



STANWELL
CORPORATION LIMITED

**Submission to the Productivity Commission
Public Hearing - National Access Regime
inquiry into third party access under Part IIIA
of *the Trade Practices Act 1974* and Clause 6
of the Competition Principles Agreement**

14 June 2001

Introduction

Stanwell Corporation Limited (SCL) appreciates the opportunity to appear before the Productivity Commission (PC) public hearing into the National Access Regime inquiry into third party access under Part IIIA of *the Trade Practices Act 1974* and Clause 6 of the Competition Principles Agreement.

SCL supports the broad thrust of the proposals contained in the PC position paper on the Review of the National Access Regime. This is because SCL believes that a great deal can be accomplished by undertaking the following steps to enhance the effectiveness of the existing regulatory framework:

- streamlining the regulatory processes and minimising any duplication in roles and responsibilities wherever possible through co-operative interaction between jurisdictional regulators; and
- establishing national regulatory standards through working groups comprising of members from all jurisdictions in order to facilitate consistent outcomes.

The advantages of this approach are:

- this will minimise the cost and disruption associated with introducing new regulatory arrangements before the existing ones have been effectively bedded down; and
- monopolies would only stand to benefit from any vacuum created while a new regulatory regime is developed.

A great deal of work is required before the full benefits of National Competition Policy are realised. SCL advocates a more proactive regulatory approach is required at the outset to provide greater certainty and guidance to affected parties. In addition, major changes are required to the National Electricity Code to:

- address inappropriate rules for the connection of renewable energy projects which discriminate against renewable technologies and creates unfair barriers to entry; and
- facilitate the growth of new sustainable and environmentally responsible renewable generation.

SCL views on the PC proposals

SCL's specific comments on the PC proposals are contained in the following table:

PC PROPOSALS	SCL VIEWS
TIER 1 PROPOSALS	
<p>Inclusion of an objects clause in Part IIIA relating to the efficient use of, and investment in, essential infrastructure facilities and recognising the generic regime's' role in providing a framework for industry regimes. This would:</p> <ul style="list-style-type: none"> • make explicit the intent 	<p>SCL considers that it is essential to ensure that energy reform initiatives are developed having due regard to the following objectives:</p> <ul style="list-style-type: none"> • economic development goals that are linked to industry policies; • economic efficiency objectives; • environmental, sustainability, biodiversity and greenhouse gas management objectives; and

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<p>of the legislation; and</p> <ul style="list-style-type: none"> • reduce the likelihood of divergent industry access regimes. <p>(Proposal 5.1)</p>	<ul style="list-style-type: none"> • community considerations – Governments should not lose sight of the fact that reforms must provide a net benefit to the community. <p>SCL supports the commitments by the Council of Australian Governments (COAG) and State Governments to ensure that:</p> <ul style="list-style-type: none"> • broader policy considerations are taken into account; and • a holistic approach is undertaken when formulating structural reform initiatives. <p>COAG - National Energy Policy</p> <p>COAG decided on 8 June 2001 to develop a National Energy Policy with the following objectives and agreed principles:</p> <ul style="list-style-type: none"> • COAG agreed objectives to: <ul style="list-style-type: none"> - Encourage responsible development of Australia’s energy resources, technology and expertise, their efficient use by industries and households and their exploitation of export markets; and - Mitigate local and global environmental impacts, notably greenhouse impacts, of energy production, transformation, supply and use; and • COAG agreed principle that the energy policies of all Australian Governments should encourage the efficient economic development and increased application of less carbon intensive (including renewable) energy sources and technologies. <p>State Government initiatives</p> <p>Queensland energy policy under a Cleaner Energy Strategy which requires Queensland electricity retailers to source 15 per cent of their power sold in the State from alternative sources – at least 13% from gas and the remainder from renewable sources from 1 January 2005.</p> <p>The Victorian Government has embraced a holistic approach with the proposed establishment of the Essential Services Commission (ESC). The ESC will:</p> <ul style="list-style-type: none"> • ensure high quality, reliable and safe provision of electricity, gas and water services; and • not only assume the role of an economic regulator, but also be responsible for ensuring that regulation of these utilities enables broader regional, environmental and social objectives to be achieved. <p>In addition, the Victorian Government has recognised the benefits of embedded generation in:</p>

