

Regulatory Impact Statement
NSW Electricity Supply (General) Regulation 2001

Submission by Balanced State Development Working Group October 2001

Over the last five years the Balanced State Development Working Group (BSDWG) has contributed to NSW studies on Retail Competition in Electricity Supply. It has also contributed to the NSW Distribution Boundary Review and to the series of (now) IPART reviews of electricity generation, transmission and distribution. We have previously been advised that these contributions are already available to the NSW Treasury, Office of Financial Management.

This submission does not attempt to comment section by section on all aspects of the statement. It does, however, attempt to draw attention to a number of issues discussed in the statement where the discussion develops from a metropolitan/large urban area perspective that overlooks the interests of the rural, remote and regional populations of NSW.

For example Section 1.3 (page 3) advises that a notice detailing the public release of the Statement was published in ten newspapers 'across the State' yet we have not been able to locate an editor in SENSW who was aware that it had been released. Similarly we have not been able to locate the notice in 'Town and Country Magazine' which has a circulation to some 125 000 homes in SENSW through the network of Rural Press Local Newspapers - the Merimbula News Weekly, for example, has an audited penetration of well over 95% of local homes.

About two years ago BSDWG drew attention to the fact that it could only locate two visits - one to Jindabyne and one to Bega - by an IPART statutory office holder. The groups listed on pages four and five as having been consulted 'to-date' do not identify any representatives of 'customers' and 'government' who are based outside Metropolitan Sydney.

Similarly the 'chosen regulatory scheme' and the endorsement of the 'existing industry scheme', the Energy and Water Ombudsman of NSW (EWON), it does not include any reference (page 47) to arrangements which will allow, for example, a resident of Dorrig to make face to face representations to the EWON. Since some 15 000 contestable sites have generated 32 complaints in 2000-01 (page 46) it would be useful to have an estimate of the number of complaints expected in 2002-03 when the number of contestable sites increases by some 2 700 000 next year. It also seems reasonable to expect an estimate of the number of complaints from customers living outside NSW Metropolitan and Large Urban Areas.

As BSDWG pointed out in its February 1999 submission the obligation imposed on Governments and their Agencies (which includes the NCC) by Clause 1 (3) (d)-(f) is 'shall' not 'may' take into account. Similarly NCC seems to focus its attention on economic or financial cost to the exclusion of equally important issues such as social and environmental cost.

As the Issues Paper lists the NCC's 1996 paper on '... Public Interest under the National Competition Policy' BSDWG believes that it can safely assume that the PC has been advised that that paper continues to reflect the NCC's overall position on Public Interest questions. The NCC has confirmed to BSDWG that the various pamphlets and NCC Updates that were issued in 1998,99 and 2000 have not been replaced, however we also understand that a single overview pamphlet is due to be published later in 2004.

What seems to be clear is that there have been cases where the NCC has made a negative assessment of an initiative taken (or proposed) by a State Government without taking account, in its assessment, of those matters listed in Clause 1(3) that the State Government believes must be considered. Conversely when key elements of a State Government initiative, such as electricity pricing, have not been completed the NCC appears to be reluctant to make a negative assessment.

We say 'seems to be clear' because, although we have been on the NCC's 'mailing list' since the late 1990s we cannot locate any occasion on which the NCC has published a statement of reasons. The lack of such information on each and every case is a clear breach by a Commonwealth Agency of the Commonwealth Government's response to the first Recommendation in PC Rpt no 8.

Pages 3.7 to 3.12 provide some of the background relating to a specific example concerning electricity pricing.

In June 1996 the NSW Government 'Task Force' confidently advised all electricity consumers in the State that by 1 July 1999 the threshold for Eligibility would be 0 KWh pa and Mandated Contestability would be introduced on 1 July 2000. During 1998/99 the date for Eligibility had slipped to 1 January 2001 and no date for Mandated Contestability was available.

In September 2001 a Regulatory Impact Statement for NSW Electricity Supply (General) Regulation 2001 was published. At page 9 the 'transitional timetable' shows 1 January 2002 as the date when 'all customers' are eligible.. No date is provided for Mandated Contestability and no explanation given.

This example also provides an illustration of our concerns with NCC Update No 13 dated Jan/Feb 1999 which concentrated on 'National Competition Policy: Some impacts on Society and the Economy'. It included a two page insert 'NCP and the Bush'. The introduction reads:

‘Some groups have raised concerns that the NCP reforms are skewed against rural Australia, in favour of urban communities. But the reforms can benefit rural Australia in a number of ways. In fact, the reforms can help mitigate some of the pressures in rural areas caused by dwindling populations and declining business opportunities, that stem from long-term decline in commodity prices and better farm productivity.’

NCC Update No 15 dated December 1999 included three paragraphs about the Regional Australia Summit. The first paragraph related to the Deputy Prime Minister’s Opening Address. The other two paragraphs are:

‘A theme of some presentations to the Summit included that regional and rural decline was not the fault of NCO or other microeconomic measures. Instead, it could be attributed to falling commodity prices, changing technology and globalisation. NCP can also provide opportunities to communities in meeting these new conditions.

