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Letter follows.



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1 June 2001

Mr Mike Rawstron
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Australian Competition and Consumer Commission
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Dear Mike

Draft Determination: Full Retail Competition Code Changes

I refer to the draft determination issued by the Australian Competition and Consumer Commission (the *Commission*) on 11 April 2001 in respect of the applications by NECA for authorisation of amendments to the National Electricity Code (the *Code*) relating to full retail competition (*Draft Determination*).

I have set out below our comments on the Draft Determination. As I emphasised at Tuesday's pre determination conference, the Department of Natural Resources and Environment strongly supports the terms of the Draft Determination. I have only one substantive comment on the Draft Determination, which relates to the process for changing the Metrology Procedure prior to the introduction of full retail competition. I have also made a number of suggestions to clarify the Draft Determination so that it reflects what I understand to be the intention of the Commission. Finally, I have proposed some further consequential changes to be made to the schedules to Chapter 7 of the Code.

1. Metrology Procedure Change Process

In accordance with condition C2(b) of the Draft Determination, the Metrology Co-ordinator for each participating jurisdiction is required to develop and document a process for changes to the metrology procedure to be prepared by other persons in the jurisdiction and proposed to the Metrology Co-ordinator for approval. This process must be developed by the date that full retail competition is introduced in the jurisdiction or, if earlier, 1 January 2003.

We appreciate that this condition was included in the interim authorisation as the result of extensive discussions between Victoria, New South Wales and the Commission at the time the interim authorisation was made. However, having had the opportunity to review the condition again, we are concerned that there is no clear provision for a change to be made to a metrology procedure prior to the development and documentation of that process pursuant to the Code.

It is envisaged that the change process described above will be implemented once the jurisdictional regulator is appointed as the Metrology Co-ordinator. However, it is possible that it may be necessary to make changes to the metrology procedure during the initial period in which the Government appointed Metrology Co-ordinator is acting. As you may be aware, the Victorian Metrology Co-ordinator has already published metrology procedures for types 5 and 7 metering installations and proposes to publish the metrology procedure for type 6 metering installations (which has been published as a "final draft") once final authorisation of the Code changes is granted. While the Government has undertaken an extensive consultation process in preparing the metrology procedures and made every effort to ensure those procedures are workable, there is a risk that there may be some areas where it becomes apparent that changes are required. If such circumstances arise, it would clearly be preferable for Government to initiate the process for change immediately, rather than deferring the issue for consideration until the jurisdictional regulator becomes the Metrology Coordinator. This is particularly the case given the long lead time for any changes to be made to the metrology procedure, as such changes must undergo a Code consultation process and then be published for three months before becoming effective.

Accordingly, we propose that, during this interim period, the Metrology Co-ordinator should be able to amend the metrology procedures in the same way as it develops the initial procedures. We suggest that the Code could be clarified to reflect this position as follows:

- in condition C2(a), inserting the words "and may be amended," after the words "prepared and approved"; and
- in condition C2(f)(i), replacing the words "in accordance with the process referred to in paragraph (b):" with the following:
 - with effect from the date that is the earlier of:
 - (A) the date that a process is developed under paragraph (b); or
 - (B) the date that a process is required to be developed under paragraph (b),
 - in accordance with the process referred to in paragraph (b):".

2. Clarification of Draft Determination

Condition C1

- In condition C1(b)(1), the word "jurisdictions" should be "jurisdiction".
- A technical argument has arisen in Victoria in relation to the reference to a customer's "entitlement" to purchase electricity from any retailer. This technicality arises from the manner in which contestability in Victoria has been deferred, which is effected by a retail licence condition prohibiting licensees (other than the host retailer) from selling electricity to customers consuming less than 40MWh per annum. We suggest

this issue could be overcome by referring to a customer's "ability" to purchase electricity from any retailer, which we consider does not make any substantive difference to the condition.

- In condition C1(c):
 - the word "clause" should be inserted before "7.3.1(ba)(3A)"; and
 - the words "set out in clause 8.9 of the Code" could be deleted as this is covered by the definition of "Code consultation procedures".

Condition C2

- In condition C2(a) the words "and other interested persons" should be deleted.
- In condition C2(b)(1):
 - the word "jurisdictions" should be "jurisdiction"; and
 - for the reasons set out above, we request that the word "entitled" be replaced with the word "able".
- We assume it is not intended that NEMMCO would be required to review changes to a metrology procedure that are consequential to changes being made to the Code. Accordingly, in condition C2(d), the words "clauses 7.3.1(ba)" should be replaced by the words "clauses 7.3.1(ba) and 7.3.1(bc)".
- The word "are" has been omitted before "not" in the last sentence of condition C2(d).

Condition C3

The word "; and" at the end of paragraph (ba)(3A)(iv) should be deleted and replaced with a comma.

Condition C5

We assume this condition is intended to have the effect that there is only one metrology procedure for each metering installation type. We suggest this could be clarified by replacing the condition with the following:

Clause 7.2.1A(d) should be replaced with the following:

"For the avoidance of doubt a Metrology Coordinator may approve a different metrology procedure for each type of metering installation within the participating jurisdiction of that Metrology Coordinator but may not approve more than one metrology procedure for each type of metering installation within the participating jurisdiction of that Metrology Coordinator."

Condition C6

- The reference in condition C6(a)(i) to "first and second tier customers" is limited by the Code definition to loads that have been registered by a Market Customer under the Code. We assume this review is intended to apply to customers generally and suggest that a more general obligation would result from a reference to "all persons who purchase electricity supplied through the national grid at a connection point".
- Is it intended that consideration of a nationally consistent metrology procedure (new condition C6(a)(vi)) be restricted to metering installation types 5 and 6 (see

introductory wording in paragraph (a))? Perhaps this condition could be incorporated in the similar condition contained in condition C6(b).

- In the final paragraph of condition C6, the words "set out in clause 8.9 of the Code" could be deleted as this is covered by the definition of "Code consultation procedures".

3. Consequential Amendments to the Code

In addition to the proposed changes to the Draft Determination, the following consequential amendments, arising out of the Draft Determination, could be made to the schedules to Chapter 7 of the Code. These suggested consequential amendments are intended to ensure that the terminology used in the Chapter 7 schedules is consistent with the Code changes arising out of the Draft Determination.

- The first 2 sentences of Note 3 to the table in clause S7.2.3 should be amended to read:

A type 5 *metering installation* will use a *metrology procedure* prepared and approved in accordance with clause 7.3.1(ba)(2) for the purpose of converting *active energy* into *metering data*. The value of "x" is to be specified in the *metrology procedure*.

- The first 2 sentences of Note 4 to the table in clause S7.2.3 should be amended to read:

A type 6 *metering installation* will use a *metrology procedure* prepared and approved in accordance with clause 7.3.1(ba)(2) for the purpose of converting *active energy* into *metering data*. The value of "y" is to be specified in the *metrology procedure*.

- Clause S7.4.1(f) should be amended to read:

The *Metering Provider* must ensure that the *metering installation* is installed and maintained in accordance with a relevant *metrology procedure* that has been either established by NEMMCO or prepared and approved in accordance with clause 7.3.1(ba)(2).

Please contact me on 9637 8249 if you would like to discuss any of the issues raised above.

Yours sincerely



Peter Clements
Acting Executive Director
Energy Policy Division