

MCE

Ministerial Council on Energy

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18 DEC 2009

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Minister for Resources and Energy

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Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box A2449
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B09/2858

16 DEC 2009

Dear Dr Tamblyn *(John)*

At its meeting of 4 December 2009, the Ministerial Council on Energy (MCE) agreed that I write to you requesting the Australian Energy Market Commission (AEMC) provide advice to the Council on the state of competition in the electricity market in the Australian Capital Territory (ACT) and the consequential role of price regulation in this market.

At the meeting Ministers also approved the supporting documentation to guide the AEMC's review of competition in the ACT. These documents are attached and include a revised Statement of Approach, which has been updated following input from the AEMC and the MCE's Standing Committee of Officials, and a Request for Advice, which is specific to the ACT review.

The MCE acknowledges the AEMC's important role in assessing the effectiveness of retail price competition in jurisdictions participating in the National Electricity Market. Previous reviews undertaken in Victoria and South Australia have demonstrated the progress which is being made towards achieving effective competition. The review of competition in the ACT is another important step towards achieving nationally consistent energy market reform.

We look forward to receiving your advice by no later than 31 December 2010.

Yours sincerely



Martin Ferguson

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MCE Chair

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**MINISTERIAL COUNCIL ON ENERGY REQUEST TO AEMC FOR ADVICE ON THE STATE
OF COMPETITION IN ELECTRICITY RETAIL MARKET(S) FOR SMALL CUSTOMERS IN
THE AUSTRALIAN CAPITAL TERRITORY**

S.41 NATIONAL ELECTRICITY (SA) ACT 1996

ADVICE

BACKGROUND

1. The Ministerial Council on Energy (MCE) has agreed, in clauses 14.11 to 14.15 of the Australian Energy Market Agreement (AEMA):
 - To a process for assessing the effectiveness of competition in the electricity and gas retail markets of the jurisdictions for the purpose of phasing out retail price regulation where effective retail competition is demonstrated (clause 14.11);
 - That the Australian Energy Market Commission (AEMC) will assess the effectiveness of competition against criteria developed by the MCE;
 - That the AEMC will provide advice to jurisdictions on the retention, removal or reintroduction of retail energy price controls;
 - The effective competition review process is to commence with those jurisdictions most likely to have effective competition.
2. On 19 April 2007, AEMC provided advice to the MCE regarding the proposed public consultation process and the factors to be considered in its reviews of the effectiveness of competition in gas and electricity retail markets and for providing advice to jurisdictions for the purpose of retention, removal or reintroduction of retail energy price controls. This advice is referred to as the Statement of Approach.
3. Pursuant to s.41 of the *National Electricity (SA) Act 1996*, the MCE may request the AEMC to provide advice.
4. Participating jurisdictions under the National Electricity Law (NEL) have agreed to the request set out below with respect to the provision of advice by the AEMC on the state of competition in, and retention, removal or re-introduction of retail price regulation for electricity market(s) in the Territory of the Australian Capital Territory (Australian Capital Territory).

REQUEST

5. The MCE has by resolution dated 4 December 2009, agreed to request the AEMC to provide advice to the MCE on:
 - the AEMC's assessment of the effectiveness of competition for small customers in the electricity market (i.e. customers consuming less than 100MWh per annum) in the Australian Capital Territory, having regard to the full range of customers in this class; and
 - the retention, removal or re-introduction of retail price regulation for standing contracts for small customers in the electricity market in the Australian Capital Territory.

The advice must be prepared in accordance with the following requirements.

6. The AEMC must carry out its assessment and provide its advice generally in accordance with the Statement of Approach and in particular must assess whether competition is effective in relevant Australian Capital Territory electricity retail markets¹:
 - applying the criteria that have been developed by the MCE; and
 - using the methodology and approach set out in Part 2 and Part 3 of the Statement of Approach.

7. In formulating its advice on whether competition is effective in the relevant markets, the AEMC should have regard to the fact that under clause 14.14 of the AEMA, participating jurisdictions have agreed that the phase out of the exercise of retail price regulation:
 - need not include the removal of 'obligation to supply' arrangements;
 - may involve a further period of price monitoring and/or price agreements with retailers under appropriate oversight arrangements; and
 - does not prevent the exercise of a reserve price regulation power where effective competition for categories of users ceases, provided that the power is only exercised in accordance with a regulatory methodology promulgated by the AEMC, and is subject to review by the AEMC of the effectiveness of competition in accordance with the AEMA.

Commencement of the review

8. Consistent with the AEMC's consultation process set out in its Statement of Approach (at 4.3), the AEMC must, before commencing its assessment of competition in Australian Capital Territory electricity markets:
 - issue a public notice announcing the commencement of an assessment together with a proposed timetable for its completion including providing advice; and
 - call for public submissions within a time nominated by it on the effectiveness of competition in the relevant Australian Capital Territory electricity market(s).

Consultation with the Australian Capital Territory Government and relevant stakeholders

9. The AEMC must, at each step in the advice process, consult with the Australian Capital Territory Government. The AEMC must also consult and meet with relevant stakeholder groups in the Australian Capital Territory who have an interest in the oversight, regulation or other control of retail prices.

¹ The MCE notes that, consistent with the AEMC's Statement of Approach there may be more than one relevant retail electricity market for small customers in the Australian Capital Territory. The AEMC will consider the relevant retail market(s) in which competition will be assessed. For the avoidance of doubt, a market may be defined by reference to groups of users or regions within the Australian Capital Territory.

Four Stages of Reporting and Advice

10. In providing the advice the AEMC must follow a four stage reporting and advice process (consistent with Section 4.3 of the Statement of Approach) as follows:

Stage 1

- 10.1. Publish a draft report (First Draft Report) on its assessment of the effectiveness of competition in the relevant Australian Capital Territory electricity market(s), inviting public comment on the draft findings.

Stage 2

- 10.2. Consider all submissions and the result of any other consultation undertaken and publish a final report (First Final Report) advising of its assessment on the effectiveness of competition in the relevant Australian Capital Territory electricity market(s).

Stage 3

- 10.3. Publish draft advice (Second Draft Report):
- where the AEMC finds competition is effective, on ways to phase out retail price regulation in the relevant market, including a draft timeframe within which the phase out should occur; or
 - where the AEMC finds competition is not effective, draft advice on ways to promote competition in the relevant market; and
 - include advice on the Australian Capital Territory's compliance with clauses 14.10-14.14 of the AEMA.

Stage 4

- 10.4. Consider all submissions and the result of any other consultation undertaken and publish advice (Second Final Report):
- where the AEMC finds competition is effective, on the phase out of retail price regulation in the relevant market, including an appropriate timeframe, taking account of comments received on the draft report; and
 - where the AEMC finds competition is not effective, on ways to promote competition in the relevant market.

MAKING REPORTS AVAILABLE

11. The AEMC must provide each of the reports referred to in clause 10 (the Reports) to the MCE and the Australian Capital Territory, and at the same time:
- make each of the Reports available on its website;
 - provide a copy of each of the Reports to all MCE Ministers; and

- place a notice of publication of each of the Reports in a nationally circulating newspaper.

Date by which advice is due

12. The AEMC must provide its Second Final Report to the MCE by 31 December 2010.

Management of confidential information

13. The MCE notes that the AEMC will manage confidential information provided to it in accordance with the Statement of Approach.