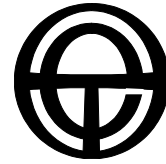


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## **SUBMISSION**

### **Standing Committee of Officials of the Ministerial Council on Energy**

### **2006 Comprehensive Legislative Package**

**19 December 2006**

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## Standing Committee of Officials of the Ministerial Council on Energy 2006 Comprehensive Legislative Package

### 1 Introduction

Total Environment Centre (TEC) is appreciative of the opportunity to respond once more to details of the energy reform program. We have restricted our comments here to specific issues addressed in the 2006 Comprehensive Legislative Package, with a focus on electricity, and have divided this submission into sections accordingly. These are: the overview and response to the Expert Panel on Energy Access Pricing; and amendments to the consumer advocacy arrangements. Our main recommendations are, in summary:

- Promote the development and elevation of environmental and social objectives to sit under the overall National Electricity Law Objective.
- The Rules should refer to a Demand Management (DM) Code of Practice for distribution and transmission networks, with the NSW model to be adopted as a minimum (including the protocol for disclosure of information); networks to be obligated to *implement* non-network solutions where more cost effective than augmentation. Demand side participation has been neglected within the National Energy Market (NEM) and the energy reform program to date.
- Economic efficiency is central to the NEM. To achieve this there must be equal emphasis on demand and supply as the basis of standard economic regulation. DM and energy efficiency must therefore be given high priority and be integrated in uniform national regulation.
- Retain a control form of regulation to be applied to energy generally, since networks essentially form natural monopolies.
- Retain a revenue cap for transmission network revenue and apply this method to distribution networks as well since they form geographic monopolies.
- Total factor productivity should not be acceptable within the Rules until the Australian Energy Market Commission (AEMC) has investigated it further.
- Distribution services should be regulated at a national level as far as possible. In the interests of consistency, certainty, equity and transparency, best-practice minimum requirements must apply across the NEM for it to be a genuinely national system. Regulations should include environmental best practice in particular.
- The environment should constitute a particular area of focus within consumer advocacy arrangements, specifically climate change caused by greenhouse gas emissions from stationary energy. Proper consideration of environmental externalities – acknowledging the role of demand management and embedded generation – should be addressed in funding advocacy, capacity building and research.

## **2 Overview and Response to Expert Panel on Energy Access Pricing**

### **2.1 Objects clause**

The Expert Panel endorsed the NEM Objective and proposed that an object clause based on that objective be inserted in the National Electricity Law, with a similar clause to be inserted into the National Gas Law. TEC has identified limitations to the NEL Objective and produced a report titled, *How Should Environmental and Social Policies be Catered for as the Regulatory Framework for Electricity Becomes Increasingly National?* We have attached a copy of this report.

The concerns raised in the report are the failure in the move to national regulation to include environmental considerations, and that the long-term interests of consumers are founded on environmental and social objectives as much as they are on pure efficiency objectives. We are proposing two new objectives – an environmental and a social – to stand as subsidiary or complementary to the NEL Objective. Our proposed objectives are:

#### Environmental

"The Market Environmental Objective is to contribute to achieving ecologically sustainable development and is to have regard to the effect on the environment of the generation, transmission, distribution, supply and use of electricity and related activities including achieving a permanent reduction in the total global emissions of greenhouse gases."

#### Social

"The Market Social Objective is to promote the long term interests of consumers with respect to the supply of electricity as an essential service including addressing the particular vulnerabilities that particular classes of consumers may have such as customers who are: disabled or chronically sick; of pensionable age; of low income; and/or residing in rural areas."

### **2.2 Form of regulation**

TEC reiterates its preference for the control form of regulation. We would also note that the MCE's position on control versus negotiate/arbitrate seems to be equivocal and no clear direction is given – other than to suggest that the two approaches would operate in tandem – as to how the form of regulation would operate in practice. This equivocation appears to be leaving substantial discretionary powers with the AEMC and the Australian Energy Regulator (AER), which does not address existing problems of uncertainty for both consumers and investors.

Networks essentially form natural monopolies, which does not appear to be disputed by the MCE. This is an effective barrier to efficiency and competition and so government has the responsibility to regulate their activities to protect the interests of consumers. Equally, investors require certainty, particularly in network planning which relies on substantial injections of capital. A position which increases uncertainty beyond that existing within the status quo is to the detriment of all participants in the electricity market.

### **2.3 Revenue and pricing**

Total factor productivity (TFP) should not be included in the NEL as a potential methodology until more research has been done within the Australian electricity market.

The MCE states it is taking a more cautious approach than the Expert Panel; therefore it should not be recommending a facility within the Rules for the AER to use it as a regulatory tool. Further investigation of the methodology is essential before it is embedded in the NEL.

It seems contradictory to direct the AEMC to review TFP – which we would support – but then at the same time legislate for the AER to go ahead and use it immediately. Any Rule changes, such as permitting the AER to use TFP to assist with the building blocks approach, should be held off entirely until the AEMC has completed its review. This argument also applies to the section on information disclosure, which is placing an onus on the AER to obtain information to support TFP – this could be a waste of the AER's resources if the AEMC finds that the methodology is not appropriate.

Any principles that are to be established should be applied equally to all monopoly businesses, that is, to electricity distribution service providers as well as transmission networks, and the papers do allude to the possibility of certain principles applying to distribution in the future. TEC is of the opinion that a revenue cap should be applied to distribution networks – as for transmission – since they equally are natural monopolies with similarly “lumpy” investment.

### **3 Consumer advocacy**

TEC has already proposed that additional focus should be placed on the environment as a key area for advocacy, as environmental externalities caused by the NEM have direct impacts on small and medium consumers, as well as the wider community and national economy. Consumers with an interest in demand management and renewable energy form a particular constituency within the NEM and they are currently under-represented in the projects the Panel has supported to date.

Therefore, the environment should constitute a particular area of focus within consumer advocacy arrangements and proper consideration of environmental externalities – acknowledging the role of demand management and climate change in particular as primary issues – should be addressed in funding advocacy, capacity building and research.

We also note that although the Advocacy Panel clearly has a mandate to support advocacy and research, there is no facility to commission new research on behalf of particular consumers. The range of organisations currently funded by the Panel is a wide one, but there is no doubt that some consumers would be slipping through this net and so it would be valuable if the Panel were able to initiate research.

Another shortcoming with the consumer advocacy arrangements is an over-emphasis on fixed products from grants. This is relevant to research projects, but advocacy is an intangible area which may not directly produce results that can be readily identified. Reporting on advocacy actions would be appropriate, but not the need to define specific outcomes.