

Appendix B – Extract of the AEMA

Retail Price Regulation

14.10 The Parties reaffirm their commitment to full retail contestability in accordance with the National Competition Policy Agreements.

14.11 All Parties agree to phase out the exercise of retail price regulation for electricity and natural gas where effective retail competition can be demonstrated and that:

- (a) the AEMC will assess the effectiveness of competition for the purpose of retention, removal or reintroduction of retail energy price controls, whereby:
 - (i) the criteria for assessing the effectiveness of competition will be developed by the MCE in consultation with the AEMC and other interested parties based on the principles set out in Annexure 3;
 - (ii) the assessment process will commence from 1 January 2007 starting with those jurisdictions most likely to have effective competition; and
 - (iii) reviews will be conducted biennially, unless the AEMC recommends otherwise, until all retail energy price controls are phased out or at the request of a Party thereafter;
- (b) social welfare and equity objectives will be met through clearly specified and transparently funded State or Territory community service obligations that do not materially impede competition; and
- (c) the AEMC will publicly report on its assessments of effective competition in which it will provide advice to each jurisdiction on their compliance with clauses 14.10-14.14 and on:
 - (i) ways to phase out the exercise of retail price regulation if competition is determined to be effective and an appropriate timeframe; or
 - (ii) ways to promote the growth of effective competition for those users or areas of a jurisdiction which do not enjoy effective competition.

14.12 The Parties agree that where competition is not yet effective for a market, group of users or a region:

- (a) retail energy price controls (including those furthering social welfare and regional equity objectives) can be imposed by the relevant State or Territory but should, to the extent possible, not hinder further development of competition and ensure that the benefits outweigh the costs, and costs are minimised; and

- (b) retail energy price control will be retained under the existing arrangements or be transferred to the AER and the AEMC at the discretion of each jurisdiction (such a transfer would not include the funding of community service obligations).

14.13 Where competition has been found to be effective under clause 14.11, the Parties agree to implement the phase out of the exercise of retail price regulation in accordance with clauses 14.14 and 14.15.

14.14 The Parties agree that the phase out of the exercise of retail price regulation under clause 14.13:

- (a) need not include the removal of 'obligation to supply' arrangements;
- (b) may involve a period of price monitoring and/or price agreements with retailers under appropriate oversight arrangements;
- (c) does not prevent the exercise of a reserve price regulation power by the State or Territory 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 clause 14.11.

14.15 The Parties further agree that, for the purposes of the phase out of the exercise of retail price regulation under clause 14.13, the process for responding to advice from the AEMC under clause 14.11(c)(i) will be as unanimously agreed by the MCE by 1 July 2006.

14.16 The functions and powers conferred on the AEMC by clauses 14.11, 14.14 and 14.15 are taken to be conferred on the Economic Regulation Authority for the State of Western Australia until such time as Western Australia elects to join the NEM or the Economic Regulation Authority is disestablished. The Economic Regulation Authority will conduct these functions and powers in consultation with the AEMC and in accordance with the national consistent developed by the AEMC.

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ANNEXURE 3

INDICATORS OF COMPETITION IN RETAIL ENERGY MARKETS

1. **Customer experiences** – for competition to be effective, customers must be aware of different retailers and perceive that they can make price comparisons – data compiled from customer surveys.
2. **Customer switching** – transfer rates can indicate customer interest and activity in the competitive market – available from market data.

3. **Price and non-price offers** – evidence that suppliers are actively competing by offering innovative products that meet customer needs – compiled from retailer surveys and ‘mystery shopper’ surveys.
4. **Entry and exit of suppliers** – numbers of competing suppliers and changes in the numbers of suppliers can indicate the degree of competition – available from market data.
5. **Market shares** – market shares and changes in market shares are an indicator of market structure and dynamics – available from market data.
6. **Barriers to entry** – the threat of new entry creates pressures to reduce prices and improve service – to be ascertained by analysis.

