

THE NSW ELECTRICITY SUPPLY INDUSTRY

INFORMATION PAPER ON THE TRANSITION TO FULL RETAIL COMPETITION

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FOREWORD

This Information Paper prepared by the Government's Electricity Reform Taskforce provides an overview of the regulatory framework which will apply to the transition to retail competition within the NSW electricity industry.

The timetable and approach to be taken for the introduction of retail competition have been described in the paper titled, *Retail Competition in Electricity Supply*, released in June 1996. The effects of that policy on the choices available to customers and on existing and potential future participants in the electricity supply industry will be profound. This Information Paper describes in broad terms the principal statutory and regulatory controls within which the policy will be introduced.

While the Paper is intended to be of general assistance in understanding the mechanics of the regulatory framework, the administration and formal documentation of the Government's regulatory policy for the industry will be provided through the NSW Department of Energy. Readers requiring further information should contact the Department at the address and telephone number provided in the Introduction.

The paper also documents the scale of the reforms to the electricity industry in NSW in preparation for the onset of a national, competitive energy market.

While the reform task is far from complete, the substantial achievements of all those involved in fashioning and implementing the Government's energy policies are reflected in this paper.

Already the State's businesses have received \$170 million of saving on their electricity bills, while household prices have been largely frozen at 1992 levels.

NSW leads the nation in tackling greenhouse emissions through market regulation and the establishment of the Sustainable Energy Development Authority to promote renewable energy technologies and energy conservation.

I commend this paper to all readers.

Michael Egan

NSW Treasurer and Minister for Energy

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1. INTRODUCTION

This paper provides an overview of the regulatory framework which will apply to the electricity supply industry in NSW, with particular emphasis on those aspects which are relevant to the establishment of retail competition. A full description of the Government's policy for the introduction of retail competition is provided in the New South Wales Electricity Reform Taskforce report, *Retail Competition in Electricity Supply* (Treasury Policy Paper TPP 96-1, June 1996).

The legislative framework for the industry is constituted by the *Electricity Supply Act 1995*. This paper describes how the Act and associated regulations will apply to the operation of the retail electricity market, and places these arrangements in the overall framework of regulation which will apply to the industry.

While every care has been taken to ensure the accuracy of the material presented, the paper is intended only as a guide to the operation of the regulatory arrangements. The information which has been provided does not constitute either a statement of regulatory intent on behalf of the NSW Government or a reference manual of industry regulations. Documents of this nature will be available from the Electricity Regulation Coordinator in the NSW Department of Energy. The Department's postal address is PO Box 536, St Leonards NSW 2065. Further information on the licence and regulatory framework may be obtained by writing to the Department or by telephoning 1800 67 1650.

2. BACKGROUND

With the release of its *Electricity Reform Statement* in May 1995, the NSW Government commenced a program of major reform of the State's electricity industry.

The reforms are aimed at:

- improving efficiency and service levels
- providing customers with a choice of supply arrangements and service levels, and
- meeting the community's expectations for substantially reduced environmental impacts from the use of electricity.

At the centre of these reforms is the introduction of competition into the production and supply of electricity. As the Minister for Energy stated in the NSW Parliament:

A key objective of the reforms is to foster competition and competitive processes wherever practicable.

Establishing an effective electricity market provides the opportunity and incentives for competition. In this market generators, retailers, end users and other service providers should be able to participate on equal terms to buy and sell electricity and related energy services.

Substantial progress has since been made on implementing the reforms. Trading in the NSW interim wholesale market commenced in May 1996. In October 1996 the first group of NSW electricity users will become eligible to choose their supplier, either in the retail market

or the wholesale market. By July 1999 all customers will have this right.

To support competition the generation and distribution sectors of the NSW electricity industry have been substantially restructured. Three generators - First State Power, Macquarie Generation and Pacific Power (responsible for the Eraring power station and the State's entitlement from the Snowy scheme) now supply into the State market. TransGrid operates the high voltage grid and the State's twenty five distributors have been formed into six energy services corporations. With the introduction of retail competition in New South Wales in October new wholesale traders and retailers will be able to enter the market, providing an expanded range of choice for customers.

Looking to the future, the next major step forward will come with the introduction of an interstate market in electricity. Under the auspices of the National Grid Management Council the Governments of New South Wales, Victoria, Queensland, South Australia, Tasmania and the Australian Capital Territory are working to establish a National Electricity Market. The two primary market institutions, NEMMCO (the National Electricity Market Management Company) and NECA (the National Electricity Code Administrator) have recently been formed. In addition, New South Wales, Victoria and the ACT have agreed to harmonise their State markets so that the benefits of interstate trade can be obtained at the earliest possible date.