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	<ul style="list-style-type: none"> • enhancing electricity supply security and reliability; • stimulating regional development; and • contributing towards the achievement of Australia’s environmental objectives. <p>The Victorian Government has undertaken to facilitate embedded generation projects.</p>
<p>Inclusion of pricing principles in Part IIIA to:</p> <ul style="list-style-type: none"> • provide greater certainty to market participants; • facilitate speedier resolution of access disputes; and • increase the likelihood that regulated determinations strike an appropriate balance between the needs of service providers and access seekers. <p>(Proposal 5.3)</p>	<p>To date SCL’s experiences in interacting with monopoly service providers highlight the problems associated with information asymmetry and the need for the regulators to:</p> <ul style="list-style-type: none"> • provide clear guidance to monopoly service providers to facilitate the negotiation of appropriate access arrangements in a timely manner. This is essential as monopoly service providers: <ul style="list-style-type: none"> - do not appear to have much incentive to reach appropriate commercial outcomes; - do not seem to be driven to achieving optimal results given their effective monopoly position in the market; - do not voluntarily take on responsibility for their own service performance; and - SCL concurs with the Hilmer Committee findings that owners of vertically integrated ‘essential’ facilities which do not compete in upstream and downstream markets may seek to exploit market power through access charges; • establish a simple and transparent framework to assist in the negotiation process for connection and access agreements – this is critical to facilitate the smooth operation of a competitive market without barriers to entry; and • formulate a streamlined approach where issues such as Transmission Use of System passthrough can be handled in an evenhanded and straightforward manner. <p>Regulatory oversight is not be limited to establishing pricing principles – there are also the following related aspects:</p> <ul style="list-style-type: none"> • contractual terms and conditions; and • service quality standards. <p>Examples of areas of potential concern are:</p> <ul style="list-style-type: none"> • determination of TUoS passthrough; • network charge reduction for non supply of network connection service;

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	<ul style="list-style-type: none"> • unreasonable obligation clause; • timing for routine planned maintenance; • supply restoration service standards; and • terms of payment. <p>Determination of TUoS passthrough</p> <p>The reluctance of DNSPs to negotiate in good faith for the determination of TUoS passthrough is illustrated by the response to a previous SCL request that a DNSP include the following clause in its connection and access agreement:</p> <p style="padding-left: 40px;">"Each month, the network service provider shall prepare and submit to the generator a statement detailing the calculation of the monies due to the generator for the previous month."</p> <p>The DNSP rejected this clause and countered with the following clause:</p> <p style="padding-left: 40px;">"To the extent required by the regulators direction or determination, the network service provider shall provide to the generator details of how any avoided transmission use of system rebates are calculated".</p> <p>SCL considers that it is imperative that regulators provide clear guidance to DNSPs to ensure that the following change to the National Electricity Code is implemented in a simple and transparent manner:</p> <p style="padding-left: 40px;">"a Distribution Network Service Provider must passthrough to an embedded generator the amount calculated in accordance with clause 5.5(i) for Customer Transmission Use of System usage charges that would have been payable by the Distribution Network Service Provider to a Transmission Network Service Provider had the embedded generator not been connected to its distribution network."</p> <p>The Code further states that:</p> <p style="padding-left: 40px;">"any payments to generators and embedded generators under the above clause are to be included as part of the annual revenue requirements of the relevant Transmission Network Service Provider or Distribution Network Service Provider."</p> <p>Network Charge Reduction for non supply of Network Connection Service</p> <p>SCL has also experienced difficulty in negotiating with DNSPs on a network charge reduction for the non-supply of network connection services in the following cases:</p>

