

CABINET - SUBJECTS FOR CONSIDERATION, 20 JUNE 2002 9:30 AM

1 **New Initiatives/Policy Matters**

2 **Bills and Regulations in Principle**

201

Not Relevant

202 **MEN0001/02CS** **Amendments to Electricity Act 1996 to Facilitate
Electricity Full Retail Competition ("FRC")
APPROVED**

All Ministers

3 **Bills for Introduction**

4 **Appointments**

5 **Other Matters**

6 **Cabinet Notes**

601

Not Relevant

202

CABINET COVER SHEET

1. **TITLE:** Amendments to *Electricity Act 1996* to facilitate electricity Full Retail Competition ("FRC").
2. **MINISTER:** Hon Patrick Conlon MP
Minister for Energy
3. **PURPOSE:** To seek approval to draft amendments to the *Electricity Act 1996* to implement key aspects of Government policy to provide a range of consumer protection arrangements for small electricity consumers, consuming less than 160 Megawatt Hour per annum of electricity, from 1 January 2003.
4. **RESOURCES REQUIRED FOR IMPLEMENTATION:** No resources are sought for implementation.
5. **RELATIONSHIP TO GOVERNMENT POLICY:** The proposed amendments reflect Government policy to implement a comprehensive consumer protection regime for electricity consumers before January 2003, in preparation for FRC.
6. **CONSULTATION:** Consultation has been undertaken with the Department of the Premier and Cabinet, the Crown Solicitor's Office and the Office of the South Australian Independent Industry Regulator (SAIIR). If the proposals are approved in principle, detailed consultation will occur with stakeholder groups.
7. **FAMILY IMPACT STATEMENT:** There are no direct impacts.
8. **SMALL BUSINESS AND REGIONAL IMPACT STATEMENT:** Not applicable.
9. **URGENCY:** High.
It is important that the amendments be drafted as soon as possible to ensure

that, following further consultation, the Bill may be introduced into Parliament during July.

The amendments relating to FRC need to be in place well before 1 January 2003 when all customers will be contestable.

10. RECOMMENDATIONS:

It is recommended that Cabinet approve:

- approve the drafting by Parliamentary Counsel of amendments to the *Electricity Act 1996* to provide for:
- *Obligation to Offer* – Require the incumbent electricity retailer, AGL SA, to offer to sell electricity to all existing and new South Australian customers prescribed for this purpose by regulation. The obligation is to apply to all existing and new sub-160 MWh per annum customers for a period of two and a half years from 1 January 2003;
- *Default Offer* – Require all retailers operating in South Australia to provide a default contract for prescribed customers. This will be required once the retailers begin to supply sub-160 MWh per annum customers and will be an on-going obligation to those customers;
- *Prices Justification* – Require retailers to publish a justification for *Obligation to Offer* and *Default Offer* tariffs;
- *Price Regulation* – Current legislation enables the Government to direct the Industry Regulator to undertake an inquiry into the justification of retail electricity prices and to regulate retail electricity prices for

prescribed customers. However, amendments to the *Electricity Act 1996* provisions may be required to ensure the Regulator's powers are compatible with the justification process;

- *Review and Appeals Process* – Require that where a price determination is issued by the Industry Regulator pursuant to Part 3 of the *Independent Industry Regulator Act 1999*, that determination continues in effect until it is varied or substituted by the review or appeal process, and that this will operate despite any provision to the contrary in other legislation, and will be prospective;
- *Price Disclosure* – Require the Industry Regulator to publish a guideline for price disclosure to prescribed customers and require retailers to publish pricing information in accordance with that guideline in a form suitable for making comparisons between competing offers;
- *Coordination Agreements* – Empower the Industry Regulator to impose a Coordination Agreement between a retailer and a distributor if the parties are unable to reach a commercial agreement within a period of 90 days;
- *New Penalty* – amend the *Electricity Act* to provide for a penalty and for Court Orders, to enforce requests for information made by the Electricity Supply Industry Planning Council ("the Planning Council") to Network Service Providers;

- *Exemption from Electricity Industry Ombudsman Scheme of retailers of only large customers*— Exempt retailers who only sell electricity to customers with annual consumption of greater than 750MWh from the requirement that all retail licensees take part in the Electricity Industry Ombudsman Scheme;
- *Public Register of Current Licences* – Require the Industry Regulator to maintain a public register of current licences only, rather than all licenses, to prevent the register from becoming unusable and impractical;
- *Application Fee for the Issue of a Section 80 Exemption* - Impose an application fee when seeking an exemption pursuant to section 80 of the *Electricity Act 1996* to reflect the heavy administrative cost to the Industry Regulator in assessing the application and making a recommendation to the Minister;
- *Other* – Other amendments may be required. Where appropriate, issues will be managed through the imposition of licence conditions. However, it may be preferable to enshrine some matters in legislation. The issues to be resolved include an obligation on retailers to deliver Community Services Obligations and confidentiality arrangements covering the use of consumer information; and

- Note that the draft amendments to the *Electricity Act 1996* will be submitted to Cabinet for approval, following further consultation with relevant stakeholders.



**HON PATRICK CONLON MP
MINISTER FOR GOVERNMENT ENTERPRISES
MINISTER FOR ENERGY
MINISTER FOR POLICE
MINISTER FOR EMERGENCY SERVICES**

18/6/02

TO: THE PREMIER FOR CABINET

**RE: AMENDMENTS TO THE *ELECTRICITY ACT 1996* TO FACILITATE
ELECTRICITY FULL RETAIL COMPETITION.**

1. PROPOSAL

It is proposed that Cabinet approve the drafting of amendments to the *Electricity Act 1996* to implement key aspects of Government policy to provide a range of consumer protection arrangements for electricity consumers consuming less than 160 Megawatt Hours per annum (MWh pa) of electricity from 1 January 2003.

2. BACKGROUND

- 2.1 With the advent of Full Retail Competition ("FRC") on 1 January 2003, all South Australian consumers will have the ability to choose their electricity retailer. This will represent a fundamental change in the way that ordinary South Australian domestic and small business consumers will take supply of an essential service.
- 2.2 Currently, there are only some 3,100 large industrial and commercial South Australian consumers, using more than 160 Megawatt hours ("MWh") of electricity per annum, equivalent to an annual electricity bill of \$20,000 or more, which have the ability to choose their electricity retailer.
- 2.3 The remaining 730,000 South Australian domestic and small business consumers using less than 160MWh per annum have no such choice. Under the legislative scheme in the *Electricity Act 1996*, these consumers are only able to enter into retail electricity contracts with AGL SA Pty Ltd ("AGL") until the commencement of FRC.
- 2.4 However, at the commencement of FRC on 1 January 2003, there will no longer be any obligation on AGL, or any other electricity retailer who may choose to enter the South Australian market, to continue to offer to sell retail contracts to South Australian domestic and small business consumers.
- 2.5 Thus, under current legislative arrangements, there is a risk that some South Australians may not be able to secure a retail electricity contract in the fully competitive market. The potential for this situation to arise is not fanciful, given the difficulties faced by "grace period" consumers who gained retail choice in 2000.

