

Draft Decision

Applications to vary an access code

Variations to the NEM access code

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Glossary

ACCC	Australian Competition and Consumer Commission
Act	Trade Practices Act 1974
code	National Electricity Code
DNSP	Distribution Network Service Provider
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
TNSP	Transmission Network Service Provider
TUOS	Transmission Use of System

1. Introduction

On 10 December 1997 the Australian Competition and Consumer Commission (ACCC), under Part VII of the Trade Practices Act 1974 (Act), authorised the National Electricity Code (code).¹

The code was initially made by the relevant ministers of participating jurisdictions under the national electricity law. On 16 September 1998 the ACCC, under s. 44ZZAA of the Act, accepted chapters 1, 2, 4, 5, 6, 7, 8, 9 and 10 of version 2.3 of the code as an industry access code for the National Electricity Market (NEM). The industry access code is referred to as the National Electricity Market access code (NEM access code).

Since that time there have been a number of code changes which have been authorised by the ACCC under Part VII of the Act. Those changes also vary components of the code which comprise the NEM access code or affect the NEM access code.

The ACCC received applications on 5 November 1998, 10 May 2002 and 7 March 2005 from the National Electricity Code Administrator (NECA) to vary the access code, to which the ACCC consented.

On 22 June 2005 the ACCC received a further application from NECA to vary the access code. This current application seeks to vary the access code to take account of six changes to the code that have been gazetted since 1 March 2005. These changes are:

- New South Wales Full Retail Competition Metering Derogation (20 May 2005)
- Extension of Reserve Trader Sunset (20 May 2005)
- Tasmania's Entry to the National Electricity Market (28 April 2005)
- Victoria Full Retail Competition Metering Derogation (21 April 2005)
- New South Wales Transmission Revenue Cap Derogation (8 April 2005)
- Market Ancillary Services for Tasmanian Entry (17 March 2005)

Written submissions in relation to this draft decision may be made to the ACCC, and relevant issues raised in submissions will be taken into account in the final decision. Written submissions must be received by Thursday 11 August 2005.

¹ Authorisation is a process whereby the ACCC grants immunity from court action by the ACCC or any other party for conduct that may breach some of the competition provisions of the Trade Practices Act 1974. Authorisation may only be granted if the ACCC is satisfied that the public benefits of the proposed conduct will outweigh the anti-competitive detriments of the conduct or that the benefits of the conduct are such that it should be allowed.

2. Statutory test

Under s. 44ZZAA of the Act, an industry body may give a written code to the ACCC setting out rules for access to a service. The ACCC may accept the code, if it thinks it appropriate to do so having regard to the following matters:

1. the legitimate business interests of providers who might give undertakings in accordance with the code
2. the public interest, including the public interest in having competition in markets (whether or not in Australia)
3. the interests of persons who might want access to the service covered by the code
4. whether access to the service is already the subject of an access regime
5. any matters specified in regulations made for the purpose of [s. 44ZZAA(3)]
6. any other matters that the ACCC thinks are relevant.

Regulation 6J of the Trade Practices Regulations 1974 sets out the following matters for the purpose of s. 44ZZAA(3):

1. government legislation and policies relating to ecologically sustainable development
2. social welfare and equity considerations, including community service obligations
3. government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity
4. economic and regional development, including employment and investment growth
5. the interests of consumers generally or of a class of consumers
6. the competitiveness of Australian businesses
7. the efficient allocation of resources.

Section 44ZZAA(4) requires the ACCC to publish the proposed code and invite and consider submissions.

Under s. 44ZZAA(6), the industry body may 'withdraw or vary the code at any time, but only with the consent of the ACCC'. Although s. 44ZZAA does not set out a statutory test or consultation procedure to apply to an application to vary an industry code under s. 44ZZAA(6), the ACCC, in relation to NECA's application dated 22 June 2005, has applied the criteria in s. 44ZZAA(3) and r. 6J (set out above) and followed the process in s. 44ZZAA(4).

