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

Dear Dr Tamblyn

**Draft Rule Determination - National Electricity Amendment
(Advocacy Panel) Rule 2006**

AGL welcomes the opportunity to provide comments on the 'Draft Rule Determination – National Electricity Amendment (Advocacy Panel) Rule 2006' by the Australian Energy Market Commission ("AEMC").

AGL supports the view that end user comment is required on market developments but believes that this objective is better served by direct discussions between end user representatives and market bodies such as the National Electricity Market Management Company ("NEMMCO"), AEMC and the Australian Energy Regulator ("AER").

AGL notes that the AEMC has chosen to implement an interim Panel that varies the current arrangement and differs from stated policy principles for the long-term model as proposed by the Ministerial Council on Energy ("MCE"). AGL considers that the interim Panel should be established in accordance with the principles of the long term Panel to ensure a smooth transition.

AGL provides the following specific comments on the draft rule.

Panel Membership

AGL supports the strengthening of the accountability arrangements of the Advocacy Panel, however, AGL questions the current approach under the draft rule where the AEMC is responsible for appointing members as it is inconsistent with the MCE's policy for customer advocacy going forward.

The MCE issued a communique on 4 November 2005 stating that "the MCE will have responsibility for appointing the Chair, Executive Director and Panel" under the long term model. Furthermore, in the MCE's Energy Market Reform Bulletin No. 57 issued on 15 December 2005 it is also stated that under the long term model the MCE will be "responsible for appointment of Panel members".

The AEMC has recognised in the draft rule determination that "there must be a smooth transition from the operations and functioning of the current (interim) Panel and any new Panel to be appointed under the new Rule" (page 8). It is our view that the transition to the long term model that incorporates both gas and electricity will be more streamlined and cost efficient if the current interim arrangement for electricity reflects as closely as possible the procedures that will be in place in future. AGL therefore considers that the MCE, not the AEMC, should be responsible for the appointment of members under the interim arrangement.

If the interim arrangements are introduced with the AEMC being responsible for appointment of Panel members then this should be only be done in accordance with guidelines that have been approved by the "ministers of the participating jurisdictions". Currently the AEMC need only consult with the "ministers of the participating jurisdictions" so there is no obligation to adopt any "MCE" requirements.

The draft rule also states that the AEMC must review these guidelines "where the AEMC considers this is necessary". AGL submits that this clause should be amended to specify a method to review the content at designated intervals, including a requirement for consultation. This is to ensure that the principles remain relevant while mitigating any perception of a conflict of interest. This review should be presented to the MCE and if amendments are required to the guidelines then this should involve MCE approval.

In regard to the removal of members from the Advocacy Panel, timeframes should be included to ensure that any removal is acted upon in a timely manner by the AEMC, which will then ensure the continued independence of the Panel.

It is also unclear why the proposal requires that nominees to the Panel be independent of market participants. It would appear more appropriate that nominees be independent of likely recipients of funding. This would avoid a perceived lack of independence in decision making, which is one of the purported reasons for this Rule change proposal.

Panel Operations

AGL supports the AEMC's finding that defining a quorum for the panel is appropriate. However, as this contemplates that members will at times be absent from meetings the rules should be amended to account for a possible situation where a particular member is regularly absent from meetings. For prolonged non-attendance, the rules should allow for the AEMC to remove the member from the Advocacy Panel, and to seek replacement membership.

Focus of Panel

As stated previously, AGL believes that the transition to the long term model that incorporates both gas and electricity will be more streamlined and cost efficient if the current interim arrangement for electricity reflects as closely as possible the procedures that will be in place in future.

Therefore, given the MCE's policy position for the long term model is for advocacy to be focused on small to medium consumers then AGL considers it appropriate that funding applications be considered in this context during this interim phase. A project proposed in an application for funding should represent a "reasonable number of end-users". AGL supports this approach and considers that the allocation of funding to relatively few large users would be in conflict of this requirement. This should be clear and transparent in the rules.

AGL agrees with the current funding guidelines that funding for projects should only be allocated for the objective of "increasing end-user involvement in the national electricity market and making that market more efficient and effective". It should be noted that while the Rules provide a fairly broad mandate for funding (see appendix B), the funding is for national matters where "national electricity market" is defined as "the wholesale exchange operated and administered by NEMMCO under this Law and the Rules; and ... the national electricity system". It would therefore be expected that advocacy for unrelated topics such as network and customer pricing and customer protection would be pursued through other appropriate forums. AGL recommends that the AEMC considers making the provisions in the Rules such that matters dealt with operationally by the AER and jurisdictional bodies or covered by other legislation, such as customer protection, be explicitly out of scope for funding.