- 2.6 South Australian Government policy clearly contemplates the need to protect consumers from these risks. This policy encompasses:-
- 2.6.1 the requirement for there to be an obligation on electricity retailers to offer retail contracts to all small South Australian consumers, not only those who are "attractive" to retailers;
 - 2.6.2 requiring electricity retailers to provide a public justification of the prices they set;
 - 2.6.3 requiring the industry regulator, currently the South Australian Independent Industry Regulator ("the SAIIR") but in the future the Essential Services Commission ("the ESC"), to investigate whether the justifications published by retailers support the prices set; and
 - 2.6.4 if prices are not justifiable, then price setting is required.
- 2.7 As the current legislative scheme does not permit the South Australian Government to give effect to these policies, it is necessary that amendments be made to the Electricity Act, and the regulations thereunder, to establish a comprehensive and viable consumer protection regime in anticipation of FRC in South Australia.
- 2.8 It is noted that in December 2001 the SAIIR released for public and industry consultation a discussion paper entitled, *Electricity Retail Competition: Consumer Protection Issues for Small Consumers*, which considered some of these issues. The SAIIR wrote to the Minister for Energy on 2 April 2002 reporting the results of this consultation process and outlining its views on the central issues. A copy of the paper may be found at Annexure 1 of this Cabinet Submission.
- 2.9 As noted above, the Government has also announced its intention to establish the ESC to protect the long-term interests of South Australian consumers with regards to price, quality and reliability of essential services. It is proposed that the ESC Bill repeal the *Independent Industry Regulator Act 1999* and will similarly empower the ESC to make codes and rules. This is the subject of a separate Cabinet Submission seeking approval of the project plan for the establishment of the ESC and for various administrative arrangements which will be submitted for consideration (ref: T&F02/0043CS). It is anticipated that the powers currently held by the SAIIR will be transferred to the ESC, upon its establishment. Accordingly, where this submission refers to the powers of the Industry Regulator, this is currently the SAIIR and may eventually become the ESC.

3. DISCUSSION

Obligation to offer

- 3.1 One of the fundamental questions which must be addressed prior to the commencement of FRC is the manner in which the South Australian Government can ensure that all small South Australian consumers will be guaranteed at least a standard retail contract for electricity.
- 3.2 Without such a safeguard in place, it is possible that some current South Australian domestic and small business consumers will be left without a retail electricity contract in the transition to FRC; for example, if AGL decides that some consumers are no longer viable after 1 January 2003.
- 3.3 It is further possible that new consumers seeking contracts after the commencement of FRC will face the same difficulties and be unable to secure a retail electricity contract.
- 3.4 It is noted that current South Australian Government policy proposes that these risks be met through amendments to the Electricity Act, by placing an obligation upon retailers to "actually supply power" to all consumers within the market segment in which they choose to compete.
- 3.5 To give effect to this policy in light of the potential difficulties identified above, the Electricity Act will need to be amended by the insertion of a two-limbed obligation to offer:-
 - 3.5.1 An obligation to continue to offer retail electricity contracts to existing South Australian domestic and small business consumers after the commencement of FRC on 1 January 2003; and
 - 3.5.2 An obligation to make an offer to sell electricity, if requested, to all new South Australian domestic and small business consumers after the commencement of FRC on 1 January 2003.
- 3.6 The first limb, the obligation to offer to sell electricity to all existing consumers, will ensure that no South Australian domestic or small business consumer will be left without a retail electricity contract at the commencement of FRC.
- 3.7 The second limb, the obligation to offer to sell electricity to all new consumers, will ensure that all new South Australian domestic or small business consumers will be able to obtain a retail electricity contract.

- 3.8 In both New South Wales and Victoria, where FRC has already commenced, an obligation to offer has been imposed in respect of all existing domestic and small business consumers using less than 160MWh of electricity per annum.
- 3.9 In New South Wales, this same obligation applies in respect of all new domestic and small business consumers as well. By contrast, new domestic and small business consumers in Victoria only obtain the benefit of the obligation to offer to sell electricity if they use less than 40MWh of electricity per annum.
- 3.10 It is suggested that the lower figure applicable in Victoria for new connections is not appropriate for adoption in South Australia, at least in the transition to FRC. It would be inappropriate to assume that some new smaller consumers will be better able to cope with this market and, on that basis, remove the benefit of the obligation to offer.
- 3.11 It is therefore recommended that the obligation to offer to sell electricity should apply to those South Australians who consume 160MWh or less of electricity per annum.
- 3.12 While the concept of an obligation to offer is clearly crucial to the successful transition to FRC, it is noted that there may be adverse consequences should the obligation be imposed on all retailers.
- 3.13 In particular, imposing the obligation to offer on retailers who do not presently have contracts with domestic or small business consumers may well constitute a significant barrier to such retailers entering the market. In large part, this is because these retailers are unlikely to be able to obtain sufficient wholesale electricity market contract coverage to adequately supply a large number of consumers.
- 3.14 It is noted in this context that in both Victoria and New South Wales the obligation to offer has been imposed only on incumbent retailers, that is, those retailers who had a market share at the commencement of FRC, and only in relation to their areas of incumbency.
- 3.15 Therefore, whilst it is arguable that competition would be better served by requiring multiple offers to domestic and small business consumers, it is suggested that in the short term the development of a competitive market would be more appropriately enhanced by imposing an obligation to offer on the retailer best equipped to carry the risks of holding that obligation. In South Australia, the retailer which is so equipped is AGL.
- 3.16 However, it is recognised that whilst this may be the best approach during the establishment of the market, mandating only one retailer will not ultimately serve the best interests of South Australian consumers. As identified in the current Government policy, it will be better for

consumers to receive several offers and in this way make the competitive market work for them.

- 3.17 Therefore, it is suggested that the obligation to offer be imposed solely on AGL for a transitional period only, with the potential for new entrants to have a similar obligation imposed on them, or for the obligation to cease after this time, should the Government identify this change as being in the best interests of South Australian domestic and small business consumers.
- 3.18 This transitional period may also allow the identification of classes within the domestic and small business market which no longer require the long term protection of the obligation to offer.
- 3.19 In New South Wales and Victoria, a similar approach has been adopted, with a two year transitional period, subject to review, having been implemented. It is proposed that in South Australia, the transitional period should be two and a half years, that is to say, until July 2005. This date has been chosen to avoid the expiration of the obligation during the peak demand period of summer, which could leave consumers exposed to high prices when trying to obtain a new contract.
- 3.20 To account for these factors, it is recommended that the Electricity Act be amended such that the Governor may impose by regulation an obligation on prescribed retailers to offer retail electricity contracts to a prescribed class of consumers.
- 3.21 Finally, in order to address information imbalances in the FRC environment, it is recommended that the retailer bearing the obligation to offer should be required to publish the obligation to offer contract under section 36 of the Electricity Act.

Default retail arrangements

- 3.22 **Default retail arrangements** apply to consumers who, for some reason, have failed to enter into a specific arrangement with a retailer. There are two likely scenarios where default arrangements will be in place:-
- 3.22.1 Existing connections where, as a result of change of tenancy or ownership, a consumer moves into a site where the electricity is already connected and takes supply without entering into a contract with a retailer; or
- 3.22.2 Where a consumer takes supply on the basis of a fixed term contract which subsequently expires without the consumer having made any contractual provision for its continuation.