3. Public consultation process

The Act does not specify a process for the ACCC to follow when assessing a variation to an access code. However, the ACCC has followed a public process by publishing NECA's application, inviting submissions and having regard to the statutory criteria set out in s. 44ZZAA(3) of the Act.

The ACCC received NECA's application on 22 June 2005. Notification of the application and a request for submissions was placed on the ACCC's website. There was also a direct mail out on 24 June 2005. Interested parties were requested to make submissions to the ACCC addressing the criteria in s. 44ZZAA(3) of the Act. The ACCC did not receive any submissions.

The code changes which NECA has included in its application to vary the NEM access code have all been assessed as part of the ACCC's authorisation determinations or they are the result of NECA complying with the ACCC's authorisation conditions. These code changes have been subject to extensive public consultation through both NECA's code change process and the ACCC's authorisation process.

The ACCC has produced this draft decision setting out its analysis of the proposed variations to the NEM access code according to the statutory criteria outlined in chapter 2. Written submissions in relation to this draft decision may be made to the ACCC, and relevant issues raised in submissions will be taken into account in the final decision.

Written submissions must be received by 11 August 2005.

4. Variations to the NEM Access Code

4.1 Background

NECA, in its application dated 22 June 2005, has sought to include in the NEM access code all provisions of the code authorised by the ACCC between 1 March 2005 and 22 June 2005, except to the extent that those changes relate to chapter 3 of the code. The amendments to the code authorised by the ACCC in that time period, listed in schedule A of NECA's request to vary the NEM access code, are:

- New South Wales Full Retail Competition Metering Derogation (20 May 2005)
- Extension of Reserve Trader Sunset (20 May 2005)
- Tasmania's Entry to the National Electricity Market (28 April 2005)
- Victoria Full Retail Competition Metering Derogation (21 April 2005)
- New South Wales Transmission Revenue Cap Derogation (8 April 2005)
- Market Ancillary Services for Tasmanian Entry (17 March 2005)

4.2 The access code application

In its application, NECA states that there have been a number of code changes advanced by NECA and authorised by the ACCC which have varied those components of the code which comprise the NEM access code or affect the NEM access code. It seeks to vary the NEM access code to 'take account of these developments and improve the administration of the NEM access code'. NECA notes:

Each of these code changes have been assessed as part of the ACCC's authorisation determination in Division 1 of Part VII of the Trade Practices Act 1974. These code changes have been the subject of industry and public consultation through the code change processes set out in Chapter 8 of the code and the ACCC's authorisation process.

4.3 Structural reform

The access-related provisions of the code have been accepted by the ACCC as an industry code under Part IIIA of the TPA, with the result that any proposed changes to those provisions require the consent of the ACCC.

As of 1 July 2005 the code has been replaced in operation by the National Electricity Rules as the body of regulations governing the operation of the National Electricity Market. According to the Ministerial Council on Energy:

[T]he National Electricity Law will be amended to empower the AEMC to make rules for the operation of the National Electricity Market, the activities of participants in that market, the registration of those participants, the operation of the power system for system security purposes, the operation of, and access to, electricity transmission and distribution systems, transmission and distribution service pricing, metering, the calculation or estimation of electricity usage, dispute resolution processes for use by Code Participants and others, the calculation, imposition and collection of participant fees by NEMMCO, and ancillary matters.²

In effect, these changes supersede the code in every respect. However, the NEM access code continues to be the access regime under Part IIIA of the Act for access to the physical infrastructure of the NEM.

In moving to this new framework, it is important that the NEM access code be amended to incorporate all those changes which were approved prior to the conversion of the code into National Electricity Rules. This is to ensure consistency between these documents as the new arrangements take effect.

4.4 Submissions from interested parties

The ACCC did not receive any submissions in relation to this application to vary the NEM access code. Submissions relating to some of the code changes were received as part of the authorisation process. The parties that provided submissions as part of the authorisation processes are listed in the individual determinations.

