



Victorian Energy Networks Corporation

Office of the Chief Executive Officer
Victorian Energy Networks Corporation
Level 2 Yarra Tower
World Trade Centre
Siddeley Street
Melbourne Vic 3005
Telephone (03) 8664 6500
Facsimile (03) 8664 6510

30 May 2008

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Dear John

**RESPONSE TO DRAFT REPORT ON AEMC REVIEW OF
NATIONAL TRANSMISSION PLANNING ARRANGEMENTS**

VENCorp welcomes the opportunity to respond to the AEMC's Draft Report on the National Transmission Planning Arrangements.

VENCorp is supportive of many of the AEMC's proposals and believes that the Draft Report represents a significant step forward for the National Electricity Market. In particular VENCorp supports:

- Recognition that the National Transmission Planning is one of the AEMO's many functions;
- The flexibility for the AEMO to decide what and how it should fulfil its obligations; and
- Greater disclosure on augmentations through the Regulatory Investment Test.

However, VENCorp believes that further work is required on the following elements:

- The legal architecture of the proposals (i.e. what goes in the National Electricity Law and National Electricity Rules); and
- The governance arrangements of the National Transmission Planning Advisory Committee.

Should you have any questions on anything in the submission please do not hesitate to contact me on ☎(03) 8664 6545 or Louis Tirpcou on ☎(03) 8664 6615.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. Zema', is written over a light blue horizontal line.

Matt Zema
Chief Executive Officer

Introduction

On 2 May 2008, the AEMC published its Draft Report to the MCE on its review of the National Transmission Planning Arrangements. The Draft Report sets out the AEMC's draft consideration of the matters raised by interested parties in response to its Scoping Paper of 3 August 2007, its Issues Paper of 9 November 2007 and its Discussion Paper of 28 March 2008.

In response to the Issues Paper, VENCORP put forward a number of principles and objectives which it believed the transmission planning arrangements needed to address. These were:

- For economic efficiency, transmission investment must be focused on the needs of the market, the customers and potential investors in generation capacity and major loads;
- In designing the National Transmission Planning Arrangements, the interests of TNSPs themselves must be regarded as secondary to those of market participants and potential investors;
- The Ministerial Council on Energy (MCE) and Coalition of Australian Governments (COAG) have decided the change must be one of substance, not one of appearance, nor minor fine tuning;
- The National Transmission Planning Function must be independent of market participants, investors, and transmission asset owners, who naturally have a primary interest in their own territory and asset inventory and can not be reasonably expected to place the national interest ahead of their own;
- The transmission network must behave as a seamless single network and individual assets or classes of assets cannot be identified with national benefit as distinct from local benefit;
- The National Transmission Planning Function should be based on agreed guiding principles, rather than prescriptive distinctions between physical assets or locations; and
- Network planning involves architecture and topology as well as project by project justification and these broader, longer term aspects must be incorporated into the national transmission planning design.¹

VENCORP believes that the AEMC's Draft Report meets many of these principles and objectives and commends the AEMC's work to date. In particular VENCORP is supportive of many of the proposals put forward by the AEMC, including:

- Recognition that the AEMO is the National Transmission Planner;
- Recognition of the contribution that the AEMO can make in responding to individual TNSP regulatory test assessments and AER revenue determinations;
- Allowing flexibility in the consideration of which elements are subject to the Plan;
- Providing scope for congruence between the National Transmission Network Development Plan (NTNDP) and APR's;
- The move to combine the two limbs of the regulatory test; and
- The increases in consultation on all regulatory test assessments, not just market benefit augmentations through the Regulatory Investment Test for Transmission.

¹ As per VENCORP's response to AEMC Issues Paper, 21 December 2007

These proposals represent a significant step forward from the AEMC's earlier considerations. In VENCORP's view, they will assist the AEMO to:

'plan and promote the efficient, long term and coordinated development of the national transmission grid'.

However, VENCORP believes that further work is required on a number of elements including:

- The legal architecture of the proposals, that is, the separation between what goes into the National Electricity Law (NEL) and what goes into the National Electricity Rules (NER); and
- The governance arrangements of the National Transmission Planning Advisory Committee (NTPAC).