Operational Aspects of Determining Funding

AGL supports the increased accountability in relation to the amount of funding allocated for customer advocacy. Consistent with the long term model where the MCE will be responsible for approval of grant allocation guidelines, guidelines for funding application and funding in the interim should also require MCE approval, not AEMC.

The Jurisdictions have agreed that activities of the AEMC are to be funded by the states and territories that are participants in the NEM. The MCE's proposal for interim customer advocacy arrangements did not prescribe that funds should be sourced from market participants via NEMMCO.

The Reliability Panel and other such bodies are funded by the AEMC and funding for the Advocacy Panel should be consistent with this approach. The AEMC should remove clauses in the Rules that seek funds from participants when this funding should be provided by the states and territories.

Panel Meetings

AGL Supports that the Panel must meet at least quarterly, and more often if necessary, to consider funding applications.

Audits

AGL supports the introduction of additional requirements that allow greater capacity to request audits of successful funding applications and also the Panel. As the Panel will be funding such audits, guidelines as to how or when these should happen should be developed to ensure any audits have clear objectives and are performed cost effectively.

AGL considers the content of these guidelines should be determined as part of a consultation process with the MCE providing final approval.

Cessation of Interim Panel Arrangements

AGL had previously submitted that the current Panel be terminated from 1 January 2007 as that was the date the MCE Rule change proposal advised would be the commencement date for the new, legislated arrangement. This issue was not addressed in the draft rule determination and the draft rules do not provide for the automatic removal the panel when the "long term" legislative approach is implemented. As the MCE state that they will provide an alternative approach from 1 January 2007 the Panel should automatically cease on that date or some later date to allow for the new approach to be effective. AGL proposes that the sunset date is merely extended until 1 June 2007.

If you have any queries, please contact Natasha Cheshire, Regulatory Development Manager on (08) 8299 4515 or by email to ncheshire@agl.com.au.

Yours sincerely,

[Submitted by email]

Sean Kelly
General Manager Energy Regulation

Appendix A

Extract from Draft Rule Determination – National Electricity Amendment (Advocacy Panel) Rule 2006

“The Commission recognises that:

- in particular, the small to medium end user participants in the NEM largely lack the necessary resourcing, funding and understanding to actively contribute to the effective operation and development of the NEM and the Rules; and
- from the submissions received on this proposal, there is a view that the current arrangements for the Panel have been ineffective in building up the capacity for end users to provide meaningful input in the development of the Rules.

That said, the Commission considers incorporating the views of electricity end users may help provide a balanced approach to the long term operation and development of the NEM.

Building up the capacity of end users to actively contribute to the development of the NEM is a gradual process, particular for small to medium end users who have limited understanding of NEM operations.

However, as end users create the demand for electricity, their understanding of the consequential impacts on the price, quality, reliability and security of supply through their actions is vital.

Larger end users may be able to forecast their demand for electricity for a given time, due to the nature of their operations or business. However, small to medium end users, eg households and small businesses, often do not consider that their actions have any impact on the investment in and efficient use of electricity services. For example, in a newly developed suburb of a metropolitan capital city, the uptake of technological advances in electricity reliant appliances, such as computers and air conditioners, may have a dramatic effect on the local substation and distribution wires to supply the necessary electricity to the end user. Such a dramatic increase in demand would also have implications for efficient investment in the NEM.

The benefit in giving end use consumers access to the necessary resourcing, funding and understanding of the NEM, through the activities of the Panel, may only appear to be marginal at present, but over time should yield valuable insight into the efficient investment in and efficient use of electricity services for the long term interests of end users.

The Commission is satisfied that continuation of the Panel, with improved governance and accountability through this draft Rule, will contribute to the long term interests of end users.”

Source: AEMC draft report page 6 -

<http://www.aemc.gov.au/pdfs/reviews/Advocacy%20Panel/aemcdocs/002Draft%20Rule%20determination.PDF>

Appendix B

Extracts related to Panel Focus

Extract from the National Electricity Rules, clause 8.10.3(d)

“(2) a project proposed in an application for funding should:

- (i) relate to the development, design or policy behind the national electricity market or the Rules;
- (ii) relate directly to:
 - (A) the responsibilities of the AEMC or NEMMCO under the National Electricity Law and the Rules; or
 - (B) the monitoring, investigation or enforcement responsibilities of the AER, or functions of the AER relating to the exemption from registration of Network Service Providers, under the National Electricity Law and the Rules; or
- (iii) have implications for the national electricity market as a whole;”

Extract from the National Electricity Law

national electricity market means—

- (a) the wholesale exchange operated and administered by NEMMCO under this Law and the Rules; and
- (b) the national electricity system;