4.5 ACCC's considerations

Chapters 5-9 deal with the amendments to the NEM access code.

² Ministerial Council on Energy (Standing Committee of Officials), Legislative and Regulatory Framework Information Paper, August 2004.

5. New South Wales' & Victoria's Full Retail Competition Metering Derogations

5.1 Introduction

On 27 August 2004, the ACCC received applications for authorisation (Nos A90928, A90929, and A90930) of amendments to the code. The applications were submitted by NECA on behalf of the New South Wales Department of Energy, Utilities and Sustainability and the Minister for Energy and Utilities (NSW). On 6 April 2004, the ACCC received similar applications for authorisation (Nos A90915, A90916 and A90917) from NECA on behalf of the Victorian Minister for Energy Industries and Resources (Victoria).

The stated purpose of the applications for authorisation was to authorise derogations in relation to metering arrangements in chapter 7 of the code, and grant exclusivity for the provision of metering services for certain metering installation types for smaller customers by distribution businesses in NSW and Victoria.

5.2 The access code application

A description of the application is outlined in chapter 4 of the ACCC's final determinations for NSW³ and Victoria⁴, respectively. In both cases the stated purpose of the application was to extend the application of derogations to the code providing exclusivity of metering services for meters of type 5-7 to distribution businesses in these jurisdictions. Type 5 meters are manually read interval meters capable of reading and storing half-hourly electricity consumption. Type 6 meters are accumulation meters, which do not provide interval metering data (but may provide time-of-use information), and are read manually. Type 7 'meters' relate to unmetered supply.

5.3 ACCC's considerations

Having reviewed all of the issues raised by interested parties and the applicant, the ACCC considered that a key public benefit provided by the derogations is to ensure there is sufficient time to respond to the recommendations of the Joint Jurisdictional Regulators' review. The ACCC therefore accepted that the derogations should be authorised in order to provide interim arrangements that enable the development of a coordinated response to the recommendations of the review.

³ ACCC, Amendments to the National Electricity Code, New South Wales Metering Derogations, 2 March 2005

⁴ ACCC, Applications for Authorisation, Amendments to the National Electricity Code, Victorian Metering Derogations, 2 March 2005

The ACCC maintained the view that, taking into account the public benefits and anticompetitive detriment associated with metering exclusivity, it was necessary to impose a condition of authorisation to ensure that any interval meter that incorporates remote reading capabilities, irrespective of how frequently the interval meter is remotely read, would not be subject to the derogations.

5.4 ACCC's decision

The ACCC has considered the matters in s. 44ZZAA(3) of the Act, in particular, the legitimate business interests of service providers, the public interest and the interest of access seekers. The ACCC believes that, in relation to this amendment, the analysis it conducted in its determinations of 27 April and 2 March 2005 is relevant to its assessment under s. 44ZZAA.

The ACCC considers that NECA's application satisfy s. 44ZZAA(3) of the Act in that the variations to the access code provide for a smoother transition to new metering arrangements and are therefore in the public interest. The ACCC proposes to consent to NECA's request to vary the NEM access code by incorporating these derogations into the NEM access code, to the extent that they have not been amended by subsequent authorisations.

6. Extension of Reserve Trader Sunset

6.1 Introduction

On 3 March 2005, the ACCC received applications for authorisation (Nos A90955, A90956 and A90957) of amendments to the code. The applications were submitted by NECA.

NECA proposed amendments to the provisions of the code which relate to the reserve trader.

The change to derogations under chapter 8 of the code will extend NEMMCO's ability to contract non-scheduled reserves until 30 June 2006. The derogation also incorporated alterations to chapter 3 of the code, which are not relevant to the NEM access code.

6.2 The access code application

A description of the application is outlined in chapter 4 of the ACCC's final determination.⁵ The reserve trader provisions allow NEMMCO to enter into reserve contracts and issue directions in order to ensure that the reliability of supply in a region meets the reliability standard. The application was for a change to the sunset date for these provisions.

