

**International Power (Hazelwood, Synergen, Pelican Point and Loy Yang B)
Loy Yang Marketing Management Company Pty. Ltd.**

AGL Energy Limited

TRUenergy Pty. Ltd.

Hydro Tasmania

Flinders Power

16th May 2008

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

By email: submissions@aemc.gov.au

Dear Dr Tamblyn

Congestion Management Review – Exposure Draft – Arrangements for recouping costs for participant funded network augmentations – Dated 2 May 2008

This response is on behalf of AGL Energy, International Power, Loy Yang Marketing Management, Hydro Tasmania, Flinders Power and TRUenergy, the (Group). The Group welcomes the opportunity to comment on the Congestion Management Review - Exposure Draft – “Arrangements for recouping costs for participant funded augmentations.”



The Exposure Draft (ED) describes the issue that the AEMC is addressing in this Rule as being based on submissions by participants in relation to rule 5.4A, generally as follows;

- the submissions are characterised in Section 3 of the Exposure Draft as participants seeking strengthening of 5.4A to *“provide for negotiated access rights to the transmission system to be “firmer .”* and
- the NGF submission¹ which proposed two alternative models for improving the compensation provisions of 5.4A.

The participant submissions, at least by generators, are in relation to the compensation provisions which are negotiated at the time a connection agreement is formed. These provisions would apply where a generator elects not to fund a downstream augmentation, as provided for in Chapter 6A, and creates congestion.

The Exposure Draft then goes on to discuss in section 4, the requirements of Chapter 6A in relation to negotiated transmission services. Chapter 6A stipulates that generators are not required to, but may pay for downstream augmentations. In the case where a generator makes a capital contribution to fund a specific augmentation to build out network constraints the Rules provide for the generator to recoup some of these augmentation costs (or pay reduced ongoing charges) in the event that other generators subsequently connect to the network and make use of that particular augmentation. This is also part of the negotiations at the time a connection agreement is formed.

In our view the characterisation of the participant concerns by the Commission does not adequately represent the issue raised at least by this group of generators. Our concerns related to the workability or the ability of TNSPs to implement or meet their obligations with respect to the provisions of clause 5.4A.

The Exposure Draft recommends amendments to the Rules aimed at further clarifying the arrangements for the recovery of costs or reduction in ongoing charges. This does not address the issue raised by generators or as described in the Exposure Draft which relate to the need for greater specificity on exactly how the compensation provisions operate.

On the basis that the proposed Rule changes are only to clarify *“how participants who fund network augmentations can recoup some of their costs ... in the event new parties subsequently connect”* then The Group believes that these changes should not proceed for the following reasons;

1 The Rule change proposed does not address the concerns raised by generators, or the issue as described by the Commission; ie generators have not expressed concern that the provisions of 6A.9.1 require clarification;

It would appear that the problem may not have been adequately expressed by participants or interpreted or understood by the Commission. In our view no further action should be taken in relation to the proposed change until the problem is adequately described and understood by all parties. The best means of clarifying the issue would be to not proceed with this proposed rule change, and leave it to any concerned participants to prepare a fully documented Rule change proposal identifying the issues, together with a solution as required by the Rule change process. This approach would allow for a comprehensive and focused debate on this specific issue.

2 Section 5.4A changes to the Rules proposed by the Commission are unnecessary because there is already a link in the Rules between clause 5.4A and clause 6A. 9.1

Insofar as it is the Commission's objective to create a link between the negotiated transmission service principles in clause 6A.9.1 and Section 5.4A, that is not necessary as that linkage is already clearly provided for in clause 6A.9.2(b). This clause imposes the following requirement on a TNSP in negotiating the terms and conditions of access for negotiated transmission services:

¹ Synergies, Market Access Report, National Generators Forum submission, 4 Dec 2007

The Transmission Network Service Provider must also comply with Chapters 4, 5, and this chapter 6A of the Rules, including the requirements of:

- (i) rules 5.3 & 5.4A, when negotiating for the provision of connection services and the associated connection service charges; and*
- (ii) rule 5.4A when negotiating the use of system charges and access charges to be paid for a transmission network user.*

3 Changes to Rule 5.4A fall short of addressing the compensation issues identified in the Synergies report

The report to the NGF from Synergies Economic Consulting² on market access argued that there were two ways for improving Rule 5.4A. This could be achieved through a strong model and a weak model. This is generally as described in the ED however these models were not fully developed at the time and as formulated are unlikely to have obtained the full economic value achievable through the efficient management of congestion as envisaged by the compensation provisions in rule 5.4A.

Whilst the Commission's intention to address the concerns raised by generators through a rule change is appreciated, the proposed changes fail to put in place a clear mechanism to avoid or deal with congestion for both incumbent and new generators' in the future.

Synergies has revised their advice and reformulated the strong and the weak model so that either model will drive transmission investment to avoid congestion, or produce efficient outcomes, where congestion occurs due to new generator investment. The Synergies report forms part of the NGF submission which the Group supports.

4 Section 5.4A changes to the Rules by the Commission may lend weight to the view the section only applies to generators that seek negotiated transmission services

The changes to Section 5.4A of the Rules may lend weight to the view, that Section 5.4A only applies to generators that seek negotiated transmission services. The intent of the original market rules was to apply such arrangements to incumbents as well. We have received legal advice from a number of sources in relation to the interpretation and application of Section 5.4A to the effect that the compensation provisions under Section 5.4A can also be applied to incumbent generators for an erosion of the existing level and standard of performance of power transfer capability to prescribed services. In view of this, it should be clear that any rule change regarding this issue does not confine the scope of clause 5.4A so that it only applies to negotiated transmission services, but instead applies equally to prescribed transmission services (particularly those grandfathered under clause 11.6.11). Our understanding is that it was not the objective of this rule change to limit the scope of clause 5.4A in this way, and we believe such a scope reduction would not be consistent with the market objective

Conclusion

The Group welcomes the Commission's endeavours to provide additional clarity to the operation of compensation mechanisms related to generator investment induced transmission congestion. However, the Group believes that given the issues identified above, it would be prudent not to proceed with the rule change proposed and is of the view that the best means of clarifying the issue would be for any concerned participants to prepare a fully documented Rule change proposal identifying the issues, together with a solution as required by the Rule change process.

² Synergies, Market Access Report, National Generators Forum submission, 4 Dec 2007

If you have any questions regarding this submission please contact the undersigned on (03) 96122211.

Yours faithfully,



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(on behalf of the participants listed)

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