STANWELL
CORPORATION LIMITED

Submission to 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

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Introduction

Stanwell Corporation Limited (SCL) appreciates the opportunity to submit a submission to 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.

While SCL considers that the current legislative framework provides a reasonable starting point for the development of an appropriate regulatory regime for access to significant infrastructure facilities, we are concerned with the manner in which it has been implemented. In particular, SCL believes that it is important that the Commonwealth Government:

- 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 endeavours 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:
  - 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.

  In addition, the Victorian Government has recognised the benefits of embedded generation in:
  - enhancing electricity supply security and reliability;
  - stimulating regional development; and
  - contributing towards the achievement of Australia's environmental objectives.

  The Victorian Government has undertaken to facilitate embedded generation projects and SCL urges other jurisdictions to adopt a similar philosophy.

SCL is of the view that the Commonwealth Government must maintain the momentum and keep the reform agenda on track. This submission outlines the following concerns and suggested solutions:

- the number of regulatory bodies involved in determinations;
- the implications of the regulatory approach adopted by jurisdictional regulators; and
- SCL's response to issues raised by the National Access Regime issues paper.

Regulatory bodies involved in determinations

As with the majority of market participants and industry bodies, such as the Business Council of Australia, SCL considers that the number of institutions involved in the regulation of the electricity market requires review. The electricity market is regulated by:

- NEMMCO (market & system operator);
- NECA (Code administration);
- ACCC (competition regulator); and
- state regulators:
  - Independent Pricing & Regulatory Tribunal of NSW and the Ministry of Energy and Utilities;
  - Office of Regulator-General, Victoria;
  - Queensland Competition Authority (QCA) and the Department of Mines and Energy;
  - SA Independent Industry Regulator; and
  - Tasmanian Office of Electricity Regulation.

This gives rise to the following concerns:

- it is difficult for the regulatory framework to evolve quickly and efficiently in response to market changes as the Code change process is too cumbersome to the extent that Code changes seem to be almost unachievable which is a major impediment to the introduction of renewable electricity generation;
- there is insufficient accountability for the setting of NEMMCO fees and inadequate accountability by NEMMCO to market participants and customers;
- there are problems with the current allocation of responsibilities between NECA, NEMMCO and transmission entities in terms of facilitating achieving efficient and effective outcomes;
- the current system presents regulated entities with 'gaming' opportunities; and
- companies, such as SCL, which operate across Australia are faced with a significant cost burden and increased market risk associated with satisfying different regulatory regimes.

SCL recommends that the Commonwealth Government:

- reviews the current situation with the view to enhancing and streamlining regulatory processes to engender greater consistency, certainty, transparency and accountability;
- simplify the National Electricity Code (the Code) change process to facilitate more timely amendments; and
- amend the Code to be accommodating of embedded and renewable generation as the Code was not developed with these renewable technologies in mind.

Regulatory approach by jurisdictions

SCL has been urging all jurisdictional regulators to re-consider any preference for a light handed regulatory approach in light of SCL's experience in negotiating with monopoly service providers in three states. To date negotiations with DNSPs for connection and access agreements covering new installations have been excessively lengthy and the net result has been:

- delays in obtaining market registration, which has impacted adversely on the timely entry of new generation facilities into the electricity market. This has had a negative effect on the commercial outcomes for these projects; and
- SCL has at times been forced to accept inappropriate outcomes in order to finalise a connection and access agreement, so that the market registration process of a new generation facility could proceed in a timely manner.
- DNSP's have simply refused to accept responsibility for the quality and availability performance of their network service and for their emergency situation responsiveness

To date SCL's experiences in interacting with monopoly service providers highlight the need for the regulators to:

- 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:
  - do not appear to have much incentive to reach appropriate commercial outcomes; and
  - do not seem to be driven to achieving optimal results given their effective monopoly position in the market.
  - do not voluntary take on responsibility for their own service performance

  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; and
  - it is important that a consistent regulatory approach be developed and administered by an economy wide body rather than a series of industry specific regulators.
- 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.

This 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 access arrangements.

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:

- 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.

Issues raised by The National Access Regime Issues Paper

Are the circumstances in which a facility owner would seek to deny access widespread? What sorts of costs does denial of access impose? Are these situations where denial of access would be desirable from a community's point of view?

As outlined above, SCL is concerned that monopoly service providers are imposing onerous terms and conditions or employing delaying tactics, which may effectively deny access or extract monopoly rents.

