

15 DEC 2005


CHAIR

Ministerial Council on Energy

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Dr John Tamblyn
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Australian Energy Market Commission
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- 9 DEC 2005

Dear Dr Tamblyn 

National Electricity Rules – Rule Change Request Advocacy Panel

In accordance with s.91 of the *National Electricity Law* (NEL), the Ministerial Council on Energy (MCE) requests the Australian Energy Market Commission (AEMC) to make a Rule change to implement governance and accountability changes to the National Consumers Electricity Advocacy Panel (the Panel) established by clause 8.10 of the *National Electricity Rules* (the Rules).

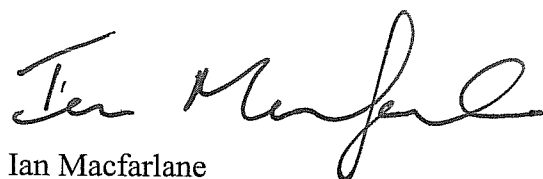
The MCE has decided that consumer advocacy in both the gas and electricity schemes should be dealt with by a long term body established under legislation, accountable to the MCE and AEMC with a focus on small and medium consumers. It would be inappropriate and probably beyond power for the AEMC to establish such a body in the Rules.

However, the MCE is concerned that the Panel currently established by the Rules is governed by inadequate accountability arrangements which require immediate attention. The current funding for the Panel is also set to expire on 30 June 2006. The MCE therefore feels that it would be appropriate to make the following Rule change as an interim solution until a long term model which accounts for both gas and electricity can be implemented.

A description of the proposed rule, statement of the issues concerning the existing rules, and how the proposed rule addresses those issues consistent with the NEM objective is at **Attachment A**. A draft of the proposed rule is at **Attachment B**.

The MCE would be pleased if you could have these matters considered by the AEMC. For further details, please do not hesitate to contact Mr Peter Nicholas on (02) 6276 1009.

Yours sincerely



Ian Macfarlane
Chair
Ministerial Council on Energy

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Rule change request on Advocacy Panel

Role of Advocacy Panel in the Rules

The current National Consumer Advocacy arrangement was developed by the National Electricity Code Administrator (NECA) in 2001 in recognition of the fact that end-users had the same rights to be involved in National Electricity Market decision making as participants in the market and required additional resources to do this.

Clause 8.10 of the National Electricity Rules (the Rules) requires the Australian Energy Market Commission (AEMC) to establish an Advocacy Panel (the Panel), defines the Panel's constitution, defines the functions of the Panel and specifies review arrangements. The Panel is responsible for determining the total resources available for assistance for advocacy, establishing criteria and guidelines for funding and allocating funds in accordance with these criteria and guidelines. It currently does not advocate directly on behalf of consumers, but allocates funding to consumer groups for various advocacy projects.

The Panel is able to determine what funds are required for consumer advocacy for each financial year under clause 8.10.3(a). The AEMC is required to give the Panel money for this purpose under clause 8.10.3(c) but this provision is set to expire on 30 June 2006 in accordance with clause 8.10.4. Currently the AEMC sources the amount of money required from NEMMCO under clause 8.10.3(c1).

The Panel is only concerned with advocacy in the National Electricity Market and has no role with respect to advocacy in relation to natural gas. It is doubtful whether the Rules could be amended to change this.

Background to Policy Position

Long Term Model

The MCE has determined that consumer advocacy arrangements for both electricity and gas should be dealt with by the same funding body to build on the developing synergies in electricity and gas regulation. Such a body would be accountable to the MCE and AEMC. The MCE feels that the funding body should have a particular focus on small to medium consumers. The body would have a board which allocates funding impartially to consumer groups similar to the function performed by the Panel at present. Additionally, the board would identify areas of research which would benefit consumers and request tenders from other bodies to undertake that research.

To achieve an appropriate level of accountability and for the body to deal with both gas and electricity, the MCE recognises that such a model cannot be implemented through a change to the Rules which can only deal with electricity. It is anticipated that the model would be implemented by changes to the National Gas Law (NGL) and National Electricity Law (NEL) to take place in 2006 with effect from 1 January 2007.

Interim changes to the current panel – Accountability and Funding

Given the changes to implement the long term model will not take effect until 2007, the MCE feels that it is important to resolve the accountability issues and funding arrangements of the Panel.

