

Utilities (Electricity Restrictions) Regulation 2004 SL2004-61

Regulatory Impact Statement

1. Introduction

The Utilities (Electricity Restrictions) Regulation 2004 is made under the Utilities Act 2000 (the Act). Section 234 of the Act provides that regulations may be made in relation to the safe or efficient provision of utility services. Regulations may include provision prohibiting or regulating activities to ensure the safe or efficient operation of a utility network or network facility.

The main purpose of the regulation is to ensure that electricity restrictions can be implemented efficiently when there is a potential imbalance between the demand and supply of the system. Such an imbalance, if not addressed properly, may cause damage to the electricity distribution system and control equipment.

Identification of the Problem

Recent reports from National Electricity Market Management Company (NEMMCO) and TransGrid (NSW electricity transmission network service provider) have suggested that there would be a significant increase in demand for electricity in summer 2004/05 due to the unseasonably hot weather and the increasing installation and use of air conditioners. This will lead to shortfalls of electricity in the NSW and the ACT region, and restrictions on supply are likely to be required at short notice to minimise the chances of blackouts in the region.

While other jurisdictions have well-developed mandatory restriction implementation mechanisms, there is a major gap in the current ACT legislative regime in this respect.

The current regime is set out under the *Emergencies Act 2004* and the *Utilities Act 2000*. These Acts do not distinguish an ongoing shortage of utility supplies from other forms of utility emergencies that require an immediate response.

The *Emergencies Act 2004* is designed to handle emergencies and natural disasters that require inter-agency and multi-agency organisational actions and significant recovery arrangements. A declaration of a State of Emergency may be made under the Act and the management of the emergency will be transferred to the Emergency Controller who has the power to implement restrictions. The use of emergency powers for the implementation of mandatory restrictions is highly inappropriate in non-emergency situations.

Under the *Utilities Act 2000*, utilities, including electricity distributor, are required to have emergency management plans to handle supply emergencies. Such plans are designed to facilitate quick and efficient responses by utilities to emergencies that require immediate action to protect the integrity of the supply and distribution systems and to minimise network damage. These plans do not cover non-emergency situations such as prolonged shortages of supply due to unseasonal weather.

Therefore a new legislative framework is needed for the implementation of electricity restrictions in the event of a shortage of supply.

2. Objectives of Government Intervention

Implementation of a flexible utility restriction scheme for electricity requires Government legislation and regulations.

While it is Government policy to encourage a free market, in times of crisis there is sometimes a need for Government intervention to cover the possibility that the market may fail. Utility consumers have an expectation that Government will have mechanisms in place to prevent market failure and to protect their interests.

In the case of the electricity market, the proposed legislation is necessary to establish the framework for a flexible mandatory restriction scheme, and create the mechanism to trigger NEMMCO's Mandatory Restrictions Process, the purpose of which is to preserve price signals when the demand is artificially distorted by restrictions. These signals are important for investment decisions for new generation and transmission infrastructure, which is a more reliable and longer-term solution for supply shortages in the region. It also serves to protect consumers from rapid fluctuations in pricing and preserves equity amongst consumers

The proposed regulatory regime will result in:

- a head of power to enable restrictions to be imposed on consumption;
- a co-ordinated response between the Government and electricity distributor to address electricity shortfalls,
- the minimisation of inconvenience to consumers;
- the prevention of damage to commercial plant and products by allowing a calculated, monitored, pre-planned and flexible response to supply continuity in non-emergency situations; and
- the fulfilment of the ACT's obligations under inter-jurisdictional crisis management protocols.

3. Options

Non-regulatory Options

Do Nothing

Eliminated as an option.

Relying solely on utility responses may result in market failure, but Government would be expected to help rectify the situation afterwards.

Voluntary restrictions on consumption

Voluntary rationing of services is possible through appeals to consumers. However, such an approach is an uncertain and unpredictable solution and only possible during short-term restraint on usage. It is not suitable where large reductions must occur within a short period of time.