These, and other matters, are explored further in this submission.

Legal Architecture

The AEMC has sought comments on the AEMC's proposed NEL and NER drafting. VENCORP has the following two points to raise, in relation to the AEMC's draft NEL and NER provisions:

- In drafting the NER provisions, the AEMC must accommodate as much flexibility as possible to enable the National Transmission Planning Function to evolve over time in response to the needs of the market; and
- The AEMC's proposed split between the NEL and the NER is inconsistent with the NEM architecture and requires further consideration.

NER drafting

The AEMC needs to appreciate the implications of the National Transmission Planning Function being one of the many new AEMO functions which is not currently being undertaken by any of the existing gas or electricity market operators. Even assuming that there is consensus on the intent of the AEMO's National Transmission Planning Functions experience of past reviews has revealed that the NER drafting may not achieve the desired objectives.

Also, the National Transmission Planning Function will evolve over time in response to the needs of the market. For example, the impact of the Emissions Trading Scheme and renewable energy targets may drive changes in the character or how planning is conducted.

As a result, VENCORP believes that the NER drafting should be flexible enough to accommodate the natural evolution of this role.

Split between the NEL and NER

VENCorp believes that the AEMC's proposed split between the NEL and the NER is inconsistent with the NEM architecture and requires further consideration. VENCorp refers the AEMC to a report by the Expert Panel prepared for the MCE on Energy Access Pricing.² In that report, the Expert Panel succinctly summarised the legal architecture envisaged for the NEM and gas markets.

The table prepared by the Expert Panel, which sets out this framework has been replicated below.

Table 1 Hierarchy of Instruments and Principles Governing their Scope

Instrument	Authority	Scope
Law	Made by the parliaments of participating jurisdictions.	Matters for which governments are politically accountable and matters that are critical to investment/regulatory certainty. These include: delegation/conferral of powers on regulatory, executive and judicial bodies to make and review decisions high level principles that constrain the scope of rule making define and regulatory discretion.
Regulations	Made by the executive governments of participating jurisdictions.	Whole of government policy matters that are subject to regular change and machinery and transitional matters.
Rules	Made initially by the executive governments of participating jurisdictions. Rule changes delegated to the AEMC subject to: statutory definition of scope and statutory guidance procedural requirements.	Implementation of regulatory framework and principles specified in the Law, primarily with respect to: matters that have industry wide application or effects matters that will change relatively infrequently and be subject to limited exceptions.
Guidelines etc	Made by the AER or special purpose committees with delegated authority of the AEMC under the Rules.	Detailed technical matters that rely substantially on operational information/knowledge and matters limited to industry segments or likely to be subject to exceptions.
Regulatory decisions	Made by the AER within the scope of, and subject to guidance specified in: the Law the Rules.	Matters dependent on individual market participant circumstances.

² Expert Panel on Energy Access Pricing: Report to the Ministerial Council on Energy, p 23.

Consistent with the table above VENCORP believes that the NEL should only allow for:

- Significant issues of policy including the introduction of new policy or a fundamental change to existing policy;
- Circumstances in which there will be a significant impact on individual rights and liberties, for example, the making of search warrants and the requirement to give information;
- Offence and penalty provisions, for example, the issuing of infringement notices; and
- The imposition of fees and charges.

The NEL, on the other hand, should contain the detail which would not be considered suitable for parliamentary consideration. Much of what the AEMC has proposed as drafting for the NEL falls into the later category.

An example of where these principles have been applied well is evident in the Gas Bulletin Board proposals.

The NGL requires parties to give the Gas Bulletin Board Operator information in relation to natural gas services, if the person is required to do so by the Rules (Sub-section 223)

The information must be given to the Gas Bulletin Board Operator in accordance with the Rules. The NGR imposes an obligation on pipeline operators to provide, in accordance with the procedures, linepack/capacity adequacy indicator for each of its Bulletin Board pipelines for set days (Rule 172)

The NGR references the procedures which set out the information on, when the information is required and how that information is to be expressed by employing a relevant coloured flag: green (business as usual), amber (load shedding of one or more interruptible customers is likely) or red flag (involuntary load shedding of 'firm' load is likely or happening) (Procedures 5.6).