- 3.23 In these cases, it is necessary for the protection of consumers, as well as the position of retailers in the wholesale market, that the basis on which electricity is being sold to the consumer is made clear.
- 3.24 One option would be to require the retailer bearing the obligation to offer, which it is suggested should be AGL in South Australia, to take responsibility for all default arrangements. However, there are a number of difficulties with this position. In particular, as the wholesale market requires a given retailer to be responsible for consumption to a location until such time as that responsibility is transferred to another retailer, this option would be unnecessarily cumbersome and reduce market discipline, thus adding to expenses for consumers.
- 3.25 It is therefore suggested that the Electricity Act be amended to provide that where a domestic or small business consumer takes supply under default arrangements, the retailer which has financial responsibility in the wholesale market for the connection point must offer a default contract to that consumer.
- 3.26 Such a default contract must be subject to regulatory oversight for the terms, conditions and prices it contains.
- 3.27 The Electricity Act should also be amended to require that once a retailer becomes aware that it is in a default contract situation with a consumer, it must advise that consumer of the terms and conditions of supply under that contract, the availability of the "obligation to offer" contract and the retailer which bears that obligation, and, if the retailer wishes, make an offer to enter into a non-default contract with the consumer. The retailer must provide this information to the customer in accordance with the parameters established by the Industry Regulator for such matters. Such parameters may be established by the Industry Regulator through the imposition of licence conditions.
- 3.28 As in the case of the obligation to offer contract, it is appropriate that the Electricity Act be amended to require all retailers who supply at least one consumer in South Australia with annual consumption of less than 160MWh, to publish the terms and conditions of their default contracts under section 36 of that Act.

Price Justification – Obligation to Offer

- 3.29 It is South Australian Government policy to introduce a price justification scheme in anticipation of the introduction of FRC, placing an obligation on electricity retailers to justify proposed retail prices for small consumers. If prices cannot be justified, then maximum prices or maximum price fixing factors could be set.
- 3.30 The fundamental question which must be addressed in relation to this scheme is the class of electricity retailer to which it will apply.

- 3.31 One option is to require all electricity retailers to publish all of their prices and justifications for those prices. The other option considered viable is to require only the retailer bearing the obligation to offer to publish and justify the price it will charge in that offer.
- 3.32 The first option, irrespective of the formal justification process implemented, will be highly resource intensive and will undoubtedly lead to significant market uncertainty.
- 3.33 The second option however, would allow a benchmark ceiling price to be set in the market, which all domestic and small business consumers could access. Once such a benchmark is set, it would be very difficult for a competing retailer to sell electricity at a price higher than the obligation to offer benchmark. Importantly though, if the obligation to offer the ceiling price is set appropriately, there should be scope for competing retailers to offer prices below it. In this way, South Australian consumers could benefit from the competitive process.
- 3.34 It is recommended that this philosophy be adopted in respect of the price justification process.
- 3.35 In terms of the operation of this process, it is proposed that the Electricity Act be amended such that the process will consist of the following steps:-
- 3.35.1 Publication of the offer made under the obligation to offer and a justification for the price it contains;
 - 3.35.2 Assessment of that justification; and
 - 3.35.3 Price setting if required.
- 3.36 With respect to the first step, it is proposed that the amendment not dictate the form which the public justification must take or the information it must contain, noting that there may be elements of the retailer's price justification which are commercial in confidence. Accordingly, it is proposed to examine alternatives for a price justification scheme, including the issues of commercial confidentiality as part of the drafting process and the possible use of a 'comparability index' as has been used interstate.
- 3.37 Step two of the above process will be pursued under section 30 of the Independent Industry Regulator Act, whereby the Minister may refer matters to the Industry Regulator for inquiry, and specify the terms of reference for that review. Under these provisions the retailer will be required to provide all relevant information to the Industry Regulator, including information which may have confidentiality limitations, in order for the Industry Regulator to undertake and report on the review.

- 3.38 The Industry Regulator will be required to assess the price and its justification in accordance with terms of reference detailed by the Minister pursuant to section 30. The ambit of the terms of reference are still being considered.
- 3.39 In the event that the assessment recommends that a price determination be issued (step three of the above process), it is proposed that the Electricity Act require that this must be given by the Industry Regulator, pursuant to the powers of Part 3 of the Independent Industry Regulator Act. The determination made under Part 3 of the Independent Industry Regulator Act brings with it the various appeal avenues available under section 27 of that Act.
- 3.40 As it is proposed that AGL should initially be the only SA electricity retailer to have an obligation to offer to sell electricity to all existing and new domestic and small business consumers for the transition period, the prices justification regime would only apply to AGL in regard to that obligation.
- 3.41 Consideration must also be given to the need for the retailer's obligation to offer tariff to be available for public scrutiny well in advance of its effective date to provide customers with sufficient time in which to consider the offer and if necessary, seek alternative contracts. The Industry Regulator will also need enough time in which to undertake a meaningful assessment. It is therefore proposed that the retailer be required to publish its price and the justification (and provide it to the Industry Regulator) by 1 October 2002 (being three months before the proposed commencement of FRC).

Price Justification – Default Arrangements

- 3.42 However, it is noted that default arrangements, discussed at paragraphs 3.22 to 3.28 above, do not constitute competitive contracts insofar as they are not negotiated, and for this reason the prices offered by all retailers under these contracts should be subject to the justification regime on an ongoing basis.
- 3.43 Section 30 of the Independent Industry Regulator Act will provide the avenue for this ongoing assessment to occur.

Review and Appeal Processes

- 3.44 Whilst it is considered appropriate that the price determination be subject to the various review and appeal processes available under section 27 of the Independent Industry Regulator Act, it does potentially bring with it some limitations, with respect to timing. Specifically, in the event the retailer does elect to pursue the appeal process, this could

mean that a final determination may not take effect until some months after the Industry Regulator's issuing of the initial determination.

- 3.45 To ensure that a price determination regarding the incumbent retailer's obligation to offer does operate whilst the matter is progressing through the appeal process, it is proposed that the Electricity Act be amended such that the price determination in relation to an obligation to offer issued by the Industry Regulator, pursuant to Part 3 of the Independent Industry Regulator Act, continues in effect until it is varied or substituted by the review or appeal process, and that this will operate despite any provision to the contrary in other legislation.
- 3.46 Further, to ensure that no provision to allow "claw back" will be inserted in a revised or substituted determination as a result of the appeals process, it is proposed that the amendment specify that any determination that is substituted or varied shall be made on a prospective basis, that is, shall not contain any element to compensate for losses incurred by any person as a result of the operation of the initial determination. Such an amendment is neutral as to whether it will operate in favour of consumers or retailers and thus, on its face, avoids discriminating between them.

Price Disclosure

- 3.47 Price disclosure is a fundamental requirement for facilitating competition. The Victorian ESC has recently released a draft guideline on price disclosure for electricity retailers in Victoria. The guideline proposes that retailers be obliged to publish a "comparability index" with any advertisement or marketing material that contains a price offer. An index was chosen because of the difficulty involved in making comparisons between different tariff structures.
- 3.48 It is recommended that amendments be made to the Electricity Act empowering the Industry Regulator to develop and publish detailed price disclosure guidelines for all retailers supplying to South Australian domestic and small business consumers, and compel these retailers to comply with the Industry Regulator's guidelines. This will ensure, as far as practicable, that consumers will be able to make meaningful comparisons of competing retail offers.
- 3.49 As it is acknowledged that there are some practical issues in developing a price disclosure regime, it is proposed that the Industry Regulator be empowered to invoke such a regime if practicable.

Coordination Agreements

- 3.50 Section 23(1)(n)(viii) of the Electricity Act provides that a distribution licence is to include a requirement that the distribution company must

have a coordination agreement in place with all retail companies. Reciprocal conditions apply to retail licences. The agreement is a use of system agreement between the distribution company and the retailer using the distribution system to sell energy to consumers. The agreement covers the rights and responsibilities of each of the parties.