3. THE ELECTRICITY SUPPLY ACT 1995

The *Electricity Supply Act 1995* is the principal statute governing the electricity supply industry in New South Wales. It establishes the legislative framework under which electricity may be efficiently traded, distributed and supplied to retail customers throughout the State. At the same time the legislation is designed to promote the reliability and security of supply, maintain necessary safety provisions and enhance environmental outcomes.

Under the Act, primary responsibility for the regulation of the industry is assigned to the Minister for Energy. In a number of key areas, however, regulatory responsibility is transferred to or held by other agencies, in particular:

- the Independent Pricing and Regulatory Tribunal is responsible for regulating the prices of NSW Government monopoly businesses; in the electricity sector this covers retail tariffs for franchise customers and pricing in the transmission and distribution sectors
- the State Electricity Market Code, which governs the operation of the interim State wholesale market, is subject to the approval and review of the Australian Competition and Consumer Commission.

3.1 Industry Structure

The Act principally provides for:

- the licensing of retail suppliers and distributors and determination of the contractual arrangements by which they may provide connection and supply services to customers
- the authorisation of wholesale electricity market participants and the supervision of

- wholesale market operations and network access arrangements, and
- measures to ensure the ongoing soundness of the industry structure and compliance with legislative requirements.

The system of legislation, authorisations and licences form a framework which is intended to promote open and vigorous competition in the production and supply of electricity and energy services.

3.2 Commencement of the Act

The Act commenced on 10 May 1996, with the exception of the following parts which will be subject to progressive commencement to enable a smooth transition to the new framework:

- sections dealing with customer contracts - pending new customer contracts being in place (the repeal of sections of the former Electricity Act 1945 dealing with the terms and conditions of supply which the new Act will replace has also been deferred), and
- various sub-clauses of the transitional provisions providing for the deemed licensing of existing electricity distributors and retail suppliers (these have been replaced by a transitional regulation which narrows the scope of these sub-clauses).

3.3 Exemptions

Exemption from licensing has been provided for persons who have small electricity distribution systems (that is, who do not have districts defined in schedule 3 of the Act) and retail suppliers whose operations are entirely "downstream" of the operations of licensed distributors and licensed retail suppliers. This regulation is intended to make it unnecessary for "cascading" of licences where, for example:

- a person retail supplier buys its electricity from a licensed other retail supplier to on-sell to its customers, or
- a small scale electricity distributor connects into the electricity grid via the system of a licensed another "upstream" electricity distributor.

Generators operating facilities with a capacity of less than 30 MW are also exempt from the requirement for a wholesale electricity market authorisation.

4. THE WHOLESALE ELECTRICITY MARKET

The Electricity Supply Act establishes the NSW interim wholesale electricity market. The relevant provisions focus on:

- promoting the effective operation of the market (so that participants may have confidence in it)
- providing a mechanism for the secure and economic operation of the power system, and
- allowing competitive forces to satisfy customers' demands through providing customer

choice and maximising value for money.

The wholesale market has three principal components:

- participants (those engaged in wholesale trading or network operation)
- the Market and System Operator (the New South Wales Electricity Transmission Authority, trading as TransGrid), and
- the rules under which the market operates (the Market Code).

The wholesale market arrangements which commenced in New South Wales on 10 May 1996 are intended to be interim, pending establishment of a competitive national electricity market system that is acceptable to the participating States. The interim nature of these arrangements is reflected in the regulatory provisions of the Act which apply to the operation and administration of the wholesale market.

4.1 TransGrid roles

TransGrid has three roles in relation to the wholesale market:

- Market and System Operator
- Transmission system operator, and
- Interstate trading facilitator

Market and System Operator

As Market and System Operator, TransGrid prepares (in consultation with market participants) the rules under which market operations take place and supervises their implementation.

The rules have been prepared as a NSW State Electricity Market Code and cover:

- requirements to be met for participation in the market, the provision of information, bidding and dispatch, metering, market settlements and suspension of the market if it cannot continue effectively
- maintenance of system security
- network access (which must conform with the access provisions of the Competition Principles Agreement between the Commonwealth, States and Territories)
- network operation, and
- administrative functions such as dispute resolution.