The harsh and uncommercial terms proposed for connection and access agreements could potentially deny SCL's renewable energy projects access to electricity distribution networks. This would be undesirable from the community's perspective as renewable energy projects offer a range of benefits, which include:

- enhanced electricity supply in regional Australia - system reliability and security could be improved as renewable energy projects tend to be:
  - embedded in the electricity network; and
  - located in regional Australia;
- environmental benefits associated with reduced network losses;
- more efficient economic outcomes as embedded generation may result in the deferral or elimination of investment in transmission and distribution network infrastructure;
- Australia is able to diversify its energy fuel sources, which reduces the risk of dependence on fossil fuels in the event that the Kyoto Protocol emission targets become binding;
- greater flexibility and responsiveness to meet Australia's growing energy demands – green projects are generally smaller and have shorter lead times, which would better service the growth in demand for energy on an incremental basis; and
- regional development opportunities which support the Commonwealth Government's policy objectives – Rural Australia will be a major beneficiary of green projects because that is where renewable energy resources are generally located. SCL has undertaken major investments in renewable energy projects, such as the Windy Hill wind farm, which have will create wealth and employment opportunities in regional Australia.

  SCL's cogeneration projects enhance the commercial attractiveness of cogeneration hosts and associated industries. Regional Queensland in particular is a significant beneficiary of the Commonwealth Government's Mandatory 2% Renewable Energy Target given the relative abundance of biomass energy fuel in the form of bagasse. SCL also contributes towards research into the development of environmentally responsible and sustainable farming practices by:

- utilising biomass material that was previously regarded as waste material, and in some cases, there was a cost associated with disposing the material;
- incorporating new technology in the redesign of plant and equipment, which will improve efficiency and profitability of cogeneration hosts;
- formulating improved harvesting practices and supporting infrastructure to maximise the biomass available for energy production; and
- developing new varieties of crops to meet the objectives of the host industry and energy production.

The economic benefits associated with wind farms are illustrated by the benefits of SCL's Windy Hill wind farm to the Ravenshoe region. They include:

- additional sources of revenue to farmers, which provide the scope for farmers to re-invest within the region;
- the establishment of a new major tourist drawcard, which will enhance the critical mass of tourist attractions in the region. International experience shows that there is considerable visitor interest in wind farms;
- major injection of economic and investment activity during the construction phase of the wind farm and supporting network infrastructure; and
- employment creation for the on-going support and maintenance of the wind farms.

Should vertically integrated bottleneck facilities be treated differently than non-integrated facilities? Is the real concern underpinning access regimes denial of access, or the price and conditions of access? Are the two concepts separable from a regulatory point of view, or should they be addressed in tandem?

As outlined above, inappropriate price and conditions of access could effectively amount to denial of access. The focus should be on developing a regulatory framework, which delivers improved quality of service and competitive prices to the community.

However, it is also important to establish regulatory safeguards against any perceived or actual inappropriate conduct by integrated regulated businesses. Structural separation is preferable wherever possible - failing that, robust ring fencing guidelines, which are consistent across jurisdictions and industries, are essential.

What is the evidence that access regulation reduces prices and/or improves the range and quality of services available to end users?

As outlined above, SCL has first hand experience of the disadvantages associated with negotiating access agreements with monopoly service providers. This is due to information asymmetry and the current weak negotiating position of generators wishing to connect. Renewable generators are in a particularly weak position as the nature of renewable energy generally prevents any site relocation - the local DNSP is therefore effectively the monopoly connection provider. This has resulted in delays in obtaining electricity market registration, which has adversely impacted the timely entry of some of SCL's new generation facilities into the market. In some instances, SCL has also been forced to accept inappropriate outcomes in order to finalise a connection and access agreement, so that the market registration process of a new generation facility could

proceed in a timely manner. SCL therefore believes that clear regulatory guidance is required in order to ensure appropriate commercial outcomes in the form of fair and reasonable connection and access agreements which are delivered in a timely manner.

How do the costs of access regulation compare with the costs of not facilitating access for third parties? Does the magnitude of the costs of access regulation primarily depend on the associated pricing principles/rules?

The costs of regulation are likely to be outweighed by the costs of not facilitating access for third parties, which include the following:

- uncommercial costs which act as a disincentive for investment and economic activity – the resultant lost opportunities are difficult to quantify;
- delays in negotiating access arrangements, which hinder productive activities; and
- unfair pricing and access arrangements have serious technical, allocative and dynamic efficiency implications for Australia's economy. Monopoly service providers do not have any incentive to achieve best practice in terms of service quality or operational efficiency.

SCL has found that regulated entities:

- seek to only comply with the bare minimum regulatory requirements; and
- do not have any incentive to negotiate in good faith for a fair allocation of risk and responsibility. Regulated monopoly entities do not wish to assume any risk or provide any undertakings in terms of service quality standards.

SCL considers that:

- 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 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.

Should access regulation be in the form of a national regime, industry-specific arrangements, or a combination of both? In practice, would the outcome from a national regime as opposed to a series of industry-specific regimes operating under the same principles and broad rules be significantly different?