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	<ul style="list-style-type: none"> • events of Force Majeure; and • network Outages. <p><u>Force Majeure Events</u></p> <p>In current negotiations for new connection and access agreements, SCL has experienced difficulty in:</p> <ul style="list-style-type: none"> • negotiating for a network charge reduction proportional to the duration of Events of Force Majeure, which DNSPs call in order to obtain relief from their network connection obligations; and • reaching agreement on an appropriate definition of a Force Majeure event. <p>The DNSPs are insisting that the contract term be extended if they are to agree to inclusion of any network charge reduction. This term extension means that there are reduced commercial pressures on the DNSP to minimise the extent of any network interruptions. We believe that payment for network charges, when those network services are not provided due to the DNSP being protected by Force Majeure provisions, is uncommercial and inappropriate. SCL considers that the concept of a Force Majeure provision is to protect contracted parties from damages and not to ensure a payment without the provision of the service.</p> <p>SCL is also experiencing difficulties in reaching agreement with DNSPs to have the following categories of service disruption causes excluded from the protection provided by Force Majeure:</p> <ul style="list-style-type: none"> • negligence; or • the failure to comply with Good Electricity Industry Practice. <p>SCL believes that each party should only receive the protection of Force Majeure when the event is beyond their control.</p> <p><u>Network Outages</u></p> <p>DNSPs have flatly refused to consider any relief from the payment of network charges when their network service is unavailable for extended periods.</p> <p>In negotiations with DNSPs, SCL has not sought 100% availability of the network. SCL has proposed that a percentage availability factor, appropriate for the robustness of the network connection design and exclusive of planned maintenance and regulator/system operator instruction outages, be used as a network charge reduction trigger. This proposal has been completely rejected by the DNSP's with no explanation.</p>

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	<p>A disturbing issue arising from this is that the DNSP requirement for payment, even when the network service is not provided, is not a normal market practice and is, therefore, highly unsatisfactory to SCL.</p> <p>Unreasonable Obligation Clause</p> <p>SCL has encountered a DNSP which includes the following clause in its standard Connection Agreement:</p> <p>“The generator acknowledges that the provision of the connection services associated with the connection point will not be designed or constructed to withstand abnormal operating conditions on the distribution network.</p> <p>If requested by the DNSP, the generator must vary its import or export demand during any period of abnormality. This includes an obligation on the generator to:</p> <ul style="list-style-type: none"> • reduce the export from the power station to nil; and • increase the export of electricity from the Power Station up to the authorised export demand (but only to the extent that the power station is physically capable of doing so). <p>The DNSP is not liable to the generator for any loss suffered by the generator as a result of any request made by the DNSP under this clause.”</p> <p>The liability exclusion clearly indicates that the DNSP in question is fully aware that the operation of this clause may cause plant and commercial damage to the generator. The DNSP is attempting to take unfair advantage of its monopoly position in order to take commercial and technical control away from the generator, with no regard for the prevailing market conditions and the resultant impact that this could have on the generator.</p> <p>Timing for Routine Planned Maintenance</p> <p>SCL has requested that DNSP’s agree to program routine planned maintenance outside the period June through to March inclusive. This is in order to minimise avoidable network disruptions, which cause generation restrictions at the sugar mill generators during the crushing season. It should be noted that this period is the full extent of the TUoS passthrough guarantee period available to these generation facilities. We excluded emergency maintenance and regulator/system operator instruction outages from this request. SCL believes that the request is not unreasonable, as it allows for emergency maintenance as/when required, as well as allowing</p>

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	<p>a three-month period in which to program routine works.</p> <p>The DNSP's have only agreed to accept a "best endeavors" obligation for this proposed arrangement, thereby leaving the generator in a position of being completely exposed to monopoly maintenance risk. In this instance, SCL sees this as being an unreasonable approach on the part of the DNSP, which unduly disadvantages generators.</p> <p>Supply Restoration Service Standards</p> <p>SCL has requested that DNSP's agree to the inclusion of SCADA monitoring and emergency repair service standards within connection and access agreements. A DNSP rejected these requests and instead countered with the offer of a report after the interruption event.</p> <p>The DNSP's response highlighted its lack of interest in providing reasonable customer service in terms of restoring the system in a responsive manner. This is a concern as there are no drivers included in the typical liability and indemnity clauses of a connection and access agreement offered by DNSP's for the DNSP's to:</p> <ul style="list-style-type: none"> • commission network connections on time; or • to expedite outage restorations. <p>It is imperative that regulators ensures DNSP's have the incentive to maintain system reliability and security by:</p> <ul style="list-style-type: none"> • promptly restoring the system in the event of any disruption; and • preventing any future disruptions. <p>Terms of Payment</p> <p>SCL has requested that DNSP's accept 30 days from the receipt of the invoice as the term for payment of network charges, this being normal business practice. The monopoly DNSPs have completely rejected this proposal, therefore, SCL has no alternative but to accept the monopoly DNSPs' demands for uncommercial and onerous payment terms.</p> <p>SCL recommendation</p> <p>A more proactive regulatory approach is consistent with the approach adopted by the QCA in its draft determination on the Queensland Rail Access Undertaking Agreement. The QCA has issued a Schedule E of the Draft Undertaking, which outlines a reasonable process for the negotiation of third party</p>

