

09 JAN 2014



THE HON IAN MACFARLANE MP

MINISTER FOR INDUSTRY

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

RECEIVED 15 JAN 2014

Dear Mr Pierce *Sohn*

As you are aware, Australian governments have committed under the Australian Energy Market Agreement (AEMA) to remove retail energy price regulation where effective competition can be demonstrated. The Australian Energy Market Commission (AEMC) is tasked under the AEMA with responsibility for assessing the state of retail competition across jurisdictions within the National Electricity Market (NEM).

In December 2012, the Standing Council on Energy and Resources (SCER) and the Council of Australian Governments agreed to revise the AEMC's existing approach to competition reviews. As such, the attached revised Terms of Reference were developed by SCER to underpin a revised focus of the reviews on the state of competition across jurisdictions within the NEM with scope for more detailed jurisdiction-specific advice, if agreed, by the AEMC.

To support this approach the AEMA was amended in December 2013 to remove prescriptive elements associated with the existing approach which are focused on individual jurisdictional reviews.

This revised approach to competition reviews is to be applied annually from 2014 onwards. To guide the AEMC in this approach in future competition reviews, please find attached the Terms of Reference that supersede the Statement of Approach for the AEMC's reviews. The Terms of Reference will remain in place for the AEMC's reporting on an ongoing basis from 2014 until such time as directed otherwise by SCER.

Yours sincerely,

Ian Macfarlane
Ian Macfarlane

Phone: (02) 6277 7070 Fax: (02) 6273 3662

TERMS OF REFERENCE

AUSTRALIAN ENERGY MARKET COMMISSION (AEMC) REPORTING ON THE STATE OF RETAIL ENERGY MARKET COMPETITION ACROSS THE NATIONAL ELECTRICITY MARKET

BACKGROUND

Australian governments have committed under the Australian Energy Market Agreement (AEMA) to remove retail energy price regulation where effective competition can be demonstrated. The Australian Energy Market Commission (AEMC) is tasked under the AEMA with responsibility for assessing the state of retail competition across jurisdictions within the National Electricity Market (NEM).

From 2007 to 2013 the AEMC, as requested by the Ministerial Council on Energy (MCE), the predecessor to the Standing Council on Energy and Resources (SCER), conducted reviews of retail energy market competition in individual jurisdictions. These reviews were guided by prescription contained within the AEMA and a Statement of Approach approved by the MCE. The AEMC reviewed Victoria over 2007 and 2008, South Australia in 2008, the Australian Capital Territory over 2010 and 2011, and New South Wales over 2012 and 2013. During this period, Victoria and South Australia deregulated retail energy prices from January 2009 and February 2013 respectively and the Australian Capital Territory did not deregulate retail pricing as effective competition could not be demonstrated.

In December 2012, SCER and the Council of Australian Governments agreed to revise the AEMC's existing approach to competition reviews. Accordingly, these Terms of Reference have been developed by SCER to underpin a revised focus on the state of competition across jurisdictions within the NEM, with scope for further more detailed jurisdiction-specific advice on pricing reform by the AEMC, as required.

To support this approach, the AEMA was amended in December 2013 to remove those prescriptive parts of Section 14 and Annexure 3 which were associated with previous methodologies. Also, these Terms of Reference supersede the previous Statement of Approach.

OUTLINE

These Terms of Reference are intended to guide the AEMC's assessment of the state of retail energy market competition across and within jurisdictions in the NEM.

The task entails annual reporting by the AEMC on the state of competition in retail electricity and gas markets across NEM jurisdictions, with scope for more detailed jurisdiction-specific advice on pricing reform as required.

SCER requests this reporting by the AEMC pursuant to section 41 of the National Electricity Law and section 79 of the National Gas Law.

The AEMC's reporting is to be carried out in accordance with the assessment framework and processes outlined below.

SCOPE

The AEMC is required to publish an annual report assessing the current status (and possible future development) of retail competition in electricity and gas markets across all the NEM jurisdictions. This assessment is to be based upon objective measures and analysis. The AEMC's reports should also comment on NEM-wide issues that are affecting retail competition. More details on the assessment framework are provided below.

The AEMC's reporting will focus on the small customer end of retail electricity and gas markets as defined by the relevant jurisdictional consumption threshold(s) or any other means the AEMC deems appropriate.

The competition monitoring that occurs as part of the AEMC's annual NEM-wide reviews will principally cover energy markets in jurisdictions that are subject to retail price regulation, but also markets in jurisdictions where prices have been deregulated - mainly for comparison purposes.

As part of this annual reporting, the AEMC is required to advise Energy Ministers whether there are any jurisdictions to which it could usefully provide further advice on how they may transition to price deregulation. SCER would use this advice to inform their potential further directions to the AEMC on the provision of such advice.

ASSESSMENT FRAMEWORK

The AEMC should have regard to the following criteria where practicable, and subject to data availability and resourcing constraints, in assessing the effectiveness of retail competition in energy markets across and within NEM jurisdictions (i.e. they apply for both NEM-wide and any jurisdiction-specific reports).

CRITERIA

1. Independent rivalry within the market.
2. The ability of suppliers to enter the market.
3. The exercise of market choice by customers.
4. Differentiated products and services.
5. Price and profit margins.
6. Customer switching behaviour.

CONSULTATION

The AEMC must consult with jurisdictions during the preparation of its report including on methodology, data collection processes and timelines, with a view to maintaining a consistent approach on assessing competition across jurisdictions.

The AEMC must release its draft report to jurisdictions for their review and comment.

Terms of Reference – AEMC reviews of retail energy market competition

The AEMC may also consider where practicable consultation with key stakeholders in the preparation of its report including energy retailers, consumer groups, energy ombudsman and pricing regulators.

TIMING

The AEMC must publicly release its NEM-wide report by 30 June each year and provide embargoed copies of the report to Energy Ministers (through SCER) at least ten days before publication.

The second half of each year is intended to allow the AEMC sufficient time to provide individual jurisdictions with supplementary advice where the need is identified by the AEMC and agreed by SCER. This advice would also be made public with timing and other parameters to be agreed by SCER as part of its request to the AEMC.

These Terms of Reference will remain in place for the AEMC's reporting on an ongoing basis from 2014 until such time as directed otherwise by SCER.

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