As a Queensland based generator with aspirations to establish renewable generation facilities across Australia, SCL believes that a national regulatory regime is essential to provide consistency between and within jurisdictions.

A series of industry specific regimes operating under the same principles and broad rules can be materially different with serious implications for the regulated entities and affected stakeholders, such as SCL.

SCL concurs with the findings of the Hilmer Committee, which favored a general regime for the following reasons:

- it would facilitate a consistent approach across sectors and avoid the potential for regulatory duplication inherent in the current dual arrangements; and
- facilitate regulatory rationalisation and reduce the potential for regulatory capture.

However, the benefits of a general regime may be achieved by the steps outlined in this submission – namely through greater co-operative efforts between national and jurisdictional regulators. SCL believes that it is important that robust regulatory decisions are developed on a consistent basis across jurisdictions.

Should the national access regime contain a clearer statement of objectives? What should these objectives be? Is promoting competition in related markets an objective in its own right? Or is it a means to fulfill broader objectives?

SCL considers that the national access regime should contain a clearer statement of objectives, with a broader set of objectives encapsulating:

- economic development goals that are linked to industry policies;
- economic efficiency objectives;
- environmental, sustainability, biodiversity and greenhouse gas management objectives; and
- community considerations – regulators should not lose sight of the fact that Government reforms must provide a net benefit to the community.

This broader approach is reflected in the Victorian Government's recognition of the benefits of embedded generation outlined earlier in this submission. The Victorian Government has undertaken to adopt a proactive role in facilitating embedded generation projects and SCL urges the Commonwealth Government to adopt a similar approach.

What are the regulatory alternatives to access regimes?

Our experience to date with access regimes developed by a monopoly service provider is not effective as there is no incentive for them to:

- develop a balanced draft undertaking for the consideration of regulators – the current draft is heavily skewed against parties seeking to gain access to a monopoly service provider's infrastructure; or
- co-operate with regulators in their efforts to prepare a draft determination on a timely basis.

It is therefore essential that careful consideration is given to whether voluntary access undertakings are appropriate, as accepting this path could effectively:

- restrict access;
- hinder the process of parties seeking access to essential infrastructure; and/or
- allow monopoly infrastructure owners to capture the agenda and slow down the pace of reform.

SCL advocates that regulatory bodies assume a proactive role utilising the benefit of experience gathered by other regulators in other jurisdictions in similar regulatory processes.

Could alternatives to the national access regime operate through existing regulation, or would they require new or modified regulation?

SCL believes that before the Commonwealth contemplates introducing a new regulatory framework, careful consideration is given to assessing the effectiveness of the existing regulatory framework. We consider 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;
- establishing national regulatory standards through working groups comprising of members from all jurisdictions in order to facilitate consistent outcomes; and
- adopting the Victorian holistic approach with the establishment of the Essential Services Commission with a broad policy perspective encompassing economic, environmental, regional development and social objectives.

The advantage of this approach is that we minimise the cost and disruption associated with introducing new regulatory arrangements before the existing ones have been effectively bedded down. Regulated entities would only stand to benefit from any vacuum created while a new regulatory regime is developed.

Is the emphasis in Part IIIA on prior negotiations between the parties likely to encourage efficient access arrangements, or better outcomes than would eventuate in an unregulated environment? What changes to the negotiating framework would improve outcomes? For example, would a requirement for the facility owner to disclose certain information to the access seeker help to address the problem of information imbalance? What level of public disclosure should apply to negotiated terms and conditions?

SCL's experience in requesting information from DNSPs is disappointing in that the DNSPs generally:

- 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.

The following changes to the negotiating framework would improve outcomes:

- 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:
  - 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 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.

What lessons can Australia learn from approaches used in other countries? Does the overseas experience suggest that any particular approach is generally superior? Does it point to differences in the impacts of the various approaches on individual interest groups?

SCL considers that there is no magic solution to implementing an appropriate regulatory framework in Australia. Other countries operate in a different environment and great care is required in assessing whether it would be appropriate in the Australian context.

The key is the manner in which regulatory principles are implemented by regulatory bodies. SCL believes that:

- there should be consistency between and within jurisdictions. This could be facilitated by the Commonwealth encouraging co-operation between regulatory bodies in developing appropriate regulatory frameworks across jurisdictions. This would facilitate consistency as well was minimise the cost both for:
  - companies operating across state jurisdictions such as SCL; and
  - all regulatory bodies.
- light handed regulatory approaches are only appropriate if and when:

  - regulated businesses demonstrate that they are operating commercially; and
  - users benefit from improved service quality that is delivered in a competitive and innovative manner; and
- until this occurs, regulators should adopt a heavier handed approach by providing greater guidance and certainty to both regulated entities and users alike.

Concluding comments

SCL considers that a great deal 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.