- 3.51 However, not all retailers have entered into agreements with ETSA Utilities. The Industry Regulator cannot force the parties to finalise coordination agreements other than by threatening to revoke the parties' licenses. This is not a credible threat.
- 3.52 It is therefore proposed that the Electricity Act be amended to empower the Industry Regulator to impose a default agreement should the parties be unable to reach a voluntary agreement within a specified period of time. Ninety days is considered sufficient time to finalise such an agreement.
- 3.53 The Act should also be amended to give the Industry Regulator the additional power to substitute or vary a coordination agreement if, having regard to the Industry Regulator's powers and functions, it is considered necessary to do so.
- 3.54 Whilst the following amendments (paragraphs 3.55 to 3.65) are not strictly required for the introduction of FRC, it is proposed that they be included in this current suite of amendments. They relate to the operations of the Electricity Supply Industry Planning Council and Industry Regulator.

New Penalty for failure to provide information to Planning Council

- 3.55 A new SA derogation to the National Electricity Code has been proposed that will clarify and make express the powers of the Electricity Supply Industry Planning Council ("the Planning Council") to require relevant Network Service Providers ("wires businesses") to provide documents and information to the Planning Council to enable it to fulfil its planning functions. The Planning Council is dependent upon the cooperation of the wires businesses to enable it to fulfil its statutory functions. Wires businesses do not always have a commercial incentive to comply with such requests for information. In fact, the Planning Council is required to consider all options for augmentation and extension, including new generation, distribution and demand-side options, to the possible detriment of the information provider.
- 3.56 The current penalties for failure to cooperate are not particularly effective. The offence of contravening a licence condition contains a very large penalty (it is a minor indictable offence-\$250,000) and a threat to revoke the wires business' licence is not a credible threat. There could also be legal complications in a proceeding for a breach of licence condition for a failure to comply with a Code obligation. A

specific Code breach penalty would require the support of all other NEM jurisdictions for an amendment to the relevant Regulations, and the imposition of such a penalty would be at the instance of the National Electricity Code Administrator and require the involvement of the National Electricity Tribunal.

- 3.57 It is proposed that the Electricity Act be amended to provide for an offence of failing to provide documents or information to the Planning Council in a form, and by the date, required by the National Electricity Code or pursuant to a request by the Planning Council made in reliance on a licence condition. The penalty could be say \$20,000 per offence (similar to Code class A penalty) with \$2000 per day for each day that the offence continues. The court would be given the power to order compliance with the requirement to provide information, including the power to make ex parte interim orders (emergency orders without full hearing). It is proposed that the exact amount of the penalty be considered as part of the drafting process.

Exemption from Electricity Industry Ombudsman Scheme

- 3.58 Section 24(2)(l) of the Electricity Act requires an "electricity entity", defined in the Act as a person licensed under Part 3 of the Act to carry on operations in the Electricity Supply Industry, to participate in the Ombudsman Scheme, the terms and conditions of which are approved by the Industry Regulator.
- 3.59 The aim of the Ombudsman Scheme is to protect electricity consumers by providing a forum in which consumers can seek resolution of complaints and disputes. Whilst not explicit, the Scheme is designed to assist domestic and smaller business consumers with their concerns.
- 3.60 Accordingly, it is proposed section 24(2)(l) of the Electricity Act specify that those retailers who only supply to customers consuming more than 750 MWh per annum be exempt from the requirement to participate in the Ombudsman Scheme. The customers of these retailers will still be protected by requiring the retailers to adopt dispute resolution procedures approved by the Industry Regulator. In principle approval was recently given exempting large retailers (who only supply customers with annual consumption of greater than 750 MWh) from the need to participate in the Scheme through the issuing of an exemption under section 80 of the Electricity Act, provided a number of conditions were met. This more laborious approach will no longer be required if the proposed amendments are made.

Maintaining of Public Register of all licences issued under the Electricity Act

- 3.61 Section 30 of the Electricity Act currently requires the Industry Regulator to maintain a public register of all licences issued under the Act. This includes where an existing licence has been amended or varied in some way.
- 3.62 To prevent the register from becoming impractical and unwieldy, it is proposed that section 30 be amended such that the Regulator is required to maintain a public register of current licences only. Information regarding licence variations will still be kept by the Regulator and can still be accessed if required, by formal request.

Application fee for the issue of a section 80 exemption

- 3.63 Section 80 of the Electricity Act provides that the Industry Regulator, on the approval of the Minister, may grant an exemption from the provisions of Part 3 or Schedule 1 of the Electricity Act (or specific provisions of these parts), dealing with licensing and cross ownership rules, respectively.
- 3.64 When an application is made to the Industry Regulator, significant resources are then required to carry out the assessment and submit a recommendation to the Minister. This cost is indirectly borne by the licensees who fund the Industry Regulator's activities.
- 3.65 Accordingly, it is proposed that the Act be amended such that an application fee is imposed on the applicant. The specific amount of the fee will be determined as part of the drafting process. The fee would need to reflect the administrative cost to the Industry Regulator and to some extent, provide some disincentive from making a spurious application.

3.66 Drafting Instructions

A brief to Parliamentary Counsel to assist in the drafting of the proposed amendments to the Electricity Act is attached as Annexure 2.

3.67 Timing

It is essential that the amendments relating to FRC be implemented in advance of the commencement of FRC on 1 January 2003. Accordingly, it is proposed that the Bill be introduced into Parliament during July, if possible.

4. RECOMMENDATIONS

It is recommended that Cabinet approve:

4.1 The drafting by Parliamentary Counsel of amendments to the *Electricity Act 1996* to provide for:

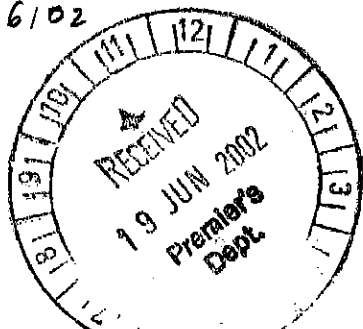
- *Obligation to Offer* – Require the incumbent electricity retailer, AGL SA, to offer to sell electricity to all existing and new South Australian customers prescribed for this purpose by regulation. The obligation is to apply to all existing and new sub-160 MWh per annum customers for a period of two and a half years from 1 January 2003;
- *Default Offer* – Require all retailers operating in South Australia to provide a default contract for prescribed customers. This will be required once the retailers begin to supply sub-160 MWh per annum customers and will be an on-going obligation to those customers;
- *Prices Justification* – Require retailers to publish a justification for *Obligation to Offer* and *Default Offer* tariffs;
- *Price Regulation* – Current legislation enables the Government to direct the Industry Regulator to undertake an inquiry into the justification of retail electricity prices and to regulate retail electricity prices for prescribed customers. However, amendments to the *Electricity Act 1996* provisions may be required to ensure the Industry Regulator's powers are compatible with the justification process;
- *Review and Appeals Process* – Require that where a price determination is issued by the Industry Regulator pursuant to Part 3 of the *Independent Industry Regulator Act 1999*, that determination continues in effect until it is varied or substituted by the review or appeal process, and that this will operate despite any provision to the contrary in other legislation, and will be prospective;
- *Price Disclosure* – Require the Industry Regulator to publish a guideline for price disclosure to prescribed customers and require retailers to publish pricing information in accordance with the guideline in a form suitable for making comparisons between competing offers;
- *Coordination Agreements* – Empower the Industry Regulator to impose a Coordination Agreement between a retailer and a distributor if the parties are unable to reach a commercial agreement within a period of 90 days;