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	<p>access arrangements.</p> <p>SCL submitted to the QCA that the electricity industry would benefit from a similar approach in respect of the negotiation of connection and access agreements between monopoly Distribution Network Service Providers (DNSPs) and generators. The advantages of the QCA establishing a framework are that it will:</p> <ul style="list-style-type: none"> • establish key principles to provide clear indication to the Queensland monopoly DNSPs on appropriate commercial practices in the contractual arrangements for connection and access services in the Queensland jurisdiction; • provide assurance that there will be no preferential treatment of any user of a monopoly DNSP's network system in terms of pricing, service quality or provision of information; • facilitate the development of a credible, transparent and equitable access negotiation process that engenders confidence in the integrity of the Queensland electricity market; and • result in consistency within the Queensland jurisdiction for all regulated businesses.
<p>Part IIA should require the provider of a declared service to give sufficient information to an access seeker to enable the access seeker to engage in effective negotiation. (Proposal 6.3)</p>	<p>There is no explicit provision in the National Electricity Code, which requires DNSPs to provide information to access seekers. SCL's experience in requesting information from DNSPs is disappointing in that the DNSPs generally:</p> <ul style="list-style-type: none"> • provide only guarded responses to specific questions; and • seek to entrench the problem of information asymmetry in their favour – DNSPs do not offer any additional relevant information that experienced DNSP professionals would be reasonably expected to anticipate. <p>The following changes to the negotiating framework would improve outcomes:</p> <ul style="list-style-type: none"> • provision of information by the facility owner to the access seeker would assist in addressing the issue of information asymmetry. However, there are also the issues of the: <ul style="list-style-type: none"> - accuracy of information; - level of detail; and - timeliness in which the information is provided; and • regulatory bodies need to adopt a more proactive role until facility owners demonstrate a proven track record in operating commercially and negotiating in good faith with access seekers. As indicated above, a light-handed

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	<p>approach is not workable in most situations as access seekers are under pressure to finalise access agreements but time is on the side of facility owners.</p>
TIER 2 PROPOSALS	
<p>Overhaul of the declaration criteria to focus more directly on the objective of efficiency rather than a means of achieving it – namely, promoting competition.</p>	<p>SCL considers that:</p> <ul style="list-style-type: none"> • competition is the most effective form of regulation; • where there is no contestability, government regulation is necessary to replicate commercial disciplines; and • light handed regulation of monopolies is inappropriate and regulatory bodies must take an active role in establishing appropriate incentives for regulated entities to act commercially – this is a prerequisite for the benefits of competition reforms to be realised. The issue should be how regulatory bodies can operate on a more efficient basis to facilitate productive economic activity, which benefits all Australians.
<p>Creating a single regulator responsible for the administration of Part IIA (most probably the ACCC) to achieve the following objectives:</p> <ul style="list-style-type: none"> • Address the overlap between the current roles of the NCC and ACCC; • Overcome any inconsistency in interpretation; and • Consolidate the limited public sector expertise. 	<p>SCL supports any moves which:</p> <ul style="list-style-type: none"> • promotes consistency between regulatory regimes and efficient regulatory administration to eliminate unnecessary duplication; • facilitates greater certainty, transparency and accountability in determinations by jurisdictional regulators; • co-ordinates the endeavors of national and state regulators to establish an access regime that results in more efficient, effective and economic outcomes which delivers a net benefit to the community; and • adopts a holistic approach, such as the approach, which has been embraced by the Victorian Government with the proposed establishment of the Essential Services Commission (ESC). The ESC will: <ul style="list-style-type: none"> - ensure high quality, reliable and safe provision of electricity, gas and water services; and - not only assume the role of an economic regulator, but also be responsible for ensuring that regulation of these utilities enables broader regional, environmental and social objectives to be achieved.

Concluding comments

SCL considers that a great deal of work is required before the full benefits of National Competition Policy are realised. More proactive regulatory involvement is required to provide greater certainty and guidance to affected parties. In addition, major changes are required to the National Electricity Code to:

- address inappropriate rules for the connection of renewable energy projects which discriminate against renewable technologies and creates unfair barriers to entry; and
- facilitate the growth of new sustainable and environmentally responsible renewable generation.