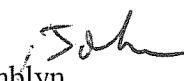
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Appendix C – MCE Request for Advice

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REC'D
31 MAY 2007

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H166
AUSTRALIA SQUARE NSW 1215

Dear Dr Tamblyn 

**PHASE OUT OF RETAIL PRICE REGULATION – COMMENCEMENT OF
VICTORIAN ASSESSMENT OF COMPETITION**

Thank you for the Acting Chair's letter of 19 April 2007 regarding the Australian Energy Market Commission's (AEMC) proposed Statement of Approach for conducting reviews of retail competition in jurisdictional energy markets.

At its meeting of 25 May 2007, the Ministerial Council on Energy (MCE) agreed that I write to you to request the AEMC to provide advice to the MCE on the state of competition in, and retail price oversight for, the electricity and natural gas market(s) in Victoria. The detailed request for advice taking account of the AEMC's Statement of Approach is attached.

We look forward to receiving your advice by no later than end February 2008.

Yours sincerely



Ian Macfarlane

25/5/07

**MINISTERIAL COUNCIL ON ENERGY REQUEST TO AEMC FOR ADVICE ON THE STATE
OF COMPETITION IN, AND RETAIL PRICE OVERSIGHT FOR, ELECTRICITY AND
NATURAL GAS MARKET(S) IN VICTORIA**

S.6(B) AUSTRALIAN ENERGY MARKET ESTABLISHMENT ACT (SA)

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 and is set out in **Attachment A**.
3. Pursuant to s.6(b) of the *Australian Energy Market Commission Establishment Act 2004* (SA) the MCE may request the AEMC to provide advice.
4. Participating jurisdictions under the National Electricity Law (NEL) and National Gas Law (NGL) 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 oversight for electricity and natural gas market(s) in the State of Victoria (Victoria).¹

REQUEST

5. The MCE has by resolution dated 25 May 2007, agreed to request the AEMC to provide advice to the MCE on:
 - the AEMC's assessment of the effectiveness of competition in the electricity and natural gas markets in Victoria; and

¹ The Victorian Government has reserve powers to regulate retail electricity and gas prices for prescribed small customers. Prices have not been regulated since 2002. Government oversight of retail electricity and gas prices is limited to a retail price path negotiated with the designated local electricity and gas retailers for the 2003 – 2007 period. The retail price path provides agreed annual movements in average prices for services covered by standing and deemed electricity and gas contracts for consumers (ie, small customers who do not have a market contract with a retailer). The Government will consider options for future retail price oversight, if any, at the end of the current price path period.

- the retention, removal or re-introduction of retail price oversight for, electricity and natural gas market(s) in Victoria.

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 Victorian electricity and retail gas markets²:
 - applying the criteria that have been developed by the MCE (at **Appendix 1**); 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
 - need 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 Victorian electricity and natural gas 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 Victorian electricity and natural gas market(s).

— ²The MCE notes that, consistent with the AEMC’s statement of approach (at 3.2) there may be more than one relevant retail electricity and natural gas market in Victoria. The AEMC will determine 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 Victoria.

Consultation with the Victorian Government and relevant stakeholders

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

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

Publish a draft report (First Draft Report) on its assessment of the effectiveness of competition in the relevant Victorian electricity and natural gas market(s), and inviting public comment on the draft findings.

Stage 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 Victorian electricity and natural gas market(s).

Stage 3

Publish draft advice (Second Draft Report):

- where the AEMC finds competition is effective, on ways to phase out retail price oversight 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 Victoria's compliance with clauses 14.10-14.14 of the AEMA.

Stage 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 oversight 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 Victoria, 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 no later than the end of February 2008.

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 (at 4.4).

MCE criteria for the AEMC to apply in carrying out its assessments:

- independent rivalry within the market;
- ability of suppliers to enter the market;
- the exercise of market choice by customers;
- differentiated products and services;
- prices and profit margins; and
- customer switching behaviour.