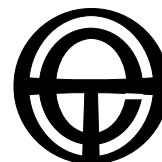


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16 February 2007

Manager
MCE Secretariat
DITR
GPO Box 9839
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By email: MCEMarketReform@industry.gov.au

Dear MCE Secretariat,

Re: Retail Policy Working Group – Working Paper 3

Total Environment Centre (TEC) is pleased to be able to have further input into the Retail Policy Working Group process. We refer also to our previous submissions on the distribution and retail process, such as our submission of January 2006 on the “Public Consultation on a National Framework for Energy Distribution and Retail Regulation”.

In this submission we have restricted our comments to electricity issues, with a focus on jurisdictional directions and licensing.

Jurisdictional Directions

We note that the MCE has engaged Clayton Utz (p 10 of the paper) to further investigate the concept of jurisdictional directions. TEC prepared a report on this in consultation with Gilbert + Tobin, “How Should Environmental and Social Policies be Catered for as the Regulatory Framework for Electricity Becomes Increasingly National?”. We have already forwarded this report to the MCE as our submission to the RPWG Working Paper 1 (and it has indeed been placed on the MCE website).

In the report, we propose a three-step model to assess whether provisions that currently exist at a jurisdictional level should be promoted to a national level. The major focus is on jurisdictional environmental and social policies and the assessment is based on the degree of commonality within these policies across the states.

The report also proposes the adoption of both an environmental and a social objective within the National Electricity Law, to sit alongside the market objective to meet consumers’ interests. On page 7 we note that:

“One of the key elements of the new single market objective is that it focuses the decision maker on the ‘long term interests of consumers’.

A key tenet of this paper is that the long term interests of consumers can only properly be advanced if:

- a socially responsible approach is adopted which recognises that consumer protections are required reflecting the essential service characteristic of electricity and the particular vulnerabilities of particular classes of consumers; and
- an ecologically sustainable approach is adopted which recognises the environmental damage that the supply and use of energy can inflict.

Without those approaches, there is a range of ways in which the long term interests of consumers would suffer ...”

Licences

Licensing to date has proven to be a useful vehicle for a variety of benefits. For instance, licensing can assure the soundness of a business wishing to engage, and continue, in the electricity distribution and retail sectors. It provides that business with guidelines to assess their economic viability, which then can contribute to a reliable system.

It has also been used across the jurisdictions to promote environmental and consumer protection obligations related to government policies and regulations. To meet the initial conditions – and then maintain the licence – the companies must comply with guidelines developed in line with social and environmental policy. Licensing can then therefore act as a mechanism to ensure regulatory compliance, one that can be audited readily by business and regulator alike.

Clearly the jurisdictions vary widely in their licensing conditions, but this should not be a barrier to developing national standards, and they can be imposed alongside conditions within the National Electricity Rules (the Rules). If licensing is to be abolished, careful consideration must be given as to how environmental and consumer policies are to be embodied across the NEM.

TEC recommends that licensing for electricity distribution and retail businesses should be maintained, and that a national framework should be developed. Best practice from the NEM could be selected for the licensing conditions; they need not be at the level of the lowest common denominator. For instance, NSW has developed a set of “Greenhouse-related licence conditions for electricity retailers” which could form a useful model. The purpose of the conditions is to reduce the production of greenhouse gases via benchmarks, “through which electricity retailers were asked to reduce per capita carbon dioxide equivalent (CO_{2-e}) emissions.”¹ Consideration of demand management also forms a condition of licensing in NSW.

A report by the Foundation for Effective Markets and Governance for the Public Interest Advocacy Centre² discusses the issues concerning licensing in some detail. Their assessment is that licensing, and licence conditions, “significantly assists achievement of regulatory compliance ...” They give these reasons:

- *First, the initial licence granting allows a process of assessment of companies prior to market entry. ... [and] companies actually find the licensing process*

¹ NSW Government, *Greenhouse-related licence conditions for electricity retailers: NSW Government Position Paper*, December 2001

² Foundation for Effective Markets and Governance, *Regulation and Consumer Benefit: Compliance in the National Energy Market – A Discussion Paper for the Public Interest Advocacy Centre*, November 2005, pp 68-69

valuable. It is seen as more efficient to go through such a process and to get the business plan right ... than it is to find a mismatch between regulation and the business plan after entry ... The value of codes and guidelines to companies is that they obviate much work on internal compliance systems.

- *Second, a license is an asset. When this asset is under any kind of threat the bank financing the licensee is interested. ...*
- *Third, a license system can be much more responsive to changing market conditions resulting from economic, social and technological changes. Altering a license condition such as by way of revising a code with which the license requires compliance is much more readily done than getting changes to legislation. ...*
- *Fourth, non-statutory ombudsman schemes are given life by license conditions. ...*
- *Fifth, having licenses that provide for consumer protection gives the licensing agency a role in achieving consumer protection regulatory compliance.*

Therefore, on balance it seems prudent to develop a licensing system at the national level. Although there are few precedents in Australia of national licences, nonetheless it should be feasible to develop such a system. It could be administered through a Licensing Code which is referred to in the Rules, with the contents of the Code being based on best practice for environmental, consumer protection and prudential obligations.

A significant benefit of licence conditions is their potential for responsiveness to changing situations. As with jurisdictional directions, where there is a perceived commonality across the States such conditions could be – and should be – adopted into the Rules. However, where there is some divergence of opinion regarding their long-term suitability then they are better served as being part of licence conditions.

TEC is also of the opinion that imposition of licence conditions is appropriate for retailers and distributors alike; the arguments for differentiation put forward in the working paper are insufficient.

Yours faithfully,



Jeff Angel
Executive Director