The Chair of the Panel is appointed by the AEMC but this is the only accountability mechanism currently in place. The issues of removal of Panel members and whether the Panel's guidelines, policies and funding needs are adequate are largely left up to the Panel itself. The Panel also suffers from each member representing particular interests in the National Electricity Market and

the perception that it cannot take an objective position on the applications before it. The MCE considers this governance framework is in urgent need of reform.

The essential elements of accountability for the Panel are most appropriately given to the AEMC. However, on issues such as appointing and removing Panel members, the involvement of the MCE is necessary to ensure that there is no perception that the AEMC would use its powers to ensure that the Panel did not fund advocacy critical of the AEMC and its rules. The MCE does not anticipate that the AEMC would ever act this way, but feels the public perception of such a conflict could be managed by the MCE taking a role in appointing and removing Panel members.

The Panel's funding is also set to expire on 30 June 2006 which will be before the long term model for advocacy can be implemented. Unless amended, this would leave consumers without recourse to advocacy funding for a considerable period of time.

Statement of issues concerning the existing Rules, how the proposed Rule addresses this issue and description of the proposed Rule.

The issues with the existing rules and a proposed solution are explained in the following table.

Current Rule	Problems with the current Rule	Solution and Description of Proposed Rule
The composition of Panel members is currently based upon them representing various interest groups: market generators, market participants, large end-users and domestic end users.	<p>The idea that a Panel which only allocates funding to various groups needs to consist of a fixed number of stakeholders representing different constituencies is problematic for the Panel, with the perception that members can not make objective fund allocation decisions when representing particular constituencies.</p> <p>The key concern in appointing Panel members should be for them to have the best ability to assess applications against the criteria.</p>	<p>The Panel's composition should be delinked from each member representing a particular constituency.</p> <p>The existing provision for the Chair to issue guidelines on appointment should therefore be replaced by the ability for the AEMC to issue guidelines in consultation with the MCE and for the AEMC to have regard to these.</p>
Selection of Panel members is made by the Chair alone.	There is no accountability mechanism for the selection of Panel members.	The Panel should be appointed by the AEMC having regard to any nominations from the MCE and any guidelines developed by the AEMC.
The Chair is appointed for three years and can only be removed on limited grounds.	There is limited opportunity to appoint the Chair for a period of less than three years if this is considered appropriate (for example, to deal with changing circumstances)	The Chair should be appointed for a period of up to three years.
Removal of Panel members is currently only dealt with by the Chair who can be removed on limited grounds.	There is no provision for removing Panel members. However, there may be a concern that the AEMC may use its power of removal in response to the Panel operating in a way critical of the AEMC's processes.	Extend the current criteria for dismissing the Chair to other members of the Panel but also make it clear that any power of removal can only be exercised by the AEMC after consultation with the MCE.
The amount of funding required for consumer advocacy is unilaterally determined by the Panel.	There is no accountability for this amount or how it was determined.	The Panel should continue to determine what funding is required but submit this to the AEMC for approval. As long as those requirements are reasonable, the AEMC must approve them.
The current annual report of the Panel is not directly published to any particular body or organisation to consider.	There is no clear line of accountability in the Panel's annual reporting requirements.	That the Panel should submit a draft of its annual report to the AEMC by 15 March each year so that the AEMC can provide feedback to the Panel and ensure the report is appropriately accountable prior to the report being published on 31 March.

Current Rule	Problems with the current Rule	Solution and Description of Proposed Rule
The funding criteria for the Panel are currently not approved by anyone else but are subject to requirements in the Rules.	There is a lack of separation between rule making (developing funding criteria) and rule application (applying funding criteria) in this process that needs to be clarified.	Although the Panel should continue to develop the criteria, the criteria should be submitted to the AEMC for approval in line with the existing criteria in the Rules.
The guidelines for how applications are to be made for funding are made by the Panel.	There is no accountability mechanism for these guidelines.	They should be submitted to the AEMC for approval. The AEMC must approve them if they: <ul style="list-style-type: none"> - have been through the Rules consultation procedures; - are consistent with the Rules and National Electricity Market Objective; - are developed according to an appropriate process; and - specify the procedure for making applications.
The funding arrangements for the Panel are to expire on 30 June 2006	The obligation for the AEMC to establish the Panel will remain after the requirement to fund the Panel has expired.	Remove the sunset clause bearing in mind that the arrangements will be replaced on 1 Jan 2007 by the long term model.