The State Market Code is the subject of an interim authorisation from the Australian Competition and Consumer Commission, the terms of which are provided in Appendix A. The operation of the market and conduct within it are therefore subject to the terms of that authorisation.

The Act vests the Market and System Operator with certain regulatory responsibilities which make it, in effect, the Minister's agent in administering the Market Code. In particular, TransGrid is responsible to the Minister for considering and recommending action which should be taken on:

- applications for authorisation to participate in the market
- changes to the conditions of authorisation, and

- participant compliance monitoring and Code enforcement.

The Market and System Operator also manages the Code change process, which involves obtaining participant endorsement and ACCC approvals.

Transmission system operator

TransGrid (Network) will continue to develop, operate and maintain the transmission network, a role conferred by the Electricity Transmission Authority Act, which constitutes TransGrid as a statutory authority. TransGrid will retain this type of constitution while it also retains its Market and System Operator (including Code administration) responsibilities.

Interstate trading facilitator

In the interim State wholesale market interstate trading is facilitated centrally on behalf of NSW authorised wholesale traders by an Interconnection Operating Agreement Facilitator within TransGrid.

4.2 Separation of functions

TransGrid's multiple roles reflect the interim nature of the State wholesale market, pending the introduction of national market arrangements. In recognition of the potential for conflict of interest between TransGrid's commercial and administrative functions, the Electricity Supply Act requires that its affairs as Market and System Operator are kept separate from, and not influenced by, any of its other affairs. Full accounting separation is required for its system control, market operation and administration and market settlement activities.

4.3 Authorisation of industry participants

Power to authorise participation in wholesale market operation is conferred by the Act on the Minister (on advice from TransGrid). To enable a smooth transition to the new industry framework, TransGrid (as a network operator) and the existing government owned electricity distributors and generators are deemed to be authorised from the commencement of the Act.

The two types of function requiring authorisation are:

- Network operation - providing the means of conveying electricity, and
- Wholesale trading - buying and selling electricity through the pool (also known as the spot market).

Network operation

The Act prohibits persons from operating transmission or distribution systems to convey electricity for wholesale traders unless they are authorised as a network operator. Once they are authorised, network operators can only convey electricity for authorised wholesale traders (or the Market and System Operator), and must do so in accordance with the Market and System Operator's rules.

Wholesale trading

Parties that wish to trade electricity through the pool (that is, participate in the wholesale electricity market) require a wholesale traders' authorisation. From 1 October 1996 non-franchise customers who wish to participate in the wholesale market will also be eligible to apply for authorisation.

The Act provides that electricity supply arrangements are unenforceable by a person (other than a customer) who is not authorised (or licensed - see below). Statutory conditions of wholesale traders' authorisations are:

- they may only enter into wholesale supply arrangements with other authorised wholesale traders (or the Market and System Operator), and must do so in accordance with the Market and System Operator's rules; and
- they must not discriminate against persons on the basis of their association with alternative sources or forms of energy or with demand management systems.

In addition to the statutory conditions the Minister may include conditions relating to, for example, compliance with the Code and the provision of information about compliance.

4.4 Operation of the market

The State wholesale market operates through a cycle consisting principally of:

- bidding
- dispatch
- metering, and
- settlement.

Participants who operate "registered" generating units (those which are larger than 30 MW sent out and which must, therefore, participate in the wholesale market) must bid all electricity sent out by those units into the pool. Financial contracting between buyers and sellers to establish pool price hedges can then take place around the pool.

Participants may also register pumps and switchable loads for dispatch in the market.

Bidding

Participants submit bids to the Market and System Operator, in respect of each generating unit, dispatchable loads and registered pumps, for each half-hour in a twenty four hour cycle each day. Bids for working days are submitted twenty four hours in advance.

Dispatch

The Market and System Operator forecasts for each half-hour the total quantity of electricity demand and ranks bids in order of price sufficient to meet the forecast. The highest bid price of units and loads to be utilised to meet the forecast then becomes the pool price for all electricity traded in that half hour.

Electricity prices are adjusted for loss factors calculated for different nodes in the transmission and distribution systems.

Metering

Remote interrogation of energy meters installed by all pool participants is currently carried out by the Market and System Operator in order to ascertain the amounts of electricity supplied to or purchased from the pool and to allow the settlement function to occur.

Settlement

The Market and System Operator stands as a clearing party to all trading in the pool. Accounts are settled monthly at present.