6.3 ACCC's considerations

The ACCC supported a temporary extension to the reserve trader provisions as a means of maintaining reliability and security within the power system and certainty amongst stakeholders, and the derogation was authorised.

6.4 ACCC's decision

The ACCC has considered the matters in s. 44ZZAA(3) of the Act, in particular, the legitimate business interests of service providers, the public interest and the interest of access seekers. The ACCC believes that, in relation to this chapter, the analysis it conducted in its determination of 27 April 2005 is relevant to its assessment under s. 44ZZAA.

⁵ ACCC, Amendments to the National Electricity Code Extension of Reserve Trader Sunset, 27 April 2005

The ACCC considers that NECA's access code application satisfies s. 44ZZAA(3) of the Act in that the variations to the NEM access code provide for greater reliability and security within the power system and are therefore in the public interest. The ACCC proposes to consent to NECA's request to vary the NEM access code by incorporating these derogations into the NEM access code, to the extent that they have not been amended by subsequent authorisations.

7. New South Wales Transmission Revenue Cap Derogation

7.1 Introduction

On 18 June 2004, the ACCC received an application from NECA under section 91A of the Act. The application was for minor variations to the existing authorisations (Nos A40074, A40075, A40076, as amended) in respect of derogations to the code. NECA lodged the application on behalf of the NSW Minister for Energy and Utilities.

The application for minor variations relate to chapter 9 derogations governing the network pricing arrangements in NSW. The changes are designed to remove the risks arising from the timing of the ACCC's revenue cap decisions for TransGrid and EnergyAustralia. The proposed derogations replace similar derogations put in place in 1999 for the ACCC's first revenue cap decisions for TransGrid and EnergyAustralia.

7.2 The access code application

A description of the application is outlined in chapter 4 of the ACCC's final determination.⁶ The application was to replace an existing derogation (clause 9.16 of the code) to give certainty to TransGrid and Energy Australia in applying the ACCC's draft revenue cap decision dated 28 April 2004 in order to set transmission prices for the period 2004-05.

7.3 ACCC's considerations

The ACCC considered that the nature of these amendments did not suggest that any of them would involve a material change to the existing authorisations, and specifically would not give rise to any identifiable detriment that is particularly important in terms of the authorisation of the code as a whole.

7.4 ACCC's decision

The ACCC has considered the matters in s. 44ZZAA(3) of the Act, in particular, the legitimate business interests of service providers, the public interest and the interest of access seekers. The ACCC believes that, in relation to this chapter, the analysis it conducted in its determination of 4 August 2004 is relevant to its assessment under s. 44ZZAA.

⁶ ACCC, Applications for a Minor Variation of Authorisation, NSW transmission pricing derogations, 4 August 2004

The ACCC considers that NECA's access code application satisfies s. 44ZZAA(3) of the Act in that the variations to the NEM access code provide for greater certainty to TNSPs in the revenue cap process and are therefore in the public interest. The ACCC proposes to consent to NECA's request to vary the NEM access code by incorporating these derogations into the NEM access code, to the extent that they have not been amended by subsequent authorisations.

8. Tasmania's Entry to the National Electricity Market

8.1 Introduction

On 4 January 2005, the ACCC received an application under section 91A of the Act for minor variations to the existing authorisation (Nos A90759, A90760 and A90761) of amendments to the code. The applications were submitted by NECA on behalf of the Tasmanian government.

Tasmania, in preparing for entry into the NEM in May 2005 sought approval of a number of transitional derogations considered essential to facilitate the smooth entry of Tasmania into the NEM.

8.2 The access code application

A description of the application is outlined in chapter 4 of the ACCC's final determination.⁷ The applicant made provision for modified derogations to be incorporated in the NEM rules which, under the reforms being pursued by the Ministerial Council on Energy, are to replace the code. In seeking authorisation of these variations, the Tasmanian government was trying to cover the situation that might arise if the Ministerial Council reforms are delayed.