Why the proposed rule meets the national electricity market objective

This request for a rule change would better meet the NEM objective than the current Rules by:

Promotion of efficient use of electricity services

Having rules conducive to the efficient use of electricity services is dependent upon end users having a voice in the formation of the rules governing the market. Consumers and consumer groups do not always have the resources and power to effectively engage with issues surrounding the national electricity market because of their complexity and the problems of collective action. On some issues, while advocacy may deliver a more efficient and/or effective rule to the collective benefit of consumers, the benefits to each individual user or group of users may not be enough to justify the costs of advocating on that issue. Therefore, a public funding mechanism based upon merit (that is not hampered by members being required to represent the viewpoints of particular interest groups) is the most effective way to build up capacity for effective consumer advocacy in the national electricity market.

The current Rule, which requires Members to be appointed on the basis that they are capable of reflecting the viewpoints and concerns of the constituencies that they represent, makes it extremely difficult for Members to make decisions that are not in accordance with the viewpoints and concerns of their constituencies. Even if a Member personally believes that another project is more meritorious, it may be difficult for that Member to make a decision that adversely affects that Member's constituency. The proposed rule change aims to eliminate this potential for conflict, resulting in more streamlined and efficient decision-making by the Panel.

Promotion of efficient investment

Investors bear the risks of an unaccountable Advocacy Panel over-determining the funding requirements of consumer advocacy and funding bad advocacy projects through the connection to NEMMCO fees. While the risks are minimal compared to the other risks faced by industry, increased accountability and certainty is still likely to have a positive impact. Public funding based on merit is more likely to ensure that funding is allocated to the advocacy projects that most require attention, as opposed to projects that meet the concerns of particular interest groups. This will help investors to take into account the considered views of consumers in making investment decisions.

Long term interests of consumers

An accountable, effective and unbiased advocacy panel which allocates funding on merit is an essential tool for ensuring that the long term interests of consumers are accounted for in the national electricity market. Effective consumer input results in better rules and gives the AEMC more balanced views in making its own assessment of proposed rule changes. Removing the uncertainty and accountability gaps in the Panel is therefore likely to promote the long term interests of consumers.

Power to make the Rule

The AEMC has the power to make the requested rule under s 34(1)(a) of the NEL. It also falls within the head of power in clause 36 of Schedule 1 of the NEL relating to the matters previously dealt with by the National Electricity Code which is given effect by s. 34(2) of the NEL.

8.10 Advocacy Panel

8.10.1 Establishment of the Advocacy Panel

- (a) The *AEMC* must establish an *Advocacy Panel*. The *Advocacy Panel*, in accordance with this clause 8.10, must:
- (1) determine the annual funding requirements for end-user advocacy;
 - (2) develop and publish criteria for the allocation of funding for end-user advocacy;
 - (3) develop and publish guidelines for applications for funding for end-user advocacy;
 - (4) allocate funding to individual projects; and
 - (5) ensure appropriate auditing arrangements.

8.10.2 Constitution of the Advocacy Panel

- (a) The *Advocacy Panel* must consist of:
- (1) a person appointed by the *AEMC* to act as the chairperson for a period of up to three years. Such chairperson will have a casting vote in all decisions of the *Advocacy Panel*;
 - (2) four members appointed by the *AEMC*,
 - (3) (deleted).
- (b) In appointing a chairperson or any other member to the *Advocacy Panel* under clause 8.10.2(a)(1), the *AEMC* must, to the extent reasonably practicable,
- (1) have regard to any nominee recommended by the *MCE* and any guidelines prepared under clause 8.10.2(e); and
 - (2) ensure that the person so appointed is independent of the *AEMC*, *NEMMCO* and all *Registered Participants* and, if at any time the person ceases to be independent of the *AEMC*, *NEMMCO* and all *Registered Participants*, the *AEMC* must remove that person from the *Advocacy Panel*.
- (c) Subject to clause 8.10.2(d) any person who has previously served as chairperson of the *Advocacy Panel* is eligible for reappointment to the *Advocacy Panel* in accordance with this clause 8.10.2.
- (d) The *AEMC* may remove the chairperson or any other member of the *Advocacy Panel* at any time during his or her term in the following circumstances:
- (1) the person becomes insolvent or under administration;
 - (2) the person becomes of unsound mind or his or her estate is liable to be dealt with in any way under a law relating to mental health;
 - (3) the person resigns or dies;
 - (4) the person ceases to be independent of the *AEMC*, *NEMMCO* and all *Registered Participants*; or
 - (5) the person fails to discharge the obligations of that office imposed by the *Rules* or the terms and conditions developed pursuant to clause 8.10.2(e).
- (d1) The *AEMC* may not exercise its powers under 8.10.2(d)(4) or (5), without prior consultation with the *MCE*.
- (e) The *AEMC* must develop and publish guidelines and terms and conditions for the appointment of members of the *Advocacy Panel* in consultation with the *MCE* and in accordance with the *Rules* consultation procedures.