Outside of the essential bidding, dispatch, metering and settlement arrangements summarised above, participants are free to form contracts as they wish for managing their exposure to pool price risks. Certain bilateral contracts (between market participants) may be registered with the Market and System Operator. Payment rights and obligations under these contracts can then netted into the settlements process.

NSW Snowy entitlement

Transaction of NSW entitlements in the Snowy Mountains Scheme is being undertaken by a ring-fenced division of Pacific Power, prior to the corporatisation of the Snowy Mountains Hydro Electric Authority.

Prudential requirements

Participants in the market must meet prudential requirements designed to ensure that payment obligations are adequately secured. The fundamental requirements are that a participant must have an acceptable credit rating, or must have procured credit support generally sufficient to cover the value of 105 days trading in the market.

Projected assessment of system adequacy

The Market and System Operator administers a program of information collection, analysis and disclosure of forecasts of the adequacy of system capacity to meet future demand.

4.5 Transition to a national market

The Act provides for the operation and administration of the wholesale market to migrate to national market institutions when the necessary agreements and arrangements are in place. To achieve this, the Minister may appoint another body to be the Market and System Operator (for example, NEMMCO, the National Electricity Market Management Company).

To support the national arrangements participating States have agreed to enact a cooperative legislative framework within each jurisdiction.

5. RETAIL MARKET FUNCTIONS

The Electricity Supply Act establishes the means by which electricity which is traded in the wholesale market can be delivered to customers who are not participants in the wholesale market. The Act refers to these means as the "retail market". The retail market serves two principal functions:

- provision of customer connection services - the means for making a supply of electricity available to a customer, and
- retail supply - the sale of electricity to a customer.

The relevant provisions of the Act focus on ensuring that safe, economic and reliable retail market services are available to customers and providing a mechanism for ensuring customer access to competitively supplied retail market services.

5.1 Licensing arrangements

The Act confers power on the Minister to license the providers of retail market services as:

- electricity distributors, and
- retail suppliers.

To enable a smooth transition to the new industry framework, the existing electricity distributors are deemed to hold both types of licence from the commencement of the Act.

5.2 Electricity distributors

The Act prohibits persons from operating distribution systems to convey electricity for retail suppliers unless they have an electricity distributor's licence. Once licensed, electricity distributors:

- can only operate to convey electricity for licensed retail suppliers
- must also hold retail supply licences
- must provide (on application) customer connection services to premises within their districts, and
- must provide customer connection services only under a contract.

5.3 Retail supply

The Act provides that electricity supply arrangements are unenforceable by a person (other than a customer) who is not authorised (in the wholesale market) or licensed. Statutory conditions of retail suppliers' licences are that they:

- must not discriminate against persons on the basis of their association with alternative sources or forms of energy or with demand management systems
- must provide retail supply services to a customer only under a contract, and
- must ensure the supply of electricity to their "franchise customers" (on application) as described below, and generally must not supply electricity to franchise customers from other districts.

All electricity customers are classed as "franchise customers" until declared by the Minister to be "non-franchise customers". Franchise customers lack the right to choose their supplier and can generally only be supplied through the electricity distributor in whose district their premises are situated.

When customers are declared to be "non-franchise", they retain the right to receive electricity supplies through their local electricity distributor (who must hold a retail supply

licence), but are free to purchase their electricity supplies by agreement from any retail supplier.

6. LICENCES IN THE RETAIL MARKET

6.1 Competitive entry

Consistent with the competition objectives which are at the centre of the Government's electricity reform program and, more generally, of the proposed national electricity market, the retail market in New South Wales will operate on a non-discriminatory basis and with low barriers to entry.

The opportunity for competitive entry by new participants is essential to the effective operation of the retail market and the delivery of the available customer, efficiency and environmental benefits. In establishing the licensing framework in New South Wales, preserving the opportunities for competitive entry has therefore been a key consideration.

To achieve this, the licensing framework:

- provides a standard application, review and issuance process
- clearly separates licence issuance from licence compliance
- as a general principle, applies licence conditions uniformly, and
- again as a general principle, balances commercial and regulatory interests by applying a preference for licence conditions which specify subject matter and objective, leaving the choice of response to the licence holder, over conditions which seek to prescribe a uniform response.

Licence holders will be required to pay annual fees as a general contribution to the Government's costs of managing licence compliance. Consistent with the Government's competition objectives the fee will be structured with a fixed and variable component to avoid discouraging new and smaller industry entrants.

