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23 February 2006

Dr J Tamblyn
Chair
Australian Energy Market Commission
PO Box H166
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Dear Dr Tamblyn

RE: Reform of the Dispute Resolution Process for the Regulatory Test

Thank you for the opportunity to comment on the Ministerial Council on Energy's (MCE) Rule change application to amend the process for regulatory test dispute resolution.

The AER supports the intent of the draft Rule change to streamline the dispute resolution process and eliminate unnecessary duplication of functions through the removal of the Dispute Resolution Panel from the regulatory test dispute resolution process. Whilst the AER generally supports the draft Rule, we wish to provide comments on the proposed timeframes for reliability disputes.

The MCE proposal seeks to address dispute resolution delays by applying tighter timeframes on decision making for a reliability augmentation dispute. The justification for this shorter timeframe is that reliability disputes are generally less complex and far more important to resolve quickly.

The AER appreciates that disputes concerning reliability-driven investment are important to resolve quickly in order to maintain supply reliability. However, the AER notes that since NEM commencement there have been considerable difficulties in defining a reliability augmentation.

Resolving reliability augmentation disputes within the proposed timeframe may raise issues in light of the complexities surrounding the definition of a reliability augmentation and the variation in jurisdictional reliability requirements. The AER considers that in order to conduct a comprehensive review of matters disputed within the timeframe specified, certain matters will need to be clarified, in particular the definition of a reliability augmentation.

The current Rules define a reliability augmentation as 'a transmission network augmentation that is necessitated solely by inability to meet the minimum network

performance requirements set out in schedule 5.1.’ This definition has received criticism and remains unclear as to the meaning of the word ‘solely’.

Further, different reliability and planning requirements apply across jurisdictions, with some requirements being more prescriptive than others, and open to interpretation. Therefore, judging whether or not a project is a reliability augmentation will vary between jurisdictions.

The difficulties associated with defining a reliability augmentation were illustrated during the Inter-Regional Planning Committee’s (IRPC) development of reliability augmentation criteria. In 2002 the IRPC was given responsibility for developing criteria to determine whether an investment is a reliability augmentation.¹ The IRPC released an Issues Paper for its reliability augmentation criteria in April 2003. In response, a number of parties commented that the proposed criteria provided limited clarification above what was outlined in the Rules and various jurisdictional codes. The issue of defining a reliability augmentation has not been progressed since this time.

Consequently, there are currently no guiding criteria to define a reliability augmentation and there remains some uncertainty surrounding how precisely to define a reliability augmentation.

Moreover, the definition of a reliability augmentation is now of particular importance given the recent draft Rules for Chapter 6 which seek to strengthen the link between the regulatory test and the revenue cap decision making process. The draft Rules include a new provision which states that the AER must accept the forecast capital expenditure as provided in a TNSP’s Revenue Proposal if that expenditure is for a reliability augmentation, subject to a reasonable estimate test.

The AER therefore considers that further progress to clarify the definition of a reliability augmentation is required and would not only greatly assist in facilitating the timely resolution of reliability augmentation disputes, but also assist in revenue regulation. The AER notes that it seems unfeasible to attempt to shorten decision making timeframes when the definition of a reliability augmentation has not been settled.

¹ Pursuant to clause 5.6.3 (l) of the National Electricity Rules

We look forward to discussing this response with you and participating in the subsequent stages of the review.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Edwell', written in a cursive style.

Steve Edwell
Chairman