

2 April 2009

Presiding Commissioner
Regulatory Burdens: Social and Economic Infrastructure Services
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Madam

MATTERS RAISED IN PRODUCTIVITY COMMISSION CONSULTATION WITH ENA

The Energy Networks Association (ENA) is pleased to be assisting in the Productivity Commission's *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*. We appreciate the opportunity to input into the process and would like to thank the Productivity Commission for their consultation with us in February 2009.

By way of background, ENA is the peak national body for Australia's energy networks which provide the vital link between gas and electricity producers and consumers. ENA represents gas distribution and electricity network businesses on economic, technical and safety regulation and national energy policy issues.

Energy network businesses deliver electricity and gas to over 13 million customer connections across Australia through approximately 800,000 kilometres of electricity distribution lines. There are also 76,000 kilometres of gas distribution pipelines. These distribution networks are valued at more than \$52 billion and each year energy network businesses undertake investment of more than \$5 billion in distribution network operation, reinforcement, expansions and greenfields extensions. Electricity transmission network owners operate over 57,000 km of high voltage transmission lines, with a value of \$15 billion and undertake \$1.6 billion in investment each year.

A number of issues were raised in the consultation between ENA and the Productivity Commission and in subsequent correspondence. The issues are dealt with below, for your consideration in your review.

Excessively Regulated Regimes

There are situations in the energy networks sector where regulators impose excessive and unnecessary regulations on businesses.

Harmonisation of Energy Safety

The current review by the Ministerial Council on Energy (MCE) on *Harmonisation of Energy Supply Industry Technical and Safety Regulation*¹ is an example of a proposed regime that is overly prescriptive. The Discussion Paper aims to achieve a common legislative approach to energy supply industry technical and safety regulation, which in theory should reduce regulatory burdens by unifying standards and practices across jurisdictions. However, there appears to be significant risk of imposing more onerous regulations on the energy sector.

¹ MCE, *Discussion Paper – Harmonisation of Energy Supply Industry Technical and Safety Regulation*, February 2009

To date the safety regulatory model has proven to be effective. The options presented by the MCE are to harmonise the current framework, but by mandating prescriptive standards in legislation a large amount of flexibility in developing and complying with standards is lost. In ENA's view, there does not appear to be any evidence to suggest that a prescriptive approach would ensure that energy networks are better able to identify and manage safety risks, or satisfy twin objectives of industry efficiency and the maintenance of worker and community safety standards.

Outcomes based standards have been the universally accepted norm in best practice safety management for many years. Any proposal to reverse this trend and revert back to prescriptive input based legislation would return the energy industry to a regime which has a proven inferior level of performance².

Local Council and Government Authority Obligations

Network operators require access to existing infrastructure to perform works, this is arranged through local councils. Local councils and other government authorities impose certain restrictions on this access, generally in the interest of the community. However, some of these impositions, especially those relating to the costs of road and footpath restoration, appear to reach beyond reasonable recovery of costs and seem to be targeted at increasing council revenues for general works programs.

There has been an increasing tendency for local councils to refuse network operators the right to perform their own permanent road and footpath restorations following construction or maintenance activities and require the works be performed by the council. Many councils are charging up to 300% mark-up on the rates their restoration contractors are charging. These excessive charges can add millions of dollars in increased costs to network operators, and potentially make extensions of gas networks into brown-field suburbs uneconomic.

Excessive charging by local councils can be overcome by ensuring that Network Operators have the statutory right to undertake their own restoration works to an agreed standard, however this right is not specifically documented in all jurisdictions.

In addition to excessive costs imposed on network operators, there are often excessive delays by councils to approve excavation work. Some local councils are imposing minimum notification periods on all excavation works in street reserves of up to 30 days. This requirement has the potential to significantly inconvenience consumers by extending the time taken to connect new consumers to the network, or where existing connections have broken down.

These policies imposed by local government have the potential to thwart Government environmental policies including switching to gas or solar water heating, because of the arbitrary time delay imposed by councils. If customers have excessive delays in getting connected, it will deter them from switching to gas.