6.2 Scope of licence conditions

The licences required by electricity distributors and retail suppliers are issued by the Minister. They are subject to a range of conditions imposed by the Electricity Supply Act (statutory conditions) and other conditions which the Minister must impose (mandatory conditions) or may impose (discretionary conditions).

Statutory conditions

Statutory conditions apply to both electricity distributors and retail suppliers.

Statutory conditions of an **electricity distributor's licence** are that the licence holder must:

- provide, on application and by contract (the customer connection contract), customer connection services to premises in its distribution district (as defined in the Act)
- be licensed as a retail supplier, and
- convey electricity only for licensed retail suppliers.

Customer connection services for this purpose consist of:

- connection of a customer's premises to the distribution system; or
- increasing the capacity of connection.

Statutory conditions of an **electricity retail supplier's licence** are that the licence holder must:

- if it is an electricity distributor, supply or ensure supply (by another licensed retail supplier) to retail customers whose premises are in its distribution district and who request supply; and
- only supply electricity by contract (the customer supply contract).

Mandatory conditions

The Act requires the Minister to impose certain conditions, largely of an environment protection nature, on licence holders.

Electricity distributors' licences contain the mandatory condition that the holder must investigate, and report annually on, whether it would be cost-effective to avoid or defer distribution system augmentation by implementing demand management strategies.

Mandatory conditions for an **electricity retail supplier's licence** are that the holder must:

- develop, and negotiate with the Minister on, strategies of a kind based on the principle of achieving reduced (and independently verified) greenhouse gas emissions
- have these strategies audited by the Environment Protection Authority not less three-yearly
- develop one, three and five year plans for energy efficiency, demand management and alternative energy sourcing, and
- report annually in relation to specified matters.

The first three of these conditions are subject to review by the Minister - in consultation with the Minister for the Environment - three years after the conditions are imposed.

The matters specified for annual reporting by a licensed retail supplier are:

- demand management strategy implementation
- principal greenhouse gas emissions arising from the production of electricity supplied by it (subject to approval by the Minister - in consultation with the Environment Protection Authority - of the methodology used)
- performance in meeting minimum standards of service required under its standard form customer contracts, and
- electricity sourcing analysis.

Discretionary conditions

The Minister may impose conditions specifying the licence period and a range of other conditions concerning:

- guidelines or restrictions to be observed
- technical or prudential criteria
- insurance cover

- separation of the affairs of distribution and supply
- the licence holder's plans for the conduct of specified activities (which must then be adhered to), and
- the provision of licence compliance information.

6.3 Requirement for discretionary conditions

In considering the scope of discretionary licence conditions, account has been taken of the range of other regulatory and legislative constraints which apply to participants in the retail market. These include obligations that are imposed by:

- the Electricity Supply Act and regulations covering -
 - the conditions of authorisation for participation in the wholesale electricity market, directed at promoting the integrity and efficiency of the electricity supply system
 - existing statutory and mandatory licence conditions, and
 - customer contract regulations, directed at providing minimum customer protections where there may be an inequality of negotiating power with licence holders
- the State Owned Corporations and Energy Services Corporations Acts, requiring financial responsibility and sound governance on behalf of the Corporations' owners, and requiring delivery of Government sponsored social programs
- determinations of the Independent Pricing and Regulatory Tribunal, limiting the prices that government monopoly service businesses may charge and overseeing the network access regime
- operation of the Electricity Safety Act, requiring and enabling electricity distributors to manage electrical safety in relation to electricity distribution and use, and
- the requirements of general law that are not specifically directed to the electricity supply industry, and including, for example, requirements in relation to -
 - trade practices and market behaviour
 - fair trading and consumer protection
 - occupational health and safety, and
 - environment protection, land use and development control.

Care has been taken to avoid duplication by limiting the scope of additional licence conditions to providing essential, supply industry specific protections for customers, industry participants and the public that are not elsewhere provided.

Accordingly, the discretionary conditions of retail licences will, apart from requiring compliance with existing obligations, be limited to those required for:

- customer protection, in terms of minimum standards of service where there is monopoly provision
- safety of customers and the public and protection of property, where these may be affected by special features of the industry
- promoting the development of fair competition, particularly in the early stages of the market, and
- licence compliance management.