The Summit Communique recorded (sic) outcomes that included the value of the natural environment, the provision and maintenance of basic infrastructure services and the removal of unnecessary regulatory impediments which increase the cost of doing business. NCP and its related reforms can contribute in a significant way to each of these areas.’

At the time members of BSDWG noted that these editions of NCC Update failed to identify any specific ‘opportunities’ of ‘benefits’ that related to the ‘Bush’ or to Regional Australia’ but decided that it we would wait to see whether later editions would identify some. We are still waiting.

In another Attachment BSDWG has referred to the views that the ACCC, led by Alan Fells, expressed to the House of Reps. Standing Committee on Financial Institutions and Public Administration about the different Impact of competition reform in the city versus rural areas. Those views appear to be at odds with the views, and assurances, made by the NCC, led by Graeme Samuel.

BSDWG notes that just under a year ago Graeme Samuel moved across to lead the ACCC and that in December 2002 the NCC’s former Executive Director Ed Willett was appointed a Commissioner of the ACCC. We hope that during the course of the present Inquiry, and consistent with your terms of reference, you will be able to identify those initiatives that Mr Samuel and Mr Willett clearly believe can improve the range of positive outcomes for Regional and Rural Communities that can be achieved by the appropriate application of NCP.

BSDWG notes that the NSW Ombudsman lists a George Street, Sydney address and a Toll Free telephone number.

We also note that although 'Industry' is represented on the EWON Board and Council Customer representation is limited to Council. Once again no information is provided as to the number of members of the Board and the Council who will live in Rural, Remote and Regional NSW.

The annual publication by the Productivity Commission of Performance Monitoring of GTE's demonstrates a total disregard of NSW Electricity and Water services beyond the Metropolitan areas. There is nothing in the Impact Statement to suggest that, so far as the Office of Financial Management is concerned it accepts a need for a much wider level of accountability with respect to Electricity Supply (General) Regulation 2001.

The next group of issues BSDWG wishes to discuss relate to the scope of Retail Competition and delays in making it available to NSW citizens.

Chapter Two page 8 correctly points out that in December 1998 New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory commenced the NEM.

In June 1996 the Office of Financial Management had, in the initial 'Retail Competition in Electricity Supply' paper, advised that a 'realistic fast track' timetable would have permitted a contestable NSW market for 2 700 000 eligible sites such as Service Stations and Households by July 1999. The paper also suggested that if NSW and Victorian markets were to be 'aligned' that date would slip to January 2001.

BSDWG is disappointed that Chapter Two makes no attempt to explain why Households did not have access to a contestable_ market last January, three years after the NEM was established. As the paper estimates the benefits to 'Industry' that have already been obtained we wonder why there is no comparable estimate of the disadvantage already suffered by Households.

In BSDWG's 20 March 1998 submission to the NSW Distribution Boundary Review we suggested that North Power was particularly vulnerable in a contestable market. We also said that Great Southern might have some difficulties but that the ability to offer services across the NSW/Vic. Boundary might assist its viability.

As drafted the Impact Statement makes no reference to Transborder contestability. Given that the Queensland Government has, not surprisingly, announced that it believes that a contestable market will lead to unacceptable increases in prices to households in Rural, Remote and some Regional parts of the State Transborder contestability still is an issue with regard to Victoria, South Australia and the ACT. Telephone enquiries to Country Energy and ACTEWAGL as to whether they are able to quote for supply in 2002 to domestic consumers at various locations in the ACT and NSW produced identical responses 'still waiting for advice from NSW'.

Although BSDWG does not accept that the population density, topography and location of thermal power stations in NSW allows meaningful comparisons with England, Scotland and Wales (page 12) there should be benefits from the introduction of full retail contestability between NSW, Vic., SA and the ACT. Any suggestion of further delays should be resisted.

Finally we believe that, providing the transborder case is adequately addressed, the customer protection policy objectives of regulation outlined in Chapter 5 is adequate, although we would not have listed them in the sequence chosen in the Statement.

supply from the network owner. This is a key aspect of the Competition Principles Agreement.

Access to electricity network infrastructure is increasing in NSW. Customer loads between 750 MWh and 160 MWh pa became contestable from 1 July 1998. A year from that date, on 1 July 1999, customers with individual loads over 100 MWh pa will be allowed to aggregate their loads to meet the contestability threshold, subject to eligibility requirements. All other customers are scheduled to become contestable from 1 January 2001, subject to the announcement of a transitional timetable.