- *New Penalty* – Imposition of a penalty, and for Court Orders, to enforce requests for information made by the Electricity Supply Industry Planning Council (“the Planning Council”) to Network Service Providers;
 - *Exemption from Electricity Industry Ombudsman Scheme of retailers of only large customers*– Exempt retailers who only sell electricity to customers with annual consumption of greater than 750MWh from the requirement that all retail licensees take part in the Electricity Industry Ombudsman Scheme;
 - *Public Register of Current Licences* – Require the Industry Regulator to maintain a public register of current licences only, rather than all licenses, to prevent the register from becoming unusable and impractical;
 - *Application Fee for the issue of a section 80 exemption* – Impose an application fee when seeking an exemption pursuant to section 80 of the *Electricity Act 1996* to reflect the heavy administrative cost to the Industry Regulator in assessing the application and making a recommendation to the Minister; and
 - *Other* – Other amendments may be required. Where appropriate, issues will be managed through the imposition of licence conditions. However, it may be preferable to enshrine some matters in legislation. The issues to be resolved include an obligation on retailers to deliver Community Services Obligations and confidentiality arrangements covering the use of consumer information; and
- 4.2 note that the draft amendments to the *Electricity Act 1996* will be submitted to Cabinet for approval, following further consultation with relevant stakeholders.



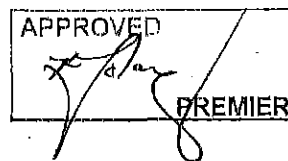
HON PATRICK CONLON MP
 MINISTER FOR GOVERNMENT ENTERPRISES
 MINISTER FOR ENERGY
 MINISTER FOR POLICE
 MINISTER FOR EMERGENCY SERVICES

18/6/02



In Cabinet

20 JUN 2002



Annexure 1

1. BACKGROUND

- 1.1. On December 20 2001, the SAIIR released for public comment a Discussion Paper, *Electricity Retail Competition: Consumer Protection Issues for Small Customers*.
- 1.2. That paper raised the key issue of whether particular measures are required to ensure that small customers can gain access to competing offers from retailers in the Full Retail Contestability ("FRC") environment, and whether special legislative or other regulatory measures will be required to protect some, or all, small customers.
- 1.3. In particular, the paper noted that the *Electricity Act*, as currently drafted, does not deal with matters such as:
 - ▲ Transitional arrangements to ensure the continuity of supply for franchise customers from the commencement of contestability on regulated terms, which may or may not include terms relating to price.
 - ▲ Whether it is to be mandatory for the incumbent retailer (or any other retailer) to have a standard offer available to any customer seeking supply after the commencement of contestability.
 - ▲ Whether it is to be mandatory for retailers to have in place default arrangements to cover the situation where a person takes supply without first entering a specific contract.
- 1.4. In the paper, the SAIIR indicated that submissions received on the above matters would inform both the SAIIR and Government decision making.
- 1.5. SAIIR received submissions on the Discussion Paper from the following parties:-
 - ▲ AGL South Australia Pty Ltd;
 - ▲ South Australian Council of Social Services Inc;
 - ▲ Business SA;
 - ▲ Office of the Technical Regulator;
 - ▲ Electricity Industry Ombudsman (SA) Ltd;
 - ▲ Origin Energy Ltd; and
 - ▲ Western Region Anti-Poverty Forum.
- 1.6. This paper outlines the outcomes of the SAIIR's consultation process to date, presents the preliminary views of the SAIIR on certain matters and suggests areas which might require legislative amendment. For ease of reference, a table setting out these matters may be found at attachment B.

2. OBLIGATION TO OFFER

Should there be an obligation to offer?

- 2.1. The following discussion addresses the question of whether customers should be assured of continuing supply during the transition to FRC and, further, whether a retailer, or retailers in general, should have an obligation to offer supply to those who seek supply within South Australia after the commencement of FRC.
- 2.2. In this context, it is important to understand that in both Victoria and New South Wales there is more than one incumbent retailer, with each of the incumbent retailers having a licensed supply area. In South Australia, there is only one incumbent retailer, AGL South Australia Pty Ltd ("AGL"), and the whole State is one supply area.

What were the responses?

- 2.3. The key responses received to this question were as follows:
- ▲ *In both Victoria and NSW, there is an obligation to offer which rests on the local retailer, not on any second tier retailer. (Origin)*
 - ▲ *In the interests of encouraging second tier competition, second tier retailers should not be subject to an obligation to offer. (Origin)*
 - ▲ *One of the most fundamental messages to the community should be that customers do not need to take any action to maintain supply unless they wish to change retailers for whatever reason. (EIO)*
 - ▲ *The incumbent retailer should be required to offer supply. (EIO)*
 - ▲ *Obligation to supply is a key requirement because electricity is an essential service. But the obligation should be to supply at a fair and reasonable price. (SACOSS)*
 - ▲ *Low-income consumers should not be penalised. (SACOSS)*
 - ▲ *Should be a requirement to offer a comprehensive "standard" contract (Business SA)*
 - ▲ *The incumbent retailer should be obliged to offer supply to current Retail Code customers ... This will ensure that all residential customers, including those deemed low value, are assured continuity of supply from the commencement of FRC. (AGL)*
- 2.4. The SAIR understands that in both New South Wales and Victoria the incumbent retailers are:
- ▲ *obliged to offer supply to any new customers entering their area and wishing to take supply; and,*
 - ▲ *obliged to continue to supply existing customers as at the start of FRC (those customers cannot be forced to enter into other supply arrangements, although they may be offered market contracts).*

- 2.5. It appears there is general agreement that there should be an obligation to supply imposed on AGL as the incumbent retailer. There is no agreement on the size of customer to whom this would apply (see discussion below).

SAIIR Preliminary Views

- 2.6. The SAIIR considers that a similar obligation to supply to that applying to incumbents interstate should be imposed on AGL in South Australia. This would be an obligation in the FRC transition period to supply all relevant small customers in South Australia and all relevant new small customers wishing to take supply on the basis of a standard offer.

No obligation on second tier retailers – advantages

- 2.7. It is not considered that this obligation should be placed upon second tier retailers.
- 2.8. The effect of this recommendation is that as second tier retailers will not have to offer to all customers, they will be:-
- ▲ faced with fewer uncertainties
 - ▲ able to match the market share they seek with the electricity contracts they can secure;¹ and,
 - ▲ able to pick the market segment on which they wish to concentrate.
- 2.9. It may be expected that there will be competition for some market segments, depending on the costs and risks of supply to the particular segment, resulting in some consumers being able to take advantage of competing offers. The SAIIR is not in a position to make any assessment of which segments of the market may be attractive/unattractive to retailers.

No obligation on second tier retailers – disadvantages

- 2.10. Ideally, all customers should have at least one alternative choice of retailer. There is the potential that placing the obligation to supply solely on AGL may result in some segments of the market not receiving market offers, or not being made more than one offer. These customers will remain reliant upon the incumbent retailer, and it will therefore be important that the standard /transitional price offered is competitive.²

Summary

- 2.11. Over time, the SAIIR expects the competitive market will produce efficient outcomes for all customers, but, in the early stages of the competitive market, regulatory controls and competitive forces together are likely to provide the best outcome.
- 2.12. It is the view of the SAIIR that changes to the *Electricity Act* should be made imposing an obligation on AGL to continue to supply under at least a standard

¹ The contestable retailers seeking to supply the "grace period" customers were not all able to secure contracts from generators to cover the contracts they wished to write with customers.