It is a good measure for introducing consumers to mandatory restrictions, if time permits and depending on the expected duration of the shortage, but lacks enforcement capabilities. Due to the high-risk nature of non-compliance, this requires supplementation with more active forms of intervention.

Regulatory Option

Explicit government legislation

This is the preferred option.

Due to the inappropriate nature of current legislative regime to deal with prolonged utility shortages, new legislation is justified to protect consumers from load shedding and ensure the secure and reliable supply of essential utility services, and to better align ACT restriction mechanisms with other jurisdictions.

The proposed regulation will provide

- the flexibility necessary for utility restriction schemes;
- appropriate mechanisms to prevent market failure;
- certainty for utilities and consumers; and
- penalties for non-compliance - monitoring by government representatives to detect non-compliance is only practicable in the case of water restrictions, however an appropriate penalty regime will be devised to encourage compliance across the board.

4. Utilities (Shortage of Essential Utility Service) Bill 2005

It is proposed that a Utilities (Shortage of Essential Utility Service) Bill 2005 be drafted for introduction in May 2005. By incorporating the existing water restrictions regulation and this proposed electricity restrictions regulation, the Bill will establish a regime that governs restrictions for water, electricity and gas. The escalation from regulations to an Act will improve the legislative robustness of the restrictions regime and is recommended by the Parliamentary Counsel's Office and the Policy and Regulatory Division of Department of Justice and Community Safety. However, given the volatility and sensitivity of the electricity supply situations forecasted by NEMMCO and TransGrid for the summer 2004/05, it is prudent to introduce the proposed electricity restrictions regulation as an interim measure. This ensures that mandatory restrictions can be implemented efficiently should they be required prior to the passage of the Bill.

5. Impacts

Costs and benefits of the introduction of the electricity restrictions regulation are summarised in the following table.

Costs and Benefits

| Sector | Costs | Benefits |
|-----------------------|---|--|
| Business and industry | <ul style="list-style-type: none"> • Inconvenience during rationing. • Obtaining advice on new regulations. | <ul style="list-style-type: none"> • Avoidance or minimisation of the chance of unscheduled supply interruptions and possible associated damages to |

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|-------------|--|--|
| | <ul style="list-style-type: none"> • Some businesses may purchase alternative fuel sources. • Potential loss of business. | <ul style="list-style-type: none"> • plant and products. • Certainty resulting from specific regulation which allows planning for contingencies. |
| Government | <ul style="list-style-type: none"> • Public education costs (media/printing advertising). • Testing of the regulatory regime. | <ul style="list-style-type: none"> • Preparedness for a non-emergency rationing event. • Avoidance of the social and economic costs of a possible market failure. • Maintenance of long-term viability of existing energy resources. • Raised profile of the importance of energy efficiency will help to reduce energy demand. • Compliance with inter-jurisdictional incident management protocols. |
| Individuals | <ul style="list-style-type: none"> • Some individuals may purchase alternative fuel sources. • Inconvenience during rationing. | <ul style="list-style-type: none"> • Equity. • Community safety. • Greater self-reliance. • Better understanding of the importance of energy efficient appliances. • Services to priority consumers, e.g those on life support, can be maintained. |
| Utilities | <ul style="list-style-type: none"> • Public education costs. • Administration of restriction schemes. • Loss of sales. | <ul style="list-style-type: none"> • Avoidance or minimisation of the chance of unscheduled supply interruptions and costs associated with supply resumption. • Certainty resulting from specific regulation. • Improved customer service perceptions. |
| Environment | <ul style="list-style-type: none"> • During rationing, especially in winter, people may turn to other sources of energy for heating, such as wood burning heaters, to the detriment of the environment. | <ul style="list-style-type: none"> • Publicity campaigns should result in greater public awareness of the importance of conservation of natural resources and energy efficiency and contribute to improved greenhouse gas outcomes. |