Consistent with the Expert Panel's principles and the model adopted for the Gas Bulletin Board arrangements, VENCORP believes that only minor changes to the NEL are required to give effect to the AEMO's National Transmission Planning Function. This could be achieved by incorporating the AEMC's proposed NTP objective into the AEMO's list of functions which will be set out in the NEL.

Taking the current NEL as a template may serve as a useful base. Part 5 of the NEL sets out, in the main, the functions of NEMMCO which are:

- (a) To operate and administer, in accordance with this Law and the Rules, the wholesale exchange; and
- (b) To promote the development and improve the effectiveness of the operation and administration of the wholesale exchange; and
- (c) To register persons as Registered participants in accordance with this Law and the Rules or otherwise in accordance with the Rules; and
- (d) To exempt certain persons from being registered as Registered participants; and
- (e) To maintain and improve power system security; and
- (f) To undertake the coordination of the planning of augmentations to the national electricity system; and
- (g) Any other functions conferred on it under this Law or the Rules.

From 1 July 2009, all of these functions will be transferred to the AEMO. Therefore, it would be sufficient for Part 5, clause (f) of NEL to be amended to incorporate, with an explicit insertion of the term 'plan', the AEMC's proposed NTP objective to read as follows:

- (f) To plan and promote the efficient, long term and coordinated development of the national transmission grid.

Consistent with this design the AEMC's proposed Division 1 drafting, which sets out the detail on what the AEMO is to publish to fulfil its obligations of 'promote the efficient, long term and coordinated development of the national transmission grid', should be moved to the NER.

Similarly, VENCORP believes that the AEMC's proposed Division 2 drafting, which sets out the governance of the National Transmission Planner Advisory Committee (NTPAC), its roles, functions and objectives should be set out in the NER not the NEL. There are a number of examples of advisory committees which are set out in the NER such as Performance Standards Committee, as well as committees which do not exist in either NER such as NEMMCO's Participant Advisory Committee or the System Planning and Operating Committee.

Consistent with the architecture, VENCORP supports the inclusion of the Division 3 proposals, which set out the information gathering powers of the AEMO, in relation to its National Transmission Planning Function in the NEL.

Governance

VENCORP supports the AEMC's endorsement that the AEMO Board is directly responsible for undertaking the functions of the National Transmission Planning Functions.³ This was clearly the intent of COAG and the MCE when it initiated the AEMC's investigation. Carrying this through to its logical conclusion, all of the AEMC's proposed references in the NEL and the NER of the National Transmission Planning Functions should instead be references to the AEMO.

However, VENCORP has concerns about the governance of the NTPAC. It is also concerned about the inconsistency between the intended roles and functions of the NTPAC, as set out in the AEMC's draft report, and the proposed drafting for the NEL and NER.

NTPAC Governance

VENCORP believes that the proposed governance arrangements for the NTPAC is too prescriptive and may compromise the effectiveness of the National Transmission Planning Function. VENCORP believes that the AEMC should not specify, in any detail, what the governance of the NTPAC should be. For example, VENCORP recommends strongly against the proposal that the NTPAC members only include one officer or employee of the AEMO.

If the intention of the NTPAC is to be an advisory committee, then there must be an appropriate balance between internal and external members. This will accommodate the formation of planning market consultative committee, along the lines of NEMMCO's Participant Advisory Committee or VENCORP's Gas Market Consultative Committee. Both of these committees have been established by the respective boards of NEMMCO and VENCORP to facilitate good decisions making.

³ AEMC Draft Report, page 9

NTPAC roles and functions

In terms of the NTPAC's roles and functions, it is still unclear how it is intended to provide input into the NTNDP process. While it is no longer required to prepare the first draft of the NTNDP, it is still required:

'to oversee the preparation of the annual plans...' (Division [2][1](2)(b))

And must:

'...take into account submissions made in response to the invitation...'
(Clause 5.6.A.2(d)(1)).