8.3 ACCC's considerations

The derogations were dealt with under the minor variations procedures of the Act. The ACCC considered that the nature of these amendments did not involve a material change to the existing authorisations, and specifically would not give rise to any identifiable benefit or detriment that is particularly important in terms of the authorisation of the Tasmanian derogations as a whole.

8.4 ACCC's decision

The ACCC has considered the matters in s. 44ZZAA(3) of the Act, in particular, the legitimate business interests of service providers, the public interest and the interest of access seekers. The ACCC believes that, in relation to this chapter, the analysis it conducted in its determination of 2 February 2005 is relevant to its assessment under s. 44ZZAA.

⁷ ACCC, Applications for a Minor Variation of Authorisation, Tasmanian technical derogations, 2 February 2005

The ACCC considers that NECA's access code application satisfies s. 44ZZAA(3) of the Act in that the variations to the NEM access code provide for a smoother transition for future Tasmanian NEM participants and are therefore in the public interest. The ACCC proposes to consent to NECA's request to vary the NEM access code by incorporating these derogations into the NEM access code, to the extent that they have not been amended by subsequent authorisations.

9. Market Ancillary Services for Tasmanian Entry

9.1 Introduction

On 22 December 2004, the ACCC received applications for authorisation (Nos A90948, A90949, and A90950) of amendments to the code. The applications were submitted by NECA and concern derogations to chapter 8 of the code.

The applications were for a derogation which sets out that mainland NEM participants should not pay for Frequency Control Ancillary Services (FCAS) required locally for Tasmania. Conversely, Tasmanian participants should not pay for FCAS services required locally on the mainland.

The derogation expires on 31 December 2006 at the latest.

9.2 The access code application

A description of the application is outlined in chapter 4 of the ACCC's final determination.⁸ NECA applied for a derogation providing for regulation ancillary services required locally in the Tasmanian region to be borne by participants active in the Tasmanian region only.

9.3 ACCC's considerations

The ACCC considered that the new cost allocation arrangements for regulation ancillary services, as put forward in the application, were an improvement upon those currently in place, and that no apparent detriment arises from the implementation of the derogations.

9.4 ACCC's decision

The ACCC has considered the matters in s. 44ZZAA(3) of the Act, in particular, the legitimate business interests of service providers, the public interest and the interest of access seekers. The ACCC believes that, in relation to this chapter, the analysis it conducted in its determination of 9 March 2005 is relevant to its assessment under s. 44ZZAA.

The ACCC considers that NECA's access code application satisfies s. 44ZZAA(3) of the Act in that the variations to the NEM access code provide for a smoother transition

⁸ ACCC, Applications for Authorisation, Tasmanian Ancillary Services – Chapter 8 Derogation, 9 March 2005

for future Tasmanian NEM participants and are therefore in the public interest. The ACCC proposes to consent to NECA's request to vary the NEM access code by incorporating these derogations into the NEM access code, to the extent that they have not been amended by subsequent authorisations.

10. ACCC's Decision

The ACCC has considered the matters in s. 44ZZAA(3) of the Act, in particular, the legitimate business interests of service providers, the public interest and the interest of access seekers and, in accordance with s. 44ZZAA(6) of the Act proposes to consent to these variations of the NEM access code on the basis that the variations:

- provide for regulatory certainty for transmission customers in NSW (New South Wales Transmission Revenue Cap Derogation)
- provide for a smoother transition for future Tasmanian NEM participants (Tasmania's Entry to the National Electricity Market, Market Ancillary Services for Tasmanian Entry)
- provide for a smoother transition to new metering arrangements (New South Wales Full Retail Competition Metering Derogation, Victoria Full Retail Competition Metering Derogation)
- provide for greater reliability and security within the power system (Extension of Reserve Trader Sunset)