6.4 Discretionary licence conditions

Planning and implementation of plans

The preparation and implementation of plans (broadly defined) is the principal mechanism used in the licences to achieve appropriate regulatory coverage in areas where the licence holder's response could or should vary to reflect differences in technical, commercial or competitive factors. The licence holder's plans will essentially form a statement of intent which may cover, for example, adopted policies, practices and procedures, strategy and possibly specific actions to be applied in the subject areas nominated in the licence. Once prepared the licence holder will be required to conduct its business affairs in a manner consistent with the content of the plans.

Both electricity distributors and retail suppliers will be required to prepare, submit and implement plans for:

- standards of service
- enquiries and complaints handling procedures
- development and use of industry codes, and
- quality management for licence compliance.

In addition, electricity distributors will be required to prepare, submit and implement plans for safety risk management, covering the quality of electrical contractors' work in customers' installations and safety in the course of the licence holder's business, particularly in relation to safety of the public and protection of property, and customer installation safety.

Business separation

The licence conditions are to include a requirement for a licence holder to maintain separation of its licensed "monopoly service" business from other business affairs

In this regard, the monopoly service businesses are:

- for an electricity distributor, the operation and maintenance of the distribution system
- for a retail supplier, the supply of electricity to franchise customers.

Separation requires, subject to Ministerial guidelines:

- keeping separate accounting and business records; and
- the allocation and costing of jointly used resources on an arm's length basis.

An electricity distributor's business separation obligations commence immediately. In the case of retail supply, however, the separation obligations commence on a date which remains for the Minister to determine. Provided the transition to retail competition proceeds smoothly and expeditiously, it is not intended to require commencement of these retail supplier business separation obligations.

Compliance with wholesale market authorisation

The retail licences are to include conditions requiring electricity distributors and retail suppliers to hold and comply at all times with corresponding State wholesale market authorisations (or their equivalent in the national market).

Dealings with exempt persons

The licence conditions are to impose some restrictions on dealings with exempt persons. Such dealings must be arranged under contracts which include conditions obligating the exempt persons to comply with conditions which will focus on maintaining:

- the integrity of the wholesale market and the safety and efficiency of electricity distribution and utilisation generally, and
- corresponding obligations to other exempt persons with whom they in turn deal.

Negotiated customer contracts

The licences are to include a condition that a customer who agrees to enter into a negotiated contract and who is entitled to have the benefit of a regulated standard form customer contract must be advised of that entitlement.

Termination

The licences are expressed to remain in force until they are cancelled.

6.5 Licence guidelines and Ministerial determinations

A number of the mandatory and discretionary licence conditions which have been described require the licence holder to comply with Ministerial guidelines or determinations.

The conditions in relation to which the Minister has retained power to issue guidelines are:

- the mandatory "environmental" conditions
- conditions relating to the separation of monopoly service affairs from other affairs, and
- conditions requiring the preparation and submission of plans which the licence holder is required to implement.

The guidelines will essentially function as a source of instruction and information on the manner in which the licence conditions should be complied with.

In addition to guidelines, the Minister has power to determine when and what information must be furnished by a licence holder to enable the Minister to assess compliance with licence conditions.

6.6 Licence policy compliance

The Act requires the Minister to establish a Licence Compliance Advisory Board which will include members nominated by the Nature Conservation Council and the Australian Consumers Association. The Board will monitor and report annually to the Minister on licence compliance. The report will be tabled in Parliament.

In addition to the functions of the Licence Compliance Advisory Board the Act requires the Environment Protection Authority to audit the greenhouse gas emission reduction strategies developed by the holders of retail supply licences. These audits must be at intervals of no more than three years.

As discussed above in relation to competitive entry, if the primary objectives of the reforms are to be achieved, the regulatory burden imposed on participants by the licensing

framework should, and, arguably, must, be kept to a minimum. Such considerations have guided the proposed application of the licences and their regulatory content, with a clear preference for objective setting over prescriptive controls.

While the introduction of competitive forces will itself reduce the requirement for regulation, the response of participants to the light handed regulatory approach proposed will be a major factor in determining its overall effectiveness. In considering their approach participants would need to bear in mind that the Minister may, under the Act, vary the conditions of licence. There is also power under the Act to make regulations in relation to licence matters.

