POWERLINK QUEENSLAND

RESPONSE TO: AEMC PROPOSED RULE CHANGES

Reform of the Regulatory Test Principles
Reform of the Dispute Resolution Process for the Regulatory Test
Last Resort Planning Power

24 February 2006

Powerlink appreciates the opportunity to comment on these proposals made by the Ministerial Council on Energy (MCE). The following sections provide Powerlink's views and comments relating to the proposed changes to the National Electricity Rules (the Rules) that the AEMC has sought comment on by 24 February 2006.

As a general proposition, Powerlink believes that, because these Rule changes have been proposed by the MCE, the designated policy setting body, the Australian Energy Market Commission (AEMC) should not undertake any changes that seek to alter the policy settings or the policy intent.

The changes suggested herein by Powerlink are aimed at either adding clarity to the MCE's policy intent or identifying items where the wording should be refined to avoid contradicting the policy intent.

Reform of the Regulatory Test Principles

Whilst Powerlink is aware of the issues raised by some in relation to what should constitute economic benefits under the Regulatory test, Powerlink believes that is a policy matter and should not be addressed in this exercise.

Powerlink is generally supportive of the work carried out on clarifying the principles of the regulatory test as described in this proposed rule. We have, however, identified one item (clause 5.6.5A) that appears inconsistent with the AEMC's proposed rule as part of the review of chapter 6. Specifically, sub-clause 5.6.5A(7) states that the regulatory test must:

> *"be consistent with the basis of asset valuation determined by the AER for the purposes of clause 6.2.3."*

Powerlink believes that this reference is now superfluous and could be deleted from the draft rule.

Reform of the Dispute Resolution Process for the Regulatory Test

Powerlink strongly supports the proposals for clarifying the dispute resolution process of the regulatory test. In particular, we support the principles of:

- a streamlined single-stage process; and
- the ability for a proponent to seek confirmation from the AER that a proposed project satisfies the regulatory test.

It is also important, in the context of the timely delivery of necessary transmission augmentations to meet statutory obligations, that no changes are proposed to some key elements of the existing Rules, such as:

- the application of strict timeframes, particularly the 30 business day timeframe for the resolution of disputes relating to reliability augmentations;
- the exclusion of disputes of a frivolous or vexatious manner; and
- the grounds for dispute not including whether a reliability augmentation satisfies the regulatory test.

However, we have identified that clause 5.6.6(qb), as written, has the potential to result in unacceptable delays to the AER making its determination. This clause allows a party to the dispute to delay payment of any costs invoiced to them, where this may be beneficial to that party's position. This could make the difference between a necessary augmentation being on time or being too late to meet a summer peak. Such a delay would appear contrary to the MCE's policy intent, viz a streamlined process to enable timely delivery of necessary augmentations.

An alternative approach, which would be consistent with the policy intent, would require that the AER publish the final report within the specified timeframes irrespective of receipt of costs, and that the Rules impose a separate binding timeframe on the relevant parties for the payment of costs.

Powerlink also suggests an additional sub-clause under 8.2.1(h) that specifically excludes a dispute between parties under clause 5.6.6 or a determination by the AER under clause 5.6.6. Furthermore, given that clause 8.2 no longer applies to regulatory test disputes, we believe that it would be beneficial for the Rules to require the AER to publish guidelines for the process by which disputes made under clause 5.6.6 will be managed.

In addition to the points raised above, Powerlink also has a number of drafting issues with this proposed rule change, and sub-clause 5.6.6(h) in particular. We support what we understand to be the policy intent of clauses 5.6.6(h) and (l), but consider the clarity of these clauses can be improved to deliver that intent.

5.6.6(h)

Powerlink believes that the proposed rule as drafted is confusing and fails to clarify the standing and grounds for dispute, as intended and stated in the MCE *Statement on NEM Electricity Transmission*. The clause is ambiguous in that it is unclear whether it is limiting what can be disputed or who may dispute a final report. Consequently, there is a need to clarify the standing to raise a dispute and the grounds for such a dispute.

Powerlink also believes that sub-clause 5.6.6(h)(3) is misleading. It is our understanding that this sub-clause is included to provide the desired single-stage dispute process, and is relevant only where the AER has determined that a proposed augmentation is not a reliability augmentation, i.e. the dispute may successfully have challenged that a proposed augmentation is not a reliability augmentation, but it does not then necessarily follow that the augmentation does not satisfy the regulatory test. Hence there is a need for a single stage dispute, with multiple grounds, whereby a party may challenge firstly that the augmentation is reliability driven and secondly the basis by which the applicant has assessed that the proposed augmentation satisfies the regulatory test.