² It is acknowledged that the Government has indicated some form of price protection will be put in place. At the time of writing, the nature of this protection had not been determined.

contract to existing customers as at 1 January 2003, and an obligation to offer at least a standard contract to any customer seeking supply after 1 January 2003. It is also the view of the SAIIR that the price for this standard contract should be published in a newspaper circulating generally in the State, as well as in the Gazette.

- 2.13. Any necessary changes to the licence of AGL, or to other regulatory documents, can then be effected by the SAIIR under a clear legislative direction.

3. WHICH CUSTOMERS SHOULD BE COVERED BY OBLIGATION TO SUPPLY ARRANGEMENTS IN THE TRANSITION TO FRC AND AFTER?

What is the issue?

- 3.1. If there is to be an obligation to supply on AGL, the next issue for consideration is the customers, or classes of customer, to whom this obligation should apply. In both Victoria and New South Wales, the obligation on all incumbent retailers is to continue to supply all existing customers in the below 160MWh/annum tranche. For new customers, the obligation in Victoria only applies to those customers consuming less than 40MWh/annum.

What were the responses?

- 3.2. Generally, retailers were of the view that a limit of 30 or 40MWh/annum should be applied. In essence, the retailers considered that whatever limit is set for the application of the Retail Code in the post FRC environment should also be the limit for the application of the obligation to supply. The key responses received were as follows:
- ▲ *Should apply only to those customers consuming less than 40MWh per annum as this is the level applying in Victoria (Origin).*
 - ▲ *AGL should be obliged to offer standard contracts to current Retail Code customers consuming 30MWh per annum or less (AGL)*
- 3.3. Other submissions, however, supported an obligation to supply to all customers using up to 160 MWh/annum.
- ▲ *Should apply to all customers up to 160MWh per annum (EIO).*
 - ▲ *Obligation to sell to customers using less than 160MWh (Business SA)*
- 3.4. The submission received from AGL suggests there should only be an obligation to supply, and transitional arrangements put in place for, the less than 30MWh/annum customers, while Origin Energy suggests 40 MWh is the appropriate level, but no comment is made on the transition situation.
- 3.5. Should either of these base levels be adopted, it would leave customers using between that level and 160MWh/annum with no transitional protection. That is to say, these customers would need to enter into market contracts before 1 January 2003. In this respect, these customers would potentially be confronted with the same situation as faced by the above 160MWh/annum customers in July 2001. Further, all new 30 (or 40) to 160MWh/annum customers would need to seek a market contract.

- 3.6. As is noted above, the Victorian position is that incumbent retailers have an obligation in the transition to FRC to continue to supply all former franchise customers, and to offer standard terms and conditions to all new customers with an annual consumption of less than 40MWh per annum.

SAIIR Preliminary View

- 3.7. It is the preliminary view of the SAIIR that regulatory controls will be necessary to ensure supply and to deliver a measure of consumer protection, particularly in the early stages of the competitive market.
- 3.8. Where customers are able to obtain offers and negotiate on commercial terms, there is no need for regulatory protection. However, the SAIIR is not aware of any market information which indicates there is likely to be vigorous competition for the 30 (or 40) to 160MWh/annum customers in the months leading up to FRC in South Australia. On the contrary, experience in both Victoria and New South Wales would tend to indicate that there will not be significant levels of competition in this period.
- 3.9. It is the SAIIR's view that transitional protection for all existing customers (ie, customers up to 160 MWh/annum) is required to ensure continuity of supply. This protection would require AGL to continue to supply these customers under standard terms and conditions. Depending on the nature of the pricing powers developed by the Government, the price for customers in the transition period may also be subject to some sort of scrutiny or approval process.
- 3.10. In addition, a general obligation to supply new customers after the commencement of contestability in South Australia should also be imposed on AGL.³ It is the SAIIR's view that until competition is established, this obligation should also apply to the supply to all new customers up to 160 MWh per annum.
- 3.11. It is the view of the SAIIR that this protection should be delivered via a clear legislative framework, and that the *Electricity Act* should be amended accordingly.

4. DEFAULT RETAILER ARRANGEMENTS

What is the issue?

- 4.1. A default retailer is responsible for the sale of electricity to a customer who has not specifically made any arrangements for the supply of electricity.
- 4.2. The most common circumstance where this will occur will be when a customer moves into a site which already has the electricity connected as a result of a change of tenancy (retail, commercial or residential) or a change of ownership.
- 4.3. The other situation where there may be no specific arrangements is where there is a new connection, either in new premises, or in additions to existing premises which result in a new connection point.

³ In this context reference to a new customer also includes reference to a new connection point.

- 4.4. There may also be some cases where a customer with a fixed term contract which has no "holding over" provision at the end of the term continues to take supply. In both of these circumstances, because of the National Electricity Market obligations on market participants, it is important to clarify the basis on which the electricity being used is sold to the customer.

What were the responses?

- 4.5. The SAIR received the following submissions on this issue:
- ▲ *The retailer previously responsible for a connection point becomes the default retailer... or the incumbent retailer becomes the default retailer for all connection points... AGL does not have preference for either as long as default prices adequately reflect the increased costs and risks. (AGL SA)*
 - ▲ *It is reasonable for the retailer responsible for the connection of electricity also maintains responsibility for acting as the default retailer. (SACOSS and the EIO)*
 - ▲ *The local retailer should be the default retailer. It is not practical or desirable to make second tier retailers default. (Origin)*

SAIR preliminary position

- 4.6. In the National Electricity Market, there is a requirement for a "financially responsible market participant" to be responsible for a National Metering Identifier (NMI) at all times.⁴
- 4.7. The SAIR is of the view that regardless of whether there is a contract in place, the identity of the default retailer for a site should be clear and easily ascertainable at all times.
- 4.8. If AGL were to be the default retailer in all circumstances, second tier retailers would need to formally transfer the NMI to AGL to effect the transfer and in the interim would be responsible for consumption at the site in any event. In addition, second tier retailers would have no incentive to manage their sites to ensure there is no unaccounted consumption past the time of transfer to the default retailer, thus increasing the risk, and the prices, of the default retailer. It is the view of the SAIR that it would be undesirable for all change of tenancy/ownership sites to default back to AGL.
- 4.9. It is the SAIR's view that the retailer responsible in the National Electricity Market for the NMI prior to the change of circumstances should remain responsible for that NMI in change of tenancy/ownership default situations until such time as the new tenant/owner makes a choice of retailer and enters into a supply contract. However, unless the default retailer in a given situation is also the retailer with the obligation to supply, which is suggested to be AGL, the requirement to remain responsible for the NMI and act as the default retailer does not mean that it has any obligation to supply other than on the default terms, and does not mean that it must offer the customer a contract.

⁴ A NMI is an identifier used for an electricity supply connection point. Under FRC conditions, every customer in South Australia will have a NMI assigned to their connection point, with retailers being the "financially responsible market participant" for all of their customers' NMIs. This means that retailers will be responsible for making wholesale payments to the National Electricity Market for electricity used at each of its customers' NMIs.

