

27 February 2009

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



By email to: regulatoryburdens@pc.gov.au

Dear Sir/Madam

Annual Review of Regulatory Burdens on Business – Social and Economic Infrastructure Services

Envestra is Australia's largest natural gas distributor, delivering gas to over 1,000,000 customers in all mainland states except for Western Australia. Being subject to numerous jurisdictional regulatory regimes, Envestra is well placed to comment on regulatory burdens.

We note from the Productivity Commission's Issues Paper (the Issues Paper) that:

"The Commission will not be examining regulations that are solely the responsibility of state, territory or local governments. However, any duplication or overlap of regulatory responsibilities between the Commonwealth and other jurisdictions does fall within the terms of reference. Regulations underpinned by intergovernmental agreements involving the Commonwealth will also be considered under the terms of reference." (p11)

Envestra is concerned that, despite the move to a national regulatory regime for gas economic regulation, the residual responsibility of state economic regulators will result in overlap of regulation between the Commonwealth and jurisdictions.

While the national framework for energy non-economic regulation is yet to be finalised, it is currently proposed (by the Ministerial Council on Energy) that jurisdictions retain licensing powers in relation to energy distribution. However, the powers that (currently) go hand-in-hand with licensing will inevitably result in duplication or overlap of regulation.

This is because the retention of licensing powers will enable jurisdictions to continue to regulate unimpeded and in a manner that overlaps with Commonwealth regulation. This can be avoided by ensuring that jurisdictional requirements (eg those related to service and reliability standards for energy distribution) are enshrined in state legislation, rather than leaving jurisdictional regulators with unconstrained licensing powers. Removing the licensing function from state economic regulators will, in our view, achieve the required result of minimising the prospect of double-regulation. Alternatively, it would be necessary to eliminate the powers of economic regulators to vary licence conditions and to impose codes and guidelines without Ministerial approval.

The overlap of regulation is already becoming evident, with Envestra now required to provide compliance reports to the Australian Energy Regulation in addition to the Essential Services Commission of South Australia and the Essential Services Commission of Victoria.

The Issues Paper states on page13:

"Even where there has been national agreement to remove duplication and inconsistency across jurisdictions these problems may continue due to delays and jurisdictional inconsistencies in implementing such reforms (PC 2007)."

Envestra is concerned at the differences in legislation between jurisdictions in relation to gas meters. We understand that reforms in trade measurement, aimed at achieving national consistency across jurisdictions, were initiated in 1983 when a review of trade measurement was undertaken by WD Scott on behalf of the Commonwealth and state governments (following industry concerns about lack of uniformity). This was followed in 1990 by a Trade Measurement Agreement – an early CoAG initiative. In 1995, the Kean Review under the Keating government sought to address the continuing failure to achieve a uniform system of trade measurement.

Envestra is advised that Commonwealth administration of a national trade measurement system will commence in 2010, but that only some devices (not gas meters) will fall under Commonwealth jurisdiction. Such delays in implementing reforms are unacceptable and result in considerable cost to industry and consumers. For example, Envestra supplies gas meters to its customers in Victoria and in Albury, New South Wales. But while the same make and model of gas meter is purchased for both jurisdictions, Envestra must maintain separate stocks of gas meters to service its 23,000 Albury consumers and its 525,000 Victorian consumers. This is because New South Wales legislation requires gas meters installed in that state to be stamped with a NSW seal of approval. The additional administrative and operational burden of complying with the NSW legislation is ultimately borne by Albury gas consumers.

Like many businesses operating nationally, Envestra is keen for the Commonwealth to expedite harmonisation of regulation and reduce the resultant regulatory burden on business. Through its membership of the Energy Networks Association, Envestra is participating in the Ministerial Council on Energy's 'Energy Safety and Technical Leaders Group', which will hopefully progress the harmonisation of technical energy regulation.

As a regulated business, Envestra would also like to bring to the Commission's attention the increasing regulatory burden associated with price reviews. The increasing level of information gathering powers and the apparent intent of regulators in attempting to minimise the possibility of any monopoly rent, means that regulatory reviews are becoming more forensic, with regulators requiring more information. The associated cost of this regulatory burden is itself unregulated, with regulators consequently passing on their significantly increasing costs via increased licence fees. Hence whilst Envestra must justify its cost increases in other areas, increases in regulatory costs occur unhindered and without oversight. We therefore recommend that all regulators be funded through government, rather than via licence fees, so that proper control and accountability occurs.

Finally, processes and consultations are still underway to finalise a national energy regime. This presents an opportunity to reduce the regulatory burden, however Envestra is concerned that this will not be the case in certain areas, eg energy customer connection framework. It is imperative that government (and their consultants) listen to the concerns of industry in formulating final positions on policies that will remain in place for many years to come.

We look forward to the Productivity Commission's report and outcomes.

Yours sincerely

Andrew Staniford
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