Table 2.2 Contestability Timetable

Site Thresholds	Approximate Annual Electricity Bill	Date for Eligibility	Date for Mandated ^o Contestability	Approximate Number of Eligible Sites	Example
>40 GWh pa	>\$2,000,000	1 October 1996	1 October 1997	47	Large hospital, heavy manufacturing
>4 GWh pa	>\$250,000	1 April 1997	1 October 1997	660	Multi-storey office block
>750 MWh pa	>\$75,000	1 July 1997	1 July 1998	3,500	Supermarket
>160 MWh pa"	>\$16,000	1 July 1998	1 July 1999	10,800	Fast food restaurant
<160 MWh pa	<\$16,000	1 January 2001	(Note 1)	2,700,000	Service station, household

Note 1: Retail contestability for all customers below 160 MWh pa will commence from 1 January 2001 with detailed transitional arrangements to be developed and announced at a later date. See section 4.3.1, Future role of retail regulation.

Vesting contracts

While part of the electricity market is not yet contestable, contracts for the supply of electricity to the franchise market remain in place. These 'vesting' contracts require the franchise retailer to purchase a specified quantity of electricity from NSW generators at a specified price.. These contracts provide financial cover for the purchase of electricity for the franchise market. Because vesting contracts do not cover the contestable market, the proportion of total load covered by vesting contracts will decline as the contestability timetable progresses.

For the purposes of this review, vesting contracts will affect the cost of electricity included in franchise tariffs. The current 'pass through price' is based on approximately 85 per cent of the franchise market load's being covered by vesting contracts priced at \$44.50 per MWh. The remaining 15 per cent is considered as passed through to franchise customers at \$38.00

Under the contestability transitional arrangements, customers are allocated a defined period during which " ^ ~ ^ , -fail,, c r may avail themselves of the published tariffs of the incumbent retailer.

2. PREFERRED APPROACH FOR RETAIL COMPETITION IN NSW

The Taskforce has examined the process for narrowing and ultimately eliminating the statutory franchise, bearing in mind the criteria listed in 1.1 above and the following combination of circumstances:

- the recent introduction of the wholesale market in NSW
- the forthcoming national electricity market
- developments in other jurisdictions
- the expressed desire of customers to have a choice of supplier as soon as possible.

Proposed timetable

The proposed schedule for introducing choice of electricity supplier allows time in which the customer is free to exit from franchise status and choose a retailer to provide supply, or to continue as a franchise customer of the local distributor. This period provides the customer with time to "shop around". In other words, there is a date at which the customer may elect to become contestable and then, somewhat later, a date at which the customer is "declared" contestable and the option of continuing as a franchise customer is removed.

PROPOSED TIMETABLE FOR REMOVAL OF NSW RETAIL FRANCHISE'

<i>Site thresholds</i>	<i>Date for - ability</i>	<i>Date for Mandated - Contestability</i>	<i>Percentage' of Total Energy Sold by Distributors -</i>
>40GWh pa	1 October 1996	1 October 1997	14%
>4GWh pa	1 April 1997	1 October 1997	29%
>750MWh pa	1 July 1997	1 July 1998	40%
>160MWh pa	1 July 1998	1 July 1999	47%
zero threshold'	1 July 1999	1 July 2000	100%

The timetable as it applies to sites using under 160MWh pa is subject to modification in the light of discussions with Victoria on the alignment of State electricity markets, see page ES vii.

The percentages are cumulative, thus 29% of total energy is sold to sites using more than 4G Wh annually.

160MWh per annum customers. However, the market rules, including the definition of a "customer", will still need to be aligned. Beyond July 1998, the NSW Taskforce's preferred mechanism for entry of "small-site" customers into the retail market differs markedly from that proposed for Victoria.

Customers using less than 160MWh per annum represent by far the largest group by number (approximately 2.7 million in NSW). They also account for the largest proportion of energy consumed (approximately 60% of energy sold by NSW distributors).

Alignment of the two states' retail markets beyond 1 July 1998 will be a major factor in adhering to the principle of providing equal effective access to customers within each jurisdiction. This principle was endorsed in the recent discussions between Ministers.

COMPARISON OF NSW AND VICTORIAN RETAIL COMPETITION TIMETABLES

Date for Eligibility	Contestability Threshold	New South Wales (Taskforce "Realistic Fast-Track" Timetable')		Victoria	
		No. of Customers	Percentage ² of Electricity Traded in State Market	No. of Customers	Percentage ² of Electricity Traded in State Market'
December 1994	5 MW demand			47	0-23
July 1995	1 MW demand			377	5 -30
July 1996	750MWh pa			1,877	20 - 40
October 1996	40GWh pa	47	14		
April 1997	4GWh pa	660	29		
July 1997	750MWh pa	3,500	40		
July 1998	160MWh pa	10,800	47	7,000	25 - 50
July 1999'	zero threshold	2,700,000	100		
January 2001 ¹	zero threshold			1,960,00	100

The timetable as it applies to sites using under 160MWh pa is subject to modification in the light of discussions with Victoria on the alignment of State electricity markets.

² The percentages are cumulative, as are customer numbers.

The range shown for "Percentage of electricity traded" in the Victorian market reflects the presence of large numbers of customers who have the option of remaining on a regulated tariff (Tariff H) until January 2001.