To allow this to happen the AEMO is required to:

'...procure the availability of reasonable financial, human and other resources'
Division [1][4]

Clearly, this is not the role contemplated in the draft report where it is stated that

'the role of the Advisory Committee would be supportive and advisory only, not executive'⁴

If the role of the NTPAC is 'supportive and advisory' this needs to be reflected in the drafting of the NER. Going beyond this role is likely to give rise to confusion regarding day to day operation and direction for AEMO staff and provides the NTPAC with a line function rather than an advisory function. It also gives rise to issues of accountability for the outcomes of the functions, which is also linked to the governance arrangements, discussed above.

Information gathering Powers

The AEMC is proposing an information provision model for the National Transmission Planner which is based upon the Regulatory Information Order (RIO) and Regulatory Information Notice (RIN) models designed for the AER.

VENCorp understands that the MCE is considering whether a consistent arrangement can be established in both the NEL and NGL which would allow the AEMO to gather information to perform all of its functions.

Therefore, prior to finalising its drafting on the information gathering power provisions AEMC should discuss this matter with the MCE to understand what the MCE is proposing and whether these provisions would be sufficient for the AEMO when exercising the National Transmission Planning Functions.

National Transmission Network Development Plan

VENCorp supports the AEMC's intention for the NTNDP to consider the matters beyond the National Transmission flow paths. VENCorp also believes that the proposed detailed obligations set out in Division 1, which as noted above should be moved to the NER, are reasonable obligations to ensure that the AEMO meets its national transmission planning objective in particular those which compel it to:

- Prepare an annual transmission grid plan;
- Maintain and make available a database of information; and

⁴ AEMC, National Transmission Planning Arrangements, Draft Report, 2 May 2008, p 18.

- Provide advice to the MCE and AEMC on national transmission grid development.

VENCorp believes that the AEMC should ensure that there is consistency between the obligations on the AEMO in respect to some of its functions, and those of TNSPs and the AER. The draft report is proposing that the AEMO to produce a draft NTNDP. However, TNSPs and NEMMCO are not currently required to produce a draft Annual Planning Report or Statement of Opportunities. VENCorp is not adverse to the idea of having the AEMO produce a draft NTNDP, because it would ensure consistency with the provisions for the publication of application notices for the regulatory tests and draft determinations by the AER in its revenue setting. Therefore, this principle must be applied consistently across all of these documents.

Other Matters

VENCorp does not consider it necessary for the NER to explicitly state that the AEMO is able to:

- Make submission to transmission system operators as part of any consultation process; and
- Make submission to the AER in respect of its transmission determinations.

The ability to respond to any of these consultations or determinations is a right conferred on interested parties, or more broadly, any persons under the NER at present.⁵ The appropriateness of any response to either an application notice or a transmission determination will be a matter for the AEMO board to address based depending on the importance of the matter under consideration.

Regulatory Investment Test - Transmission

VENCorp supports the cost threshold proposed for when a Regulatory Investment Test is conducted and providing all persons access to greater information as part of the planning process.

On the matter of amalgamating the two limbs of the regulatory test, VENCorp supports this in principle. However, it believes that the 'Option 3' approach may result in inefficient network development. To allow TNSPs to add benefits on top of a mandated reliability standard, instead of incorporating reliability benefits into the total assessment is likely to lead the construction of augmentations over and above what is actually required by the market.

⁵ For revenue determinations see Rule 6A.11.3(c)

Any person may make a written submission to the AER on the *Revenue Proposal*, the proposed *negotiating framework*, the proposed *pricing methodology* or the proposed *Negotiated Transmission Service Criteria* for the provider within the time specified in the invitation referred to in paragraph (a)(6), which must be not earlier than 30 *business days* after the invitation for submissions is *published* under that paragraph.

For application notices see Rule 5.6.6(f):

Within 30 *business days* of *publication* of the summary of the application notice on NEMMCO's website, *interested parties* may make written submissions to the applicant on any matter in the application notice, and may request a meeting.

Transmission Pricing

VENCorp believes that there is too little information and insufficient time for it to consider the four options proposed by the AEMC. While in principle it is supportive of a national approach, and therefore is likely to lean towards 'Option 4 - Uniform NEM wide charging'. VENCorp believes that the AEMC needs to undertake, or have the TNSPs jointly undertake, modelling to inform the debate on which of the arrangements are the most appropriate.