



Inter Regional Planning Committee

20th February 2006

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H166
Australia Square NSW 1215

Dear Dr Tamblyn,

Re: Proposed Rule Change 2005 – Reform of the Regulatory Test Principles

Thank you for the opportunity to place this submission addressing the Inter-Regional Planning Committee's (IRPC) issues with the reforms to the regulatory test principles.

Specifically the IRPC issues refer to clause 5.6.3 (l) of the Rules obliging the IRPC to produce and publish "an objective set of criteria" for determining whether a new network asset is a *reliability augmentation*. The IRPC's issues with the reforms to the regulatory test principles are that:

- clause 5.6.3 (l) does not further the market objective; and
- in its current form the glossary definition for reliability augmentation is inconsistent with the proposed Rule.

To resolve these issues the IRPC propose that as part of the AEMC review of reforms to the regulatory test principles, they consider removing clause 5.6.3 (l) and remove the word "solely" from the Rule definition of *reliability augmentation*.

Further details regarding the background, issues and proposed actions are attached following this letter. NEMMCO would be pleased if the AEMC could consider these matters in their assessment of the proposed Rule change to the regulatory test principles. For further details, please do not hesitate to contact John Colquhoun on (03) 9648 8784.

Yours sincerely,

Dr Charlie Macaulay
Convener of the Inter-Regional Planning Committee

Attach.

Attachment

Submission to the Proposed Rule Change

Background

Clause 5.6 of the Rules deals with the planning and development of networks. In particular, clauses 5.6.2A, 5.6.6 and 5.6.6B set out processes for evaluating certain kinds of network augmentations.

In these clauses, the Rules draw a distinction between reliability augmentations and other kinds of augmentations. A *reliability augmentation* is defined in the Rules as:

*"A transmission network augmentation that is **necessitated solely** by inability to meet the minimum network performance requirements set out in schedule 5.1 or in relevant legislation, regulations or any statutory instrument of a participating jurisdiction".*

The *reliability augmentation* definition has a significant interaction with the Australian Energy Regulator's (AER) regulatory test promulgated under clause 5.6.5A of the Rules¹. An option² satisfies the *regulatory test* if:

- a) in the event the option is necessitated solely by the inability to meet the minimum network performance requirements set out in schedule 5.1 of the NER or in relevant legislation, regulations or any statutory instrument of a participating jurisdiction - the option minimises the present value of *costs*, compared with a number of *alternative options* in a majority of *reasonable scenarios*;
- b) in all other cases - the option maximises the expected net present value of the *market benefit* (or in other words the present value of the *market benefit* less the present value of *costs*) compared with a number of *alternative options* and timings, in a majority of *reasonable scenarios*.³

Under clause 5.6.3 (l), the IRPC must develop an "objective set of criteria" for determining whether a new network asset is a *reliability augmentation*. In April 2003, the IRPC (in an attempt to develop an "objective set of criteria") released draft criteria for assessing whether a proposed network asset was a *reliability augmentation* for consultation under clause 5.6.3 (l).

Submissions received cast doubt over whether the draft criteria were consistent with the glossary definition of *reliability augmentation*. The IRPC has been unable to develop a workable "objective set of criteria" which are consistent with the glossary definition.

¹ The responsibilities to promulgate a regulatory test were transferred from the ACCC to the Australian Energy Regulator on 1 July 2005.

² An "option" includes, but is not limited to, an augmentation, a new large network asset and a new small network asset.

³ Australian Energy Regulator, "*Compendium of Electricity Transmission Regulatory Guidelines*" (August 2005) [32-38].



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The Ministerial Council on Energy (MCE), in its proposed Rule changes to reforms to the Regulatory Test principles (clause 5.6.5A (a)(1)(ii)) exclude the word “solely” in defining augmentations which are justified under the reliability limb of the regulatory test. Except for the omission of “solely”, the wording of this clause is similar to the glossary definition of reliability augmentation.

So far the regulatory test has been applied to justify reliability network augmentations in the absence of the IRPC’s “objective set of criteria”. In these applications of the regulatory test no issue has been made of the absence of the IRPC’s criteria. Further, the ACCC (and now AER) has reviewed all TNSPs’ revenue requirements in its five-yearly revenue resets (including reviewing regulatory test applications to set the regulatory asset base) and it has never made comments on the absence of the IRPC’s criteria.

Statement of issue concerning the existing Rule

The IRPC believe that the following issues deserve consideration in any Rule changes that relate to the principles of the regulatory test,

The role of clause 5.6.3 (l)

Clause 5.6.3 (l) of the Rules requires the IRPC to develop an “objective set of criteria” for determining whether a new network asset is a *reliability augmentation*.

Minimum network performance requirements are set out in schedule 5.1 or in relevant legislation, regulations or any statutory instrument of a participating jurisdiction. Each jurisdiction maintains minimum network performance standards which are subtly different in nature. In developing an “objective set of criteria” for determining whether a new network asset is a reliability augmentation, the IRPC would duplicate what already appears under jurisdictional minimum network performance standards.

The IRPC believes that a duplication of the jurisdictional minimum network performance requirements within its criteria provides no additional benefits to what is already contained in the jurisdictional requirements. Further, this duplication may cause a greater risk of dispute due to any inconsistencies that may apply between jurisdictional requirements and the IRPC’s criteria. Also the development of an objective set of criteria imposes additional compliance cost in the drafting, consultation and maintenance of the criteria.

It is the IRPC’s belief that the risk and cost of developing an “objective set of criteria” outweigh the additional benefit that is available to the market from these criteria hence clause 5.6.3 (l) detracts from the market objective.

Consistency of the proposed Rule and the glossary definition

The word “solely” is contained in the Rule definition of *reliability augmentation*. This is not consistent with the wording of the proposed clause 5.6.5A(a)(1)(ii), which omits the word “solely” when describing the augmentations which can be justified under the reliability limb of the regulatory test.



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To maintain consistency between the proposed Rule and the glossary definition, the IRPC recommends that the word “solely” be deleted from the glossary definition.

How the proposed Rule change could address the issue

In order to address the IRPC’s issues with the reforms to the regulatory test principles, the IRPC proposes that the AEMC should both:

- remove clause 5.6.3 (l) of the Rules; and
- remove the word “solely” from the Rule definition of *reliability augmentation*.

The removal of clause 5.6.3 (l) of the Rule should further the market objective through removing an obligation that places greater risks and costs on the market and adds no additional market benefit to the minimum network performance standards that are already defined in each jurisdiction. The Rules already contain provisions for the proponents of new transmission network assets to justify why they consider that the *new small (or large) transmission network asset* is a *reliability augmentation*. These provisions are contained in clause 5.6.2A (b)(5)(iii) for *new small transmission network assets* and clause 5.6.6 (b)(5) for *new large transmission network assets*.