

Min ID: B12/1244

Mr John Pierce  
Chair  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

10 OCT 2012

Dear Mr Pierce 

I am writing to you, in my capacity as Chair of the Ministerial Council on Energy (MCE), to formally request the Australian Energy Market Commission (AEMC) to provide advice to the MCE on the state of competition in, and price regulation for, retail electricity and gas markets in New South Wales (NSW).

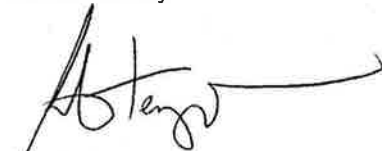
The MCE makes this request pursuant to section 41 of the National Electricity Law (NEL) and section 79 of the National Gas Law (NGL). In September 2011, the Council of Australian Governments (COAG) created the Standing Council on Energy and Resources (SCER), which includes Ministers responsible for Energy. These Ministers comprise the membership of the legally enduring MCE. SCER Ministers responsible for Energy are entitled to make requests under the NEL and NGL.

The detailed request for advice, taking account of the AEMC's Statement of Approach, is attached. Please note the MCE has approved some minor revisions to the Statement of Approach (also attached) including those proposed between the AEMC and NSW.

The MCE also requests that the AEMC, as part of its reporting for SCER's December 2012 meeting, provide advice on: progress of the NSW review; planning for the Queensland review; and, a potential revised approach to the AEMC's competition review process as previously sought by energy officials at the MCE's instruction.

We look forward to receiving your advice on these matters at our December 2012 meeting and the AEMC's final report on NSW by no later than 30 September 2013.

Yours sincerely



Martin Ferguson  
Chair  
Standing Council on Energy and Resources

[www.scer.gov.au](http://www.scer.gov.au)

The Hon Martin Ferguson AM MP  
Minister for Resources and Energy  
PO Box 6022, Parliament House  
Canberra ACT 2600  
Telephone: (02) 6277 7930  
Facsimile: (02) 6273 0434

Secretariat  
GPO Box 1564  
Canberra ACT 2601  
Telephone: (02) 6213 7789  
Facsimile: (02) 6213 6689  
[scer@ret.gov.au](mailto:scer@ret.gov.au)

**MINISTERIAL COUNCIL ON ENERGY  
REQUEST TO THE AUSTRALIAN ENERGY MARKET COMMISSION FOR ADVICE ON  
THE STATE OF COMPETITION IN THE ELECTRICITY AND NATURAL GAS RETAIL  
MARKETS FOR SMALL CUSTOMERS IN NEW SOUTH WALES**

## ADVICE

### BACKGROUND

1. The Australian Energy Market Agreement (AEMA) establishes a process for the Australian Energy Market Commission (AEMC) to assess and provide advice to the Ministerial Council on Energy (MCE) on the effectiveness of competition in the retail electricity and natural gas markets of jurisdictions for the purpose of phasing out retail price regulation where effective retail competition is demonstrated (clause 14.11).
2. The AEMC carries out its assessments and provides its advice in accordance with a Statement of Approach that is approved by the MCE (clause 14.11).
3. To date, the AEMC has conducted competition reviews of the electricity and natural gas sectors of Victoria (2007), South Australia (2008) and the Australian Capital Territory (2010).
4. At their Standing Council on Energy and Resources (SCER) meeting held on 8 June 2012, Ministers agreed to request the AEMC to commence its scheduled review of the effectiveness of retail competition in electricity and gas retail markets in New South Wales.
5. This request for advice, while similar to those provided to the AEMC in the past, reflects the passage of time and lessons learned from previous competition reviews.
6. Ministers have agreed to the request for advice set out below.

### REQUEST

7. The MCE has, by resolution dated 8 June 2012, agreed to request the AEMC (pursuant to s.41 of the National Electricity Law<sup>1</sup> and s.79 of the National Gas Law<sup>2</sup>) to undertake a review of, and provide advice to the MCE on, the state of competition in the New South Wales electricity and natural gas retail markets for small customers. In particular:
  - an assessment of the state of competition and the extent to which it is deemed effective for small electricity customers (i.e. customers consuming less than 160 megawatt hours (MWh) per annum) and small natural gas customers (i.e. customers consuming less than 1 terajoule (TJ) per annum)<sup>3</sup>;

---

<sup>1</sup> Schedule to the *National Electricity (SA) Act 1996*.

<sup>2</sup> Schedule to the *National Gas (SA) Act 2008*.