- 4.10. Where there is no existing retailer, as is the case with new connections, there is a need for other arrangements. In this case, the SAIIR is of the view that AGL should have the default responsibility for all new connection points, ie, it will be the default supplier unless the customer has nominated a different retailer, accepted a standard offer with AGL or entered into a market contract with AGL.
- 4.11. There is a need to ensure default arrangements are not onerous on either consumers or the default retailer. Particularly in the transition to a fully contestable market, customers will be unfamiliar with the new requirements concerning obtaining supply of electricity by way of contract. On the default retailer's part, it will have to bear the risks of National Electricity Market wholesale exposures which are, to a large extent, not ascertainable in advance.
- 4.12. There are a number of aspects of default arrangements which could be addressed in legislation:
- ▲ the circumstances in which default arrangements should apply;
 - ▲ the terms and conditions of the default service, including price;
 - ▲ a requirement for publication of the default service and price in a newspaper circulating generally in the State, as well as in the Gazette.
- 4.13. In Victoria, specific legislative arrangements have been made for default terms and conditions, including terms and conditions as to price and publication of price.

5. WHICH CUSTOMERS SHOULD BE COVERED BY DEFAULT ARRANGEMENTS?

What is the issue?

- 5.1. The issue for consideration is, as in the case of the obligation to supply, the class of customer which will be protected under the default retailer arrangements.
- 5.2. From a default retailer's point of view, this may not be a pressing issue, as general law relating to implied contracts would probably ensure that a retailer could recover the relevant charges from any customer who takes supply without any specific contract arrangements. However, from a consumer protection perspective, it would appear inappropriate, for the start of FRC at least, not to have any prescription of the class of consumer.

Responses received

- 5.3. In general, retailers were concerned with the ability to charge an adequate price under default arrangements to cover any increases in costs and associated wholesale trading risks.
- 5.4. However, in accordance with its position that the Retail Code protections should only apply to customers consuming 30MWh/annum or less, AGL submitted that default terms and conditions should only be regulated for these customers.

SAIIR preliminary view

- 5.5. It is the preliminary view of the SAIR that, to better smooth the transition to a FRC environment, whatever level is agreed upon for the obligation to supply should also be the level for default arrangements. It is the SAIR view that in the transition to the new market there is justification for the class of customer initially being set as those consuming 160MW of electricity or less per annum.

6. PRICE INFORMATION DISCLOSURE

What is the issue?

- 6.1. The availability of price information will ensure a more transparent and open market and go some way to assisting consumers make informed choices in a fully contestable market.
- 6.2. It is an issue for the new market how much price information retailers should be required to publish.
- 6.3. A requirement could be imposed on all retailers to publish only standard and default tariffs (where they are required to offer these). There would be no obligation for publication of other tariffs. Alternatively, retailers could be required to publish all tariffs they have on offer.

What were the responses?

- 6.4. In general, consumer representative groups were of the view a more comprehensive price disclosure regime is necessary than the retailers who support a minimum price disclosure regime.
- ▲ *Minimum price disclosure regime should be considered. Inappropriate to publish non-standard prices. (AGL)*
 - ▲ *No evidence to suggest a price disclosure regime is necessary. Only published prices should be standard/default prices. Government Gazetteal should be only requirement (Origin)*
 - ▲ *Interstate provisions are inadequate. Disclosure should involve ready comparison and other details of market offers. Website provided information is the bare minimum, hard copy information preferred. (SACOSS)*
 - ▲ *Consider that some level of price publication will be necessary to enable the small end of the contestable market to choose. (EIO)*

What is the SAIR's preliminary view?

- 6.5. The SAIR is of the view that the publication of some pricing information is necessary for customers to access and benefit from the competitive electricity market. Customers have had no experience in negotiating for the supply of electricity and, in order to take advantage of the new market conditions, customers will need some information about what is available in the market in order to assess any offer they receive.
- 6.6. There are a number of aspects in which the South Australian retail electricity market differs from that interstate, the primary difference being that there is only

one incumbent retailer. It is the SAIIR's view that this particular market characteristic means special attention needs to be paid to mechanisms for ensuring price transparency, particularly in the early stages of the market.

- 6.7. If only AGL is required to offer standard terms via an obligation to supply, and there is only an obligation to publish standard prices, then there is only one standard price which will be publicly available in South Australia. If the recommendations regarding default arrangements are implemented, then any retailer who supplies to customers using less than 160MWh/annum will have to have a disclosed default price.
- 6.8. The key issue for consideration by the SAIIR and the Government is whether this level of disclosure would provide sufficient information to the market. The SAIIR has not formed a firm view on this matter. It may be a matter to be included in any legislative amendments.

7. OTHER MATTERS

- 7.1. As previously advised by the SAIIR, there are several other matters which may need to be addressed by way of legislative amendment to ensure a smooth transition to the FRC market.⁵ These are:-
- ▲ changes to the Electricity Pricing Order;
 - ▲ clarification of SAIIR pricing functions; and
 - ▲ amendment to the co-ordination agreement provisions of the *Electricity Act*.
- 7.2. In addition, as previously advised, the issue of a FRC education program needs to be considered with some urgency.
- 7.3. The SAIIR would welcome the opportunity to discuss these matters further as a part of any proposal to amend the *Electricity Act*.

⁵ Briefing note to the Minister for Energy from the SAIIR, dated 7 March 2002 "Full Retail Contestability for Electricity – Issues for Urgent Consideration".

Issue	SAIIR Preliminary View	Legislative Amendment
Obligation to offer	<ul style="list-style-type: none"> ▲ An obligation should be imposed from 1 January 2003 on AGL South Australia Pty Ltd to offer terms of supply to all existing and new customers using 160MWh or less of electricity per annum who wish to take supply on the basis of a standard contract. ▲ This obligation should not be placed on a second tier retailer. ▲ The price under the standard contract should be required to be published in a newspaper circulating generally in the State and in the Gazette. 	Amendment to the <i>Electricity Act 1996</i> and regulations.
Default Retailer – existing connections	<ul style="list-style-type: none"> ▲ A retailer must offer supply on at least default terms to customers using 160MWh or less of electricity per annum who have not made arrangements for the supply of electricity at an existing electricity supply connection point for which the retailer is the financially responsible market participant. ▲ This obligation should be imposed on all retailers. 	Amendment to the <i>Electricity Act 1996</i> and regulations.
Default Retailer – new connections	<ul style="list-style-type: none"> ▲ AGL South Australia Pty Ltd must offer supply on at least default terms to customers using 160MWh or less of electricity per annum who have not made arrangements for the supply of electricity at any new electricity supply connection point after 1 January 2003. 	Amendment to the <i>Electricity Act 1996</i> and regulations.
Price Information Disclosure	<ul style="list-style-type: none"> ▲ No firm view at this stage. 	Amendment to the <i>Electricity Act 1996</i> and regulations.

Annexure 2

BRIEF FOR PARLIAMENTARY COUNSEL
Amendments to Electricity Act 1996

The following amendments are proposed for the *Electricity Act 1996* to implement key aspects of Government policy to provide a range of consumer protection arrangements for small electricity consumers, consuming less than 160 MWh per annum of electricity from 1 January 2003, in preparation for the introduction of Full Retail Competition ("FRC").

The amendments, to the extent possible, may need to contain some flexibility for the proposed establishment of the Essential Services Commission (ESC) by the Government. It is noted that a separate Cabinet Submission and Bill for the establishment of the ESC is to be considered by Cabinet (T&F02/0043CS). This may also contain some consequential amendments to related legislation, including the *Electricity Act 1996*.

