



Ministerial Council on Energy (MCE)
“AER-AEMC-ACCC Memorandum of
Understanding (MoU) Framework” Consultation

TransGrid Submission

7 April 2004

MoU Framework
c/- MCE Market Reform
Department of Industry, Tourism and Resources
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Dear Sir / Madam

AER-AEMC-ACCC Memorandum of Understanding (MoU) Framework

TransGrid would like to thank the Ministerial Council on Energy Standing Committee of Officials (SCO) for the opportunity to provide a response to this important framework for energy market reform. We draw your attention to a number of concerns in the existing document, notwithstanding its status as a likely *'position paper'* for the SCO in the development of an appropriate Memorandum of Understanding (MoU) for the Australian Energy Regulator (AER), the Australian Energy Market Commission (AEMC), and the Australian Competition and Consumer Commission (ACCC).

In particular, is the apparent inconsistency between the proposals contained in the 'MoU' paper and the 'Streamlining the Code Change Process' paper, insofar as the ACCC's role is concerned with the Code change process. Whilst the effectiveness of the formal and informal linkages are integral to these proposals, TransGrid notes that, in the Code Change paper 'informal' feedback is expected from the ACCC (Step 2), yet it does not establish any *obligation* by the ACCC to provide more considered input (to the AEMC) with respect to 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 Concerns

1. It could conceivably be inferred from page 4 of the document that the AER will "share" staff with the ACCC. Such a proposal, *whilst intuitively appealing*, blurs the boundaries between the bodies and appears to be inconsistent with the notion of an 'independent' AER. Although the AER may provide input to ACCC inquiries, the 'sharing' of staff implies that the accountabilities of specific staff are split between the organisations. This is not a good governance model. It should be possible for the ACCC to have access to AER staff (on a formal arms-length basis) and still preserve a clear line of accountability of AER staff to the AER commissioners.
2. It should be emphasised that although the ACCC will hire AER staff, they may come from other regulators (as per Appendix 2, Ministerial Statement 11 December 2003)^[1].

^[1] "The proposed staffing arrangements will allow the AER and AEMC to be provided with the best available expertise from the ACCC, other regulatory bodies and elsewhere."

3. TransGrid would suggest to the SCOs that to avoid confusion a clearer statement on the relationship between the AER and their role with respect to the TPA would be beneficial.

A more accurate description on this issue could be:

“The responsibility for enforcing the TPA remains with the ACCC, and the AER *may* be called upon to provide analytical support to assist the ACCC in undertaking this role. [Note - The ACCC may also call on advice from other sources as well as/or instead of AER advice]”.

4. **Scope for review of MoU:** The recitals should note that the MoU, in conjunction with the proposed Code change process, are designed to (*inter alia*) streamline the regulatory processes. If this is not successful, the recitals should note that the MoU and Code change process may be revisited and amended as necessary.

Other Concerns

Both the MoU paper and the Code change paper fails 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:

“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.

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

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