Jurisdictional Boundaries

In asset management and technical issues, gas and electricity providers can often be subjected to different obligations and technical regulations in different jurisdictions. This means that a business operating in multiple jurisdictions is subject to more than one set of obligations. Where electricity or gas is transported across borders, network and pipeline operators must adhere to different laws, rules, regulations and guidelines, making compliance complex and onerous.

² Council of Australian Governments, *Best Practice Regulation – A Guide for Ministerial Councils and National Standard Setting Bodies*, October 2007, pp. 17

One of the key challenges identified by Infrastructure Australia in *A Report to the Council of Australian Governments, December 2008* was the need to unify Commonwealth, state and local laws to remove dual or inconsistent obligations placed on energy infrastructure providers.

In their audit, Infrastructure Australia identified that separate regulatory regimes and compliance obligations across jurisdictions was the source of unnecessary regulatory burden, creating higher costs and inefficiencies. They also stated:

*"There is a fragmentation of roles within government where an infrastructure initiative requires the involvement of different tiers of government, and/or neighbouring jurisdictions for input on planning, environment, water, energy, road, rail or climate change."*³

Infrastructure Australia expressed concern that there are state exemptions from the National Electricity Rules (NER). Presently, the NER includes a set of exemptions for each state which, along with other separate legislation and regulatory instruments, make each state's electricity market unique. Infrastructure Australia noted that this acts to hamper efficient national competition and the emergence of a fully national market. However, different state schemes continue to be announced in areas such as greenhouse gas abatement policy, consumer protection and retail settlements⁴.

Infrastructure Australia concluded that:

*"The states should align as many legislative, regulatory and rule-based provisions as possible, in order to support a truly national energy market. There may also be grounds to explore the harmonisation of energy technical and safety regulations, and removing jurisdictional impediments to gas exploration and development."*⁵

Burdensome Information Requirements

Another example of excessive regulation relates to some of the information powers given to regulatory authorities. Many bodies have the mandate to issue information gathering instruments, which in addition to being intrusive and costly, are in many cases unwarranted.

Annual Reporting Requirements

Currently, the Australian Energy Regulator (AER), as part of the *Review of Distribution Network Service Provider Annual Information Reporting Requirements*⁶, is in the process of developing a regulatory information order (RIO) under the National Electricity Rules (NER). This process requires businesses to produce information including detailed expenditure and financial information, working papers and ad hoc information on demand. In addition to being time consuming, costly and intrusive, the extent and frequency of the information being sought is excessive and does not appear to address specific functions of the AER. The RIO seeks to expand annual information reporting requirements by a mechanism other than amendment to the NER. Amendment to the NER would mean that the enhanced reporting requirements would be subject to full consultation by the rule making body (the AEMC), not the rule enforcer (the AER).

As part of the proposed RIO businesses will be required to prepare cost allocation and disaggregation working papers in support of the annual regulatory financial statements. While this may provide marginally greater transparency, in our view the benefits are far outweighed by the costs and time taken to prepare these papers. It is not clear how this information will further any of

³ Infrastructure Australia, *A Report to the Council of Australian Governments*, December 2008, pp.12

⁴ Infrastructure Australia, *A Report to the Council of Australian Governments*, December 2008, pp.25

⁵ Infrastructure Australia, *A Report to the Council of Australian Governments*, December 2008, pp.25

⁶ AER, *Discussion Paper – Distribution Network Service Provider Annual Information Reporting Requirements*, September 2008

the AER's stated functions or obligations, and there is no clear purpose for this requirement to be mandated by the AER as standard practice.

The frequency of some of the reporting requirements is also unjustified and unnecessary. As part of the proposal, the AER will require back-dated and current financial information for on-going projects. The AER intend to use the information to forecast future expenditure. In addition to being difficult to apportion the project costs between financial years and varying greatly depending on how this apportioning takes place, this information serves to create yearly averages for financial data. Since businesses undertake capital expenditure for many reasons, including; innovation such as facilitating the transition to smart networks or incorporating demand management and government initiatives, such as climate change, yearly averages are not necessarily good as indicator of future expenditure. The current practice of reporting this information before regulatory reset periods or on completion of the project is less burdensome on businesses and no less effective in regulated price determinations.