7. SPECIAL POWERS OF NETWORK OPERATORS

The Act confers on network operators a range of powers which have traditionally been required by them to carry out their functions. These powers include:

- the compulsory acquisition of land
 - dealing with electricity works, particularly on public lands, subject to consultation with the local council and rectification of damage
 - altering the position of conduits
 - preventing interference with electricity works by trees, or obstruction to electricity works
 - interrupting electricity supply for maintenance
 - entry to land by authorised officers for exercising functions specified in the Act, subject to restrictions as to permitted times, notification, use of force, care to be taken, types of land, certificates of authority and, where necessary, entry warrant, and
 - requiring work to be carried out where the need for it is disclosed as a result of entry to land.
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8. CUSTOMER CONTRACTS

Retail market services must only be provided to customers by contract. The two types of customer contract required by the Act are:

- a customer connection contract, for the provision of customer connection services; and
- a customer supply contract, for the supply of electricity.

Where customer connection services and electricity supply are provided to a customer by a single business, the two types of contract may be combined.

8.1 Standard form customer contracts

Standard form **customer connection contracts** apply to all customers, unless they agree to enter into a negotiated customer connection contract.

Standard form **customer supply contracts** apply to all franchise customers, unless they agree to enter into a negotiated customer supply contract.

The Electricity Supply Act stipulates that a standard form customer contract (or amendment) is first prepared by the electricity distributor, and then must be considered by the distributor's Customer Consultative Group and publicised in a local newspaper before it can have effect.

The Act requires that standard form customer contracts must:

- provide for a range of matters specified in the Act
- summarise the service provider's and customer's statutory rights and obligations
- comply with conditions of the service provider's licence, and
- comply with relevant determinations of the Independent Pricing and Regulatory Tribunal.

Matters which the Act requires standard form customer contracts to address include:

- the basis on which charges are to be calculated
- security deposits
- standards of service
- circumstances for disconnection or discontinuation of supply, and
- procedures for handling customer enquiries and complaints and for contract disputes resolution.

These and other matters concerning the form, content and procedures for standard form customer contracts and their preparation and advertising will be set out in separate Customer Contract Regulations.

8.2 Standard form customer connection contracts

A standard form customer connection contract defines the contractual relationship between an electricity distributor and customer for the connection of the customer's premises to the distribution system.

In addition to the general matters summarised above, the Act requires standard form customer connection contracts to address obligations which a customer may have in relation to:

- capital contributions towards the cost of augmenting the distribution system
- installation of service lines, service equipment, meters, electrical protection equipment, and equipment intended to prevent supply interference to other customers
- requirements relating to loading and electrical protection, and
- the accommodation of transformers.

The Act also provides a "contestability" mechanism which gives customers the right to choose the supplier of goods and services which may be required in order to meet these obligations. The customer is not locked in to using the distributor as a supplier in these circumstances.

8.3 Standard form customer supply contract

A standard customer supply contract defines the contractual relationship between a franchise customer and the local electricity distributor for the supply of electricity to the customer's premises.

In addition to the general matters summarised above , the Act requires standard form customer supply contracts to address:

- the estimation of electricity accounts where a meter is not used or fails to operate correctly, and
- assumptions concerning the rate of electricity supply between meter readings.

8.4 (deleted)

8.5 Checks and balances on standard form customer contracts

The Act provides two principal mechanisms, Customer Consultative Groups and Customer Contract Regulations, for balancing the interests of distributors and customers in the provision of customer connection services generally and in regard to retail supply to franchise customers.

By applying only to standard form contracts, these mechanisms operate only where the service is not competitive, that is, where the customer lacks the choice of service provider, or may lack the power to negotiate the terms on which service will be provided.

Nothing in the Act impedes the operation of the general law in protecting the customer against unfair trading practices. Similarly, nothing in the Act impedes the powers of the Independent Pricing and Regulatory Tribunal to determine maximum prices which may be charged by electricity distributors.

9. CUSTOMER CONSULTATIVE GROUPS

The Act requires each electricity distributor to appoint a Customer Consultative Group to act as a representative consultative forum.

The groups are to meet at least twice a year and provide information and advice to the distributor on:

- customer contracts
 - the effect of proposed changes in or improvements to the way the distributor operates; and
 - other agreed matters.
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10. CUSTOMER CONTRACT REGULATIONS

10.1 Policy purpose

The Customer Contract Regulations set minimum standards for the contractual relationship between a licensed distributor and a customer.

The purpose of the minimum standards is to provide a process which confers on customers the protections which they could expect to have in a fully competitive situation. The regulations are not intended as a vehicle for subsidisation or for imposing arbitrary service standards. If the provision of subsidies to particular customer groups is considered necessary, this would be achieved via the mechanisms available under the Government's policy on Social Programs. The focus in relation to service standards should in all instances be cost-effectiveness so that customers secure value for money appropriate to their preferences.