Sub-clause 5.6.6(h)(2) could be simplified by removing the reference to criteria specified by the Inter-regional Planning Committee. This could be included in Chapter 10 of the Rules in the definition of "material inter-network impact".

Similarly, sub-clause 5.6.6(h)(4) could be simplified by removing the reference to criteria specified by the Inter-regional Planning Committee. In this case, Powerlink supports the proposal made by the Inter-regional Planning Committee that sub-clause 5.6.3(l) be deleted and the definition of reliability augmentation be amended to remove the word "solely".

The term "economic side-effects that are periphery to the regulatory test", in the last paragraph of 5.6.6(h), which seeks to restrict the grounds for dispute is unclear and inconsistent with terminology elsewhere in the Rules and related guidelines. Powerlink proposes that these words be replaced with wording that refers back to the regulatory test, such as "relate to any cost or benefit that is excluded from consideration by the terms of the Regulatory Test".

5.6.6(l)

Powerlink believes that sub-clause 5.6.6(l) should be redrafted to clarify the standing and grounds for dispute of a non-reliability augmentation. In essence it would improve the clarity of the rules if sub-clause 5.6.6(h) related exclusively to reliability driven augmentations, whilst this sub-clause 5.6.6(l) related exclusively to non-reliability driven augmentations.

5.6.6(ld)

There are typographical errors in sub-clause 5.6.6(ld), and we believe the sub-clause should read "…any matter raised by a party in the dispute ~~that~~ resolution process…"

Last Resort Planning Power

Powerlink supports the policy intent of a last resort planning power, as an adjunct to the ANTS, to form the national planning process envisaged by the MCE.

However, we have identified a number of practical issues relating to the proposed rule as published:

- the pre-requisites for exercising the last resort planning power;
- the scope of projects that this power potentially extends to;
- the parties who may be directed to carry out the regulatory test; and
- the potential for unreasonable costs to be forced upon a TNSP.

Powerlink believes that it is impractical to require the AEMC to identify actual projects and determine whether they would alleviate the forecast constraints. This is a very resource intensive exercise in inter-regional planning which the AEMC should not be expected to undertake before exercising the last resort planning power.

Powerlink proposes that the AEMC should be able to exercise the power based on constraints identified in the ANTS, while leaving it to the directed party to identify the options to be assessed.

There are no safeguards in the proposed rule to avoid more widespread use of the last resort planning power than intended by the MCE. It is stated several times in the

preamble that this power is to be applied to national transmission flow paths and is expected to be exercised "when normal market arrangements fail to promote efficient and timely investment to address material network congestion". There is no clause in the proposed rule to this effect.

Powerlink also believes that the Rules should require that the directed party is the most likely prospective proponent of any notional augmentation, i.e. the body (or bodies) whose network most significantly contributes to the constraint in question. Such Network Service Providers have experience of carrying out regulatory tests and would have the relevant expertise and local technical data to undertake the regulatory test assessments effectively and efficiently. It would appear inappropriate to engage a third party Registered Participant to undertake such assessments and in so doing incur the unrecoverable costs of complying with the direction.

Also, given that there is no mechanism to recover the costs of complying with a direction, no specified minimum timeframes for the regulatory test to be undertaken and limited safeguards to exercise this power only as a last resort, Powerlink believes that the Rules should require the AEMC to act reasonably when exercising this power.

In addition to the issues identified above, Powerlink believes that the use of the term "project" should be replaced, as it is misleading regarding the purpose of the regulatory test. The regulatory test is not applied to a primary project, but to a range of options with a recommended new asset being the outcome of the test. A single project is only arrived at after the regulatory test is completed, when an application to establish a new large network asset is made, i.e. the outcome of the regulatory test must not be pre-empted.

Finally, Powerlink is concerned that the proposed rule suggests that if a directed party fails to comply with all aspects of a direction, then they may be required to pay for a third party to carry out the regulatory test. This raises the concern that if the regulatory test undertaken by a TNSP cannot justify a project to alleviate a constraint then pressure from market participants could lead to the AEMC directing an additional regulatory test at the expense of the TNSP. This is unreasonable, and should not be provided for in the Rules.