Network Planning and Connection Arrangements

The MCE *Review of Distribution Network Planning and Connection Arrangements*⁷ framework calls for an extensive information disclosure and planning regime to apply. The underlying premise is that network businesses will be more accountable where interested parties can review their activities through analysis of publically available information. Information disclosure is beneficial, but it is costly for business to provide. Therefore information disclosure requirements should look to balance the costs and benefits.

Australian Energy Market Operator Information Gathering

Additional information gathering powers have been proposed in the draft legislation for the Australian Energy Market Operator (AEMO) in relation to their role as the National Transmission Planner (NTP), preparation of the Gas Statement of Opportunities (GSOO) and gas Bulletin Board. These powers extend beyond the current arrangements under the National Electricity Market Management Company (NEMMCO) and the different state and territory bodies. The current arrangements have proven to be effective, and the need for less efficient, intrusive information gathering instruments is neither justified nor warranted.

Concurrent Reviews and Frameworks

When reviews are developed and released, timing is of upmost importance. One review often has a number of overlapping work streams. Depending on the size of the review, these streams may themselves become discrete reviews or be referred to another body for consideration. As a result it is not uncommon for reviews to overlap and require businesses to have duplicate work streams.

Overlapping Reviews

One area where there is significant overlap in review processes relates to embedded generation. There are currently different reviews by the Australian Energy Market Commission (AEMC) and MCE that cover very similar ground. For instance, the AEMC's *Review into Demand Side Participation*⁸ and *Review of National Framework for Distribution Network Planning and Expansion*⁹ (which has been

⁷ NERA/Allen Consulting Report to MCE, *Network Planning and Connection Arrangements – National Framework for Distribution Networks*, August 2007

⁸ AEMC, *Review of Demand Side Participation in the National Electricity Market – Stage 2: Issues Paper*, May 2008

⁹ AEMC, *Review of National Framework for Electricity Distribution Network Planning and Expansion – Scoping and Issues Paper*, March 2009

directed by the MCE) both deal with issues of embedded generation and non-network or demand management solutions. Much of the feedback being sought by these reviews is very similar, but nevertheless requires businesses to carefully consider and respond to each of the reviews, which diverts resources from other projects.

As mentioned, the AEMC's *Review of National Framework for Distribution Network Planning and Expansion* was a direction by the MCE which stemmed from their *Review of Distribution Network Planning and Connection Arrangements*. Much of the content in the AEMC Review was similar or the same as that in the MCE review, which had sought stakeholder submissions as far back as October 2007. In this instance some of the issues that arose with the MCE were replicated by the AEMC, requiring businesses to cover similar ground.

Another area that is currently producing duplicate reviews is in relation to climate change. There are several bodies producing work on climate change issues, including the Department of Climate Change, the Department of Resources Energy and Tourism and the AEMC. In some cases, there are issues that are complementary, but in other instances there are issues that are overlapping and redundant.

In December 2008, the Department of Climate Change released the *Carbon Pollution Reduction Scheme (CPRS) White Paper*¹⁰. Currently there is also an *Energy White Paper* being produced by the Department of Resources, Energy and Tourism (RET). The Paper being produced by RET covers issues already dealt with in the CPRS White Paper, such as the role of the Government in climate change, energy efficiency issues, renewable energy and Australia's role in the global approach. Responding to each review requires time and resources from businesses, to answer many of the same questions that have been already addressed in previous reviews.

Development of Frameworks

Recently the Treasury released a consultation paper, *An Australian Consumer Law*¹¹. The Treasury Paper proposed a national generic consumer protection framework. This process is occurring at the same time as the *National Energy Customer Framework* (NECF) which is an industry specific consumer protection regime. There is a risk that in developing the regimes in parallel, their interaction will not be adequately assessed, which could result in sub-optimal outcomes including conflicting rights and obligations.

If you have any questions, or wish to discuss any matters further, please do not hesitate to contact ENA on (02) 6272 1555 or info@ena.asn.au.

Yours Sincerely

Andrew Blyth
Chief Executive

¹⁰ Department of Climate Change, *Carbon Pollution Reduction Scheme: Australia's Low Pollution Future*, December 2008

¹¹ Department of Treasury, *An Australian Law: Fair markets – Confident consumers*, February 2009