<sup>3</sup> The Independent Pricing and Regulatory Tribunal (IPART) regulates both retail electricity and natural gas prices for small customers in New South Wales (i.e. customers consuming less than 160 MWh of electricity per year and less than 1TJ of natural gas per year). IPART's most recent electricity and natural gas standing offer price determinations cover the period from 1 July 2010 to 30 June 2013.

- the availability and take up of time of use tariffs and the impact of time of use tariffs on competition; and
- based on that assessment, advice on the ways in which the effectiveness of competition can be improved (where competition is found to be not effective) as well as possible implementation strategies for the removal of retail price regulation for small electricity customers and small natural gas customers in New South Wales, regardless of the state of competition. This is to include advice for an option to gradually roll back retail price regulation through a reducing eligible consumption threshold.

The review must be undertaken, and the advice must be prepared, in accordance with the requirements set out in paragraphs 8 and 9.

8. The AEMC must carry out its review of, and provide its advice on, the state of competition in the New South Wales electricity and natural gas retail markets for small customers generally in accordance with the Statement of Approach and<sup>4</sup>:
  - apply the criteria developed by the MCE; and
  - use the methodology and approach set out in Chapters 2 and 3 of the Statement of Approach.
9. In formulating its advice on the state of competition in the relevant markets, the AEMC should have regard to the fact that under clause 14.14 of the AEMA, participating jurisdictions have agreed that the phase out of the exercise of retail price regulation:
  - need not include the removal of ‘obligation to supply’ arrangements;
  - may involve a further period of price monitoring and/or price agreements with retailers under appropriate oversight arrangements; and
  - does not prevent the exercise of a reserve price regulation power where effective competition for categories of users ceases, provided that the power is only exercised in accordance with a regulatory methodology promulgated by the AEMC, and is subject to review by the AEMC of the effectiveness of competition in accordance with the AEMA.

### **Commencement of the review**

10. Consistent with the AEMC’s consultation process set out in its Statement of Approach (at clause 4.3), the AEMC must, before commencing its assessment of the state of competition in the New South Wales electricity and natural gas retail markets for small customers:
  - issue a public notice announcing the commencement of an assessment together with a proposed timetable for its completion including providing advice; and

---

<sup>4</sup> The MCE has noted that, consistent with the AEMC’s Statement of Approach, there may be more than one relevant retail electricity and natural gas market for small customers in New South Wales. The AEMC will consider the relevant retail market(s) in which competition will be assessed. For the avoidance of doubt, a market may be defined by reference to groups of users or regions.

- call for public submissions within a time nominated by it on the state of competition in the relevant New South Wales electricity and natural gas retail markets.

### **Consultation with the New South Wales Government and relevant stakeholders**

11. The AEMC must, at each step in the review and advice process, consult with the New South Wales Government. The AEMC must also consult and meet with relevant stakeholder groups in New South Wales who have an interest in the oversight, regulation or other control of retail prices and retail competition.

### **Two Stages of Reporting and Advice**

12. After the initial publication of an AEMC Issues Paper which outlines this review, the AEMC must follow a two stage reporting and advice process (broadly consistent with clause 4.3 of the Statement of Approach) as follows:

#### **Stage 1**

- 12.1. Publish a draft report (Draft Report):
  - setting out the AEMC's assessment of the state of competition and the extent to which it is deemed effective for small electricity customers and small natural gas customers in New South Wales;
  - the availability and take up of time of use tariffs and the impact of time of use tariffs on competition;
  - based on that assessment, advice on the ways in which the effectiveness of competition can be improved (where competition is found to be not effective) as well as possible implementation strategies for removal of retail price regulation for small electricity customers and small natural gas customers in New South Wales, regardless of the state of competition, including advice for an option to gradually roll back retail price regulation through a reducing eligible consumption threshold; and
  - inviting public comment on the draft findings.

#### **Stage 2**

- 12.2. Consider all submissions received and the result of any other consultation undertaken after publication of the Draft Report and publish a final report (Final Report) setting out its assessment and advice.

### **MAKING REPORTS AVAILABLE**

13. The AEMC must provide each of the reports referred to in clause 12 (the Reports) to the MCE and the New South Wales Government, as set out below:
  - provide a copy of each of the Reports to all MCE Ministers and the New South Wales Government at the same time; and

- by no later than seven days after providing each of the Reports to all MCE Ministers and the New South Wales Government:
  - make each of the Reports available on its website; and
  - place a notice of publication of each of the Reports in a nationally circulating newspaper.

**Date by which advice is due**

14. The AEMC must provide its Final Report to the MCE by 30 September 2013.

**Management of confidential information**

15. The MCE notes that the AEMC will manage all confidential information provided to it in accordance with the Statement of Approach.