Please find below drafting instructions, consistent with the recommendations at 4.1 in the attached Cabinet Submission (MEN 02/0001):

1. Obligation to Offer

Require the incumbent electricity retailer, AGL SA, to offer to sell electricity to all existing and new South Australian customers prescribed for this purpose by regulation. The obligation is to apply to all existing and new sub-160 MWh per annum customers for a transitional period of two and a half years from 1 January 2003 (that is to say, to 1 July 2005).

It is proposed the *Electricity Act 1996* be amended to:

- Place an obligation upon retailers to "*actually supply power*" to all consumers within the market segment in which they choose to compete by amending *Electricity Act 1996* and inserting a two-limbed obligation to offer comprising of:
 1. An obligation to continue to offer retail electricity contracts to existing South Australian domestic and small business consumers after the commencement of FRC on 1 January 2003; and
 2. An obligation to make an offer to sell electricity, if requested, to all new South Australian domestic and small business consumers after the commencement of FRC on 1 January 2003.
- To allow the Governor to impose by regulation an obligation on prescribed retailers to offer retail electricity contracts to a prescribed class of consumers.
- Require that the retailer bearing the obligation to offer publish the obligation to offer contract under section 36 of the *Electricity Act*, to address information imbalances in the Full Retail Competition environment.

2. Default Offer

Require all retailers operating in South Australia to provide a default contract for prescribed customers. This will be required once the retailers begin supply to sub-160 MWh per annum customers and will be an on-going obligation to those customers.

It is proposed the Electricity Act be amended to:

- Provide that where a domestic or small business consumer takes supply under default arrangements, the retailer which has financial responsibility in the wholesale market for the connection point must offer a default contract to that consumer. Such a default contract must be subject to regulatory oversight for the terms, conditions and prices it contains.
- Require that once a retailer becomes aware that it is in a default contract situation with a consumer, it must advise that consumer of the terms and conditions of supply under that contract, the availability of the "obligation to offer" contract and the retailer which bears that obligation, and, if the retailer wishes, make an offer to enter into a non-default contract with the consumer. The retailer must provide this information to the customer in accordance with the parameters established by the Industry Regulator. Such parameters may be established by the Industry Regulator through the imposition of licence conditions.
- Require all retailers who have the potential to act as a default retailer, that is to say, all retailers who supply at least one consumer in South Australia, to publish the terms and conditions of their default contracts under section 36 of that Act.

3. Prices Justification and Regulation

Require retailers to publish a justification for *Obligation to Offer* and *Default Offer* tariffs.

It is proposed the Electricity Act be amended to:

- Require only the retailer bearing the obligation to offer to publish and justify the price it will charge in that offer.
- Establish a process which will consist of the following steps:-
 - Publication of the offer made under the obligation to offer and a justification for the price it contains;
 - Assessment of that justification; and
 - Price setting if required.

It is proposed to examine alternatives for a price justification scheme, including the issues of commercial confidentiality as part of the drafting process and the possible use of a 'comparability index' as has been used interstate.

It is proposed step two of the above process be pursued under section 30 of the *Independent Industry Regulator Act 1999*, whereby the Minister may refer matters to the Industry Regulator for inquiry, and specify the terms of reference for that review. Under these provisions the retailer will be required to provide all relevant information to the Industry Regulator, including information which may have confidentiality limitations, in order for the Industry Regulator to undertake and report on the review.

In the event that the assessment under section 30 of the Independent Industry Regulator Act recommends that a price determination be issued (step three of the above process), it is proposed that the Electricity Act require that where the Industry Regulator resolves that the price justification is insufficient, it must issue a price determination, pursuant to the powers of Part 3 of the Independent Industry Regulator Act. This brings with it the various appeal avenues available under section 27 of that Act.

- As it is proposed that AGL should initially be the only SA electricity retailer to have an obligation to offer to sell electricity to all existing and new domestic and small business consumers for the transition period, the prices justification regime would only apply to AGL in regard to that obligation.
- Require the retailer to publish its price and the justification (and provide it to the SAIIR) by 1 October 2002 (being three months before the proposed commencement of FRC) to provide customers with adequate time in which to consider the offer and provide the SAIIR with adequate time to make an assessment.

4. Reviews and Appeal Process

Require that where a price determination is issued by the SAIIR pursuant to Part 3 of the Independent Industry Regulator Act, it continues in effect until it is varied or substituted by the review or appeal process, and that this will operate despite any provision to the contrary in other legislation.

It is proposed the Electricity Act be amended to:

- Ensure that a price determination regarding the incumbent retailer's obligation to offer does operate whilst the matter is progressing through the appeal process.
- Ensure that any variation or substitutions resulting from the appeals process is prospective.

5. Price Disclosure

Require the Industry Regulator to publish a guideline for price disclosure to prescribed customers and to require retailers to publish pricing information consistent with the guideline and in a form suitable for making comparisons between competing offers.

It is proposed the *Electricity Act 1996* be amended to:

- Empower the SAIR to develop and publish detailed price disclosure guidelines for all retailers supplying to South Australian domestic and small business consumers. This will ensure, as far as practicable, that consumers will be able to make meaningful comparisons of competing retail offers.
- Empower the SAIR to invoke such a regime if practicable.

6. Coordination Agreements

To empower the Industry Regulator to impose a Coordination Agreement between a retailer and a distributor if the parties are unable to reach a commercial agreement within a period of 90 days.

It is proposed the *Electricity Act 1996* be amended to:

- Empower the Regulator to impose a Coordination Agreement between a retailer and distributor if the parties are unable to reach a commercial agreement within a period of 90 days.
- Provide for the future variation or substitution of the Coordination Agreement.

7. New Penalty

Impose a penalty of up to \$20,000, and for Court Orders, to enforce requests for information made by the Electricity Supply Industry Planning Council to Network Service Providers.

It is proposed the *Electricity Act 1996* be amended to:

- Provide for an offence of failing to provide documents or information to the Planning Council in a form, and by the date, required by the National Electricity Code or pursuant to a request by the Planning Council made in reliance on a licence condition.
- The penalty could be of up to \$20,000 per offence (similar to Code class A penalty) with \$2000 per day for each day that the offence continues. The court would be given the power to order compliance with the requirement to provide information, including the power to make ex parte interim orders.

8. Exemption from Electricity Industry Ombudsman Scheme of retailers of only large customers

Exempt retailers who only sell electricity to customers with annual consumption of greater than 750MWh from the requirement that all retail licensees take part in the Electricity Industry Ombudsman Scheme.

It is proposed the *Electricity Act 1996* be amended to:

- Specify that those retailers who only supply to customers consuming more than 750 MWh per annum be exempt from the requirement to participate in the Ombudsman Scheme.

9. Maintaining of Public Register of all licences issued under the Electricity Act

Require the Industry Regulator to maintain a public register of current licences only, rather than all licenses, to prevent the register from becoming unusable and impractical.

10. Application fee for the issue of a section 80 exemption

Impose an application fee when seeking an exemption pursuant to section 80 of the Electricity Act to reflect the administrative cost to the Industry Regulator in assessing the application and making a recommendation to the Minister.

11. Other Amendments

In the event other amendments are required, which are best enshrined in legislation rather than through the imposition of licence conditions, these are to be included.

These may include:

- Issues regarding the obligation on retailers to deliver Customer Services Obligations;
- Amendments to the EPO to permit cost recovery by ETSA Utilities; and
- Confidentiality arrangements covering the use of customer information.

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