Regulatory issues

Regulation and market power conference

The ACCC is hosting its fourth conference on regulatory issues of national significance, focusing on 'Regulation, industry structure and market power' from 31 July–1 August 2003 at Sea World Nara Resort on Queensland's Gold Coast.

The conference will feature international and local speakers representing industry, consumers, academia, consulting firms and government. This year's speakers include:

- Professor David Newbery, Director of the Department of Applied Economics, University of Cambridge
- Professor Roger Noll, Economics Department, Stanford University
- Dr Richard O'Neill, Chief Economic Adviser, US Federal Energy Regulatory Commission.

The conference will present the work of various experts in analysing utility industries and in regulatory design and evaluation. It will consider trends in regulatory practice in Australia, the United States, Europe and elsewhere.

Topics to be discussed this year include:

- measuring and mitigating market power in utility industries
- sources and leveraging of market power in regulated industries
- separation: accounting and structural approaches

Key structural and market power issues in electricity, gas, telecommunications and rail will be debated in industry-specific sessions.

Cost is $975, or for groups of 3 or more from one organisation $795 per person. This price includes all meals, airport–hotel–airport transfers and a private group polar bear viewing. It does not include accommodation.

To register your expression of interest, please contact Katrina Huntington at the ACCC at: katrina.huntington@accc.gov.au or (03) 9290 1800.

Electricity

Queensland intra-regional loss factors—authorisation of amendments to the National Electricity Code

On 14 October 2002 the Commission received applications for authorisation (A90847–9) of amendments to chapter 9 of the National Electricity Code (code).

The applications relate to the provisions of the code that require wholesale electricity prices to be adjusted to reflect losses in transmission. Whenever electricity is transmitted from one point of the transmission or distribution network to another, some proportion of electricity is lost due to resistance in the network.

Queensland derogated from the code in 1998 and since then has been calculating loss factors on a forward-looking basis, based on predicted load and generation data for the next financial year.

The Commission authorised code changes in its determination, *Stage 1 of integrating the energy market and network services* (3 October 2002) to allow for the NEM-wide implementation of forward-looking loss factors. The new forward-looking loss factors method was intended to be implemented by 1 July 2003. However, NEMMCO has indicated that this may not allow sufficient time for development of the method and therefore NECA has decided to delay the implementation of those code changes until 1 January 2004.

Without an extension to their current derogation Queensland would be required to revert to backward-looking loss factors until NEM-wide forward-looking loss factors are implemented.

The Commission thought it best that Queensland continue using the forward-looking loss factors method and accordingly released its final determination on 15 January 2003. This has the effect of extending the derogation until 31 December 2004 or until the implementation of NEM-wide forward-looking loss factors, whichever is earlier.

Technical standards—authorisation of amendments to the National Electricity Code

On 3 June 2002 the Commission received applications for authorisation (A90834–6) of amendments to the National Electricity Code on the implementation of the conclusions and recommendations of NECA's review of technical standards in the National Electricity Market (NEM).

NECA's review concluded that the overriding imperative of maintaining the security and integrity of the power system means that there has to be clearly defined standards for the overall performance of the network and the power system itself. It also concluded that to consistently achieve those system-wide requirements, there should be flexibility within a defined range around the particular standards that an individual plant should be required to meet to gain access to the network. This is consistent with the existing grandfathered arrangements under which the plant that were connected to the network at the launch of the market have a variety of capabilities based on requirements at the time of its connection.

The proposed code changes seek to:

- establish a framework within the rules for the hierarchy of system, access, performance and plant standards proposed in NECA's report
- consolidate, and where necessary, update the existing system standards currently scattered throughout the rules
- determine proposed access standards based on recommendations developed by Sinclair Knight Merz in consultation with a working group established by NECA during the course of the review.

The Commission received 11 submissions regarding the proposed code changes.

After considering the issues raised in submissions, the Commission issued its draft determination on 4 December 2002. The Commission did not receive a request for a pre-determination conference; however, six further submissions were received. These were taken into consideration when the Commission issued its final determination.

The Commission granted conditional authorisation on 26 February 2003 to the technical standards code changes. The majority of the conditions take into account that the current drafting of the proposed code changes do not reflect the intention of the agreed principles. Overall, the Commission has found that the public benefits would outweigh any anti-competitive detriments associated with the proposed arrangements. The Commission considered that the proposed changes provide a more flexible arrangement and allow for consideration of the specific performance characteristics of emerging technologies such as wind generators, gas turbines and co-generation. This would reduce barriers to entry for these participants and allow industry players to avoid incurring unnecessary costs.

