, like most industry participants are in favour of any moves to reduce duplication and inappropriate delays that seem to have permeated the current regulatory regime. However, TransGrid would like to bring to the SCOs attention a number of concerns about the 'workability' of the new "streamline" proposals.

1. A likely problem with the proposed new arrangements are that they offer no *guarantee* that the Code change process will not lead to duplication (or revert to duplicative processes over time). This is because the ACCC retains its authorisation role under the proposed model. That is, the AEMC must conduct an assessment of a Code change proposal against prescribed criteria, and if competition issues arise, the ACCC must assess the proposed change in accordance with its continuing obligations under the *Trade Practices Act*.
2. Whilst it seems the proposal envisages making authorisations less burdensome, via early engagement of the ACCC, there may still be possible instances where the ACCC will need to call for fresh submissions under their own processes.
3. There seems to be an assumption that the new AEMC will undertake appropriate consultations and discussions that take into consideration relevant "competition" issues. However, there may be a *small* risk that the AEMC may reject a Code change proposal on the grounds that it leads to a competition detriment, whereas the ACCC may accept the same proposal if the Commission deems there are associated public benefits, under their "related", yet different legislative criteria.
4. There may be an inconsistency between the proposals contained in the Memorandum of Understanding (MoU) paper and the Streamlining the Code Change Process paper, regarding the role of the ACCC in the Code change process. Whilst the effectiveness of the formal and informal linkages are integral to these proposals, TransGrid notes that the Code Change paper anticipates "informal" feedback from the ACCC (Step 2) but does not establish any *obligation* on the ACCC to provide more considered input to the AEMC on possible TPA concerns. In contrast the MoU paper establishes an obligation on the ACCC to "promptly advise the AEMC.. [on competition or access issues] .. taking into account any submission received by the AEMC". To enable the ACCC to consider submissions received this obligation must *follow* the first round of consultation with market participants, whereas the Code change process appears to anticipate that the AEMC will *call for* submissions based on ACCC advice.

Specific Comments on the Code change process

5. There must be a clearer statement of the nature and scope of the Ministerial powers of policy direction, in addition to a more complete description of the governance framework for the AEMC. Similarly, there does not appear to be any scope for the MCE to take a view on whether the AEMC has effectively applied the policy framework.
6. With respect to the proposed Step 1 of the process, whilst the process allows the AEMC to modify a Code change proposal, it is not clear if there is any scope for a proponent to object if it deems that the AEMC has amended the original Code change proposal so as to materially change its original intent.
7. With reference to proposed Step 2, there may be a requirement to include a category that may be deemed “contentious” that does not easily fit into competition related assessments, as currently outlined. These may relate to highly technical Code change proposals.

Other Concerns

Both this Code change paper, and the MoU paper fail to explicitly clarify which institution will have the likely responsibilities (presumably the AER) for key regulatory arrangements, such as the development of the “Regulatory Test” for electricity transmission. TransGrid notes that the MCE agreed to the following transmission policy principle in December 2003 such that:

- *“A new regulatory test for transmission, to include full economic benefits of increased competition, to be implemented in July 2004”.*

In light of the December 2003 MCE concerns about the current ‘regulatory test’ regime, which has been plagued with operational problems under the ACCC, it remains unclear as to which Institution will have carriage of this important issue under any new regulatory arrangement.

Anticipated Outcomes

What TransGrid envisages as positive outcomes of the energy reform process is sound governance arrangements and an environment of regulatory certainty, particularly in relation to those areas that have a direct bearing on the core operation of regulated electricity transmission businesses.

Should you wish to discuss any of the issues raised in this submission, please feel free to contact TransGrid’s Manager/Regulatory Affairs on (02) 9284 3434 or via e-mail at phil.gall@transgrid.com.au

Yours sincerely

[Original signed]

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