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Dear John

### **Submission on Last Resort Planning Powers**

VENCORP welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) rule change consultation on the Last Resort Planning Powers in the National Electricity Rules (the Rules).

VENCORP supports the principles underlying these changes, but does however, have concerns with the drafting of the proposed Rules, as discussed below.

#### **Directed Party**

The drafting of the Rules in relation to the first directed party allows for the AEMC to direct any *Registered Participant* to undertake the *Regulatory Test* on a *potential transmission project*. As considered in the discussion paper, VENCORP believes that the Rules should be amended to identify the relevant TNSP (ie the TNSP whose region the potential transmission project may be constructed within) as the directed party in the first instance.<sup>1</sup>

In accordance with the proposed Rules, if the first party fails to undertake or complete the project the AEMC may then direct a second party to undertake the *Regulatory Test*. The process the AEMC would use to select and engage the second party under clause 5.6.5B(g) is not specified and requires clarification.

#### **Cost Recovery**

While the discussion paper indicates that costs incurred by the directed party are to be borne by the directed party, the proposed Rules are silent on this matter.<sup>2</sup> This includes the costs borne by the industry for providing members to the industry panel as well as the costs to the *Registered Participant*, or engaged party, for undertaking the *Regulatory Test*. VENCORP believes that the principles for cost recovery, as discussed below, should be clarified within the Rules.

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<sup>1</sup> Attachment A - Rule Change Request on Last Resort Planning Power, p 4

<sup>2</sup> Attachment A - Rule Change Request on Last Resort Planning Power, p 6

### **Direction to Non-Relevant Party**

If the AEMC directs a TNSP (or *Registered Participant*) that is not directly affected by the proposed works, the costs will be borne by the wrong parties. For example, if one TNSP were to be directed to undertake a *Regulatory Test* for works in a region where it had no responsibility, there could be no potential for cost recovery from the beneficiaries and therefore these costs would be borne by the consumers in that TNSP's region, who would not directly benefit from the outcome of this work.

VENCorp believes that if the directed party, or the engaged party, is not the relevant TNSP they should be able to seek cost recovery for undertaking this work.

### **Access to Planning Data**

Should the directed or other party not be the relevant TNSP, there may be an issue for the directed party gaining access to the appropriate planning data with which to conduct the *Regulatory Test*. VENCorp seeks clarity on how this data may be made available to another party, who is not the relevant TNSP, should they be directed to undertake this work.

### **Establishment of Industry Panel**

The discussion paper and proposed Rules indicates that the AEMC should be informed by a panel of industry representatives, established by the AEMC and supported by NEMMCO, to define any project for which the direction power may be exercised.<sup>3</sup> VENCorp has three comments on this matter.

First, the draft Rules are unclear on how the industry panel is to be funded and, as previously stated, VENCorp believes this should be clarified.

Second, the discussion paper indicates that the representatives should be *Registered Participants* and include NEMMCO. The Rules, however, are silent on which *participants* and participant categories are represented on this panel. Arguably, the panel should not be limited to *Registered Participants*, as there may be a requirement for specialist skills (eg economic, engineering) that do not lie with a *Registered Participant*, or for which the AEMC wishes to have independent advice. Therefore VENCorp believes that the membership of this industry panel should be clarified within the Rules.

Third, the proposed Rules are silent on how the panel should conduct itself or provide advice to the AEMC. VENCorp suggests that industry and *participants* could be consulted on establishing a Terms of Reference for the panel, which should also be embedded in the Rules.

### **Process for exercising Last Resort Planning Power**

In order for the AEMC to direct a *Registered Participant* to conduct the *Regulatory Test*, under clause 5.6.5B(c), the notice of direction must be based on the advice of the industry panel when identifying the potential transmission project (clause 5.6.5B(b)). Therefore, under the current drafting of the Rules, the process to exercise these powers must start with the AEMC establishing the industry panel (5.6.5B(b)(i)).

*Participants*, the public and non-participants should be alerted to the AEMC's concerns and have an opportunity to respond to the AEMC prior to these powers being exercised. VENCorp believes that this process could be improved by first requiring the AEMC to publish a notice of intent, rather than the notice of direction.

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<sup>3</sup> Attachment A - Rule Change Request on Last Resort Planning Power, p 5

The notice of intent would identify the constraint being considered by the AEMC and would seek submissions for consideration prior to the industry panel being established (if required). This would be more consistent with the process contained within clause 5.6.6 for the establishment of a new large transmission network asset.

### **Notice of Direction**

Clause 5.6.5B(c) states that

The AEMC **may** exercise ... in writing ...

VENCorp believes that if the AEMC is to direct a party to undertake the *Regulatory Test* then it must do so in writing. Therefore clause 5.6.5B(c) should be amended to reflect this requirement

### **Capability to complete *Regulatory Test***

Clause 5.6.5B(e)(ii) provides for the AEMC to specify the time frame in which the project must be carried out by the directed party. The skills required to undertake this type of work are quite specific and the directed party is likely to have these resources allocated to other commitments.

While clause 5.6.5B(b)(v) requires the AEMC to have regard to the likely cost of the directed party in undertaking this work, there is no requirement for the AEMC to have regard for the other business and regulatory obligations that the directed party may also be required to meet when a notice is issued. VENCorp believes that this clause 5.6.5B(b)(v) should be amended accordingly.

- (v) the likely costs and other obligations of the directed party in applying the *Regulatory Test* to a potential transmission project.

### **Application of *Regulatory Test***

Page 2 of the discussion paper indicates that the outcome of this test

would be published to inform potential investors whether an economically viable project exists. While not directing investment to take place, the LRPP provides valuable information to potential investors.

The *Regulatory Test* itself does not include any requirements for consultation, but does require consideration of all network and non-network alternatives. This process for comparing all alternative solutions usually involves undertaking public consultation, which is conducted according to sections 5.6.6 and 5.6.6A of the Rules.

Clauses 5.6.5B(f) and 5.6.5B(i) imply that the directed party is undertaking the process described in clauses 5.6.6 and 5.6.6A for the establishment of a new transmission network assets

VENCorp seeks clarity from the AEMC on the expected outcomes of a direction being undertaken and the seeming disjoint between the proposal (page 2) and these draft Rules, clauses 5.6.5B(f) and 5.6.5B(i).

### **Time to complete *Regulatory Test***

Clause 5.6.5B(f) requires the directed party to meet all the requirements of the *Regulatory Test*, including imposed timeframes established within the Rules for the *Regulatory Test*. VENCorp believes that the timeframe established by the AEMC for the directed party to carry out the *Regulatory Test* should be reasonable and therefore believes that clause 5.6.5B(e)(ii) should be amended to.

- (ii) the a reasonable timeframe in which the *Regulatory Test* must be carried out by the directed party

#### **AER Determination**

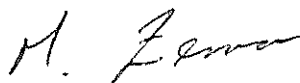
Clause 5.6 5B(i) allows for any *Registered* or *Intending Participant* to seek a determination from the AER as to whether the potential transmission project satisfies the *Regulatory Test*

Therefore, in providing for this, there must be a corresponding obligation placed on the AER to consider the application and make a determination, within a reasonable timeframe

Given the issues that have been identified in this submission, VENCORP suggests that a forum be convened to review the principles and develop new draft Rules.

Should you have any questions please do not hesitate to contact Mr Mark Riley on ☎(03) 8664 6602.

Yours sincerely



**Matt Zema**  
Chief Executive Officer