ACT full retail competition derogations—authorisation of amendments to the National Electricity Code

On 11 December 2002 the Commission received applications for authorisation of amendments to the National Electricity Code. The applications were submitted by the National Electricity Code Administrator (NECA) on behalf of the Australian Capital Territory (ACT) Treasury.

The proposed amendments were to chapter 9, Part C of the code and related to the metering arrangements in chapter 7 of the code. A further amendment clarified the way in which responsibility for performing the role of Jurisdictional Regulator in the ACT is assigned.

The ACT Treasury sought to amend the derogations contained in chapter 9 of the code to delay the introduction of competition for metering services for a transitional period to coincide with other transitional arrangements established as part of the ACT full retail competition (FRC) program.

The proposed FRC derogation was similar to that authorised for Victoria, New South Wales and South Australia.

The proposed changes to the ACT derogations:

- introduce transitional arrangements for metering services in the wholesale electricity market
- provide the local network service provider (LNSP) with a monopoly for the provision of metering services.

The ACT FRC program starts on 1 July 2003. The proposed derogations are for three years.

A draft determination proposing authorisation of the derogations was issued on 5 February 2003. No pre-determination conference was requested. The Commission therefore released its final determination on 5 March 2003.

In its final determination the Commission granted authorisation of the amendments to the derogations. The Commission considered that there should be

considerable public benefit as a result of the proposed derogations. The Commission felt that it is important to have an operating environment that is conducive to customer churn for the full benefits of FRC to be realised. It also concurred with the ACT Government's view that allowing the LNSP to have temporary exclusivity in meter provision would simplify the process for customers who choose to switch retailers, and will minimise disruption to the metering data systems.

Murraylink Transmission Company—application for conversion to a prescribed service

On 18 October 2002 the Commission received an application from the Murraylink Transmission Company (MTC), on behalf of the Murraylink Transmission Partnership (MTP), requesting the Commission to determine that:

1. the network service provided by the Murraylink interconnector be classified as a prescribed service for the purposes of the National Electricity Code
2. for the provision of this prescribed service, MTP be eligible to receive the maximum allowable revenue from transmission customers (through a coordinating NSP) for a regulatory period commencing from the date of the Commission's final decision to 31 December 2012.

MTC is currently registered with the National Electricity Market Management Company (NEMMCO) as a market network service provider (MNSP). Its application has been lodged in accordance with clause 2.5.2(c) of the code.

Clause 2.5.2(c) of the code states that:

If an existing network service ceases to be classified as a market network service it may at the discretion of the Regulator or Jurisdictional Regulator (whichever is relevant) be determined to be a prescribed service or prescribed distribution service in which case the revenue cap or price cap of the relevant network service provider may be adjusted in accordance with chapter 6 to include to an appropriate extent the relevant network elements which provided those network services.

The code establishes two frameworks for the development of network services in the National Electricity Market (NEM), regulated and unregulated. Regulated assets earn a regulated revenue determined by the Commission in accordance with chapter 6 of the code. Unregulated assets earn revenue from trading in the wholesale electricity market in accordance with chapter 3 of the code. In particular, market network service providers (MNSPs) operate as unregulated interconnectors that rely on the spot price differential between two interconnected regions to earn revenue.

In early February 2003 the Commission released an issues paper in relation to MTC's conversion application. The issues paper sets out the Commission's proposed approach for assessing MTC's application and presents some key issues, including the determination of an opening asset value, and the application of the regulatory test.

The Commission invites interested parties to comment on MTC's application, the issues paper and the reports by the Commission's consultants. Comments provided will be considered in the Commission's draft decision. The Commission will consult on its draft decision before issuing a final decision.

Review of the regulatory test—discussion paper

On 5 February 2003 the Commission released a discussion paper as part of its commitment to reviewing the regulatory test to ensure that it does not result in a complex and lengthy process that delays the development of regulated investment.

The discussion paper summarises the main concerns raised by interested parties in response to a Commission issues paper released last year and puts forward three options for refining the regulatory test.

Option one aims to ensure consistency between the regulatory test and the National Electricity Code, but essentially maintains the existing regulatory test.

Option two addresses concerns that the application of the regulatory test is ambiguous and, as a result, defines and clarifies elements of the test to ensure a consistent application across the NEM.

The third option looks at ways of broadening the scope of the regulatory test to capture the benefits of increased competition that can result from improved interstate transmission links. Competition benefits arise from increased competition between generators and the subsequent reduction in market power that may be exercised on occasions.

The Commission invites interested parties to comment on these options. Comments provided will be considered in the Commission's draft decision. The Commission will consult on its draft decision before issuing a final decision. The Commission considers that the regulatory test will ultimately form part of its Regulatory Principles.