10.2 Scope

Consistent with the preferred approach to industry regulation under the Government's electricity reform program, the Customer Contract Regulations minimise the extent of prescription as to the content of the customer contract, but require a high level of disclosure of the customer's and distributor's rights and obligations.

The regulations will require that specific provisions are included in the customer contract that are directed at:

- restoring the effect of relevant provisions previously contained in the repealed parts of the Electricity Act and regulations (for example, the assumption for billing purposes of a uniform rate of electricity consumption between meter readings or registrations, the notice to be given of tariff changes, and the minimum information to be shown on electricity bills) and which are more appropriately dealt with as part of the contractual relationship between licensee and customer
- detailing rights and procedures imposed by the Electricity Supply Act which may be considered to be adverse to the commercial position of the licence holder (for example, the rights of a customer to use alternative suppliers of certain customer connection services)
- applying fair procedures in the event of breach of contract by the customer (for example, disconnection procedures for non-payment of accounts), and
- imposing clearly critical consumer protection requirements which are not able to be imposed through other general regulatory mechanisms, such as general law fair trading obligations.

In regard to the last two matters, the NSW Government has established a working group to provide advice on consumer protection issues in the retail electricity market, within the framework established by the Electricity Supply Act.

10.3 Specific minimum provisions

Each standard form customer contract will include minimum provisions addressing such matters as:

- statement of contract purpose
- tariffs and charges
- variation of charges
- metering
- discontinuance of service
- disputes handling
- presumption of uniform consumption between meter readings
- estimation of electricity supplied but not properly registered
- interest on unpaid accounts
- information to be included in accounts, and
- access to contract and referenced documents.

10.4 Disclosure requirements

The regulations will specify subjects which the customer contract must cover, including:

- scope and grounds for the licence holder to exercise discretion
- matters required to be addressed under the former Electricity Act (section 26C); this covers payments for installation work, installation and service rules, and customer obligations for care and custody of metering or other equipment
- grounds for discontinuation of service
- listing of customer obligations
- safety responsibilities
- licence holder's obligation to provide service
- accounts procedure
- security deposits, and
- other charges.

10.5 Other provisions

Other miscellaneous matters to be addressed in the regulations will include:

- a requirement to summarise matters which are likely to be of interest to customers but which do not necessarily give rise to contractual rights and obligations, and
- a process for the development of codes of practice covering critical customer relations matters and detailed technical issues.

11. MECHANISMS FOR INTRODUCING RETAIL COMPETITION

The move to full competition in the electricity supply industry will be triggered and assisted by

mechanisms provided in the Electricity Supply Act, its regulations and licences.

11.1 Declaration of non-franchise customers

The trigger for retail supply competition is the declaration of customers as "non-franchise". The Act enables the Minister to declare persons, or classes of persons to be non-franchise customers. Non-franchise customers may contract freely with any retail supplier for electricity supply. Supply arrangements entered into by non-franchise customers are not subject to the regulated provisions of standard form customer contracts.

11.2 Consolidation

The general regulation under the Act permits "consolidation" of non-franchise customers for the purpose of negotiating supply arrangements with licensed retail suppliers. Generally, businesses which provide consolidation services will be free of licensing requirements (provided they source their electricity from licensed retail suppliers). By establishing significantly sized consolidated customer groups, they may be in a position to secure more favourable supply arrangements for their customers. For example, they may be able to actively drive competition by calling for competing tenders from licensed retail suppliers.

11.3 Establishment of the National Market

The Act allows the Minister to nominate other agencies to perform the Market and System Operator (TransGrid) functions. For example, the National Electricity Market Management Company (NEMMCO) and National Electricity Code Administrator (NECA) will perform these functions in a national market. While this simple mechanism is available, it is intended that establishment of the national market will be the subject of new legislation.

11.4 Competitive sourcing

Under the Government's reform program, and within the bounds of technical and commercial feasibility, the broadest possible range of activities within the electricity sector will be subject to competitive sourcing. For example, the Act provides that where an electricity distributor requires work to be done under a customer connection contract, the customer has the right to choose any accredited person to do that work. It is planned that the regulations will progressively expand the categories of services which will be subject to similar competitive sourcing.

If you have queries on any aspect of the reforms, please contact [Warwick Watkins](#) NSW Electricity Reform Task Force, NSW Treasury.