- (f) (deleted)
- (g) A person may resign from the Advocacy Panel by giving notice in writing to that effect to the chairperson of the Advocacy Panel and the AEMC.
- (h) The Advocacy Panel must meet and regulate its meetings and conduct its business in accordance with the Rules.

8.10.3 Functions of the Advocacy Panel

- (a) The *Advocacy Panel* must determine the provisional funding requirements for end-user advocacy in accordance with the *Rules consultation procedures* and submit them to the AEMC by 1 March each year for approval under this clause. The AEMC must approve the funding requirements by 31 March each year, unless satisfied that there are no reasonable grounds for approving the funding requirements.
- (b) Not later than 31 March each year the *Advocacy Panel* must prepare and publish an annual report which:
 - (1) includes details of its funding determination pursuant to clause 8.10.3(a);
 - (2) summarises the submissions received from *interested parties* regarding the funding requirements for end-user advocacy and the *Advocacy Panel's* response to each such submission;
 - (3) details expenditure in the current *financial year* and the individual projects to which funding was allocated for the current *financial year*; and
 - (4) details the extent to which the allocation of funding in the current *financial year* satisfies the principles in clause 8.10.3(d).
- (b1) The *Advocacy Panel* must submit a draft of its annual report under clause 8.10.3(b) to the AEMC by 15 March of each year.
- (c) The AEMC must provide to the *Advocacy Panel* in respect of each *financial year* the funds for which provision is made in the *Advocacy Panel's* annual report for that year.
- (c1) NEMMCO must pay to the AEMC such amounts as are necessary to enable the AEMC to comply with clause 8.10.3(c) in respect of the *Advocacy Panel's* funding requirements each *financial year*.
- (d) The *Advocacy Panel* must develop and publish funding criteria for use by the *Advocacy Panel* in allocating funding based on applications for funding for end-user advocacy, in accordance with the *Rules consultation procedures* and submit them to the AEMC for approval. The AEMC may approve the funding criteria if they are, to the extent practicable, consistent with the following principles:
 - (1) there should be diversity in the allocation of funding with respect to the number of end-users represented, the nature of the interests represented and the issues which are the subject of the application for funding;
 - (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;
- (3) the applicant for funding must represent the interests of a reasonable number of end-users;
- (4) the applicant for funding must fund a share of the project costs from a source other than funding provided by the *Advocacy Panel*. In considering the contribution made by an applicant the *Advocacy Panel* may consider non-financial contributions, for example staff time, in lieu of a direct pecuniary contribution. An applicant may seek to waive the requirement to fund a share of the project costs but the *Advocacy Panel* has discretion as to whether or not to grant the waiver;
- (5) the applicant for funding must provide a project plan, outlining the purpose of the project, the project category, budget estimates and the amount of funding sought from the *Advocacy Panel*;
- (6) the successful applicant for funding must maintain and make available to the *Advocacy Panel* appropriate records, accounts and reports on the expenditure of funding provided by the *Advocacy Panel* on the project; and
- (7) the successful applicant for funding must within 2 months of the completion of the project or as soon as reasonably practicable after receipt of a written request for a report from the *Advocacy Panel* publish a report setting out:
 - (i) the purpose of the project;
 - (ii) the issues considered and outcomes of the project; and
 - (iii) the costs and expenses of the project.
- (e) The *Advocacy Panel* must develop and publish guidelines for applications to the *Advocacy Panel* for funding for end-user advocacy, in accordance with the *Rules consultation procedures* and submit them to the AEMC for approval. The AEMC must approve those guidelines if they:
 - (1) have been through the *Rules consultation procedures*;
 - (2) are consistent with the *Rules* and National Electricity Market Objective; and
 - (3) specify the procedure for making applications.
- (f) The *Advocacy Panel* must determine applications for funding on a quarterly basis, having regard to the criteria prepared in accordance with clause 8.10.3(d). The individual projects to which funding is to be allocated and disbursed in the next quarter of the *financial year* must be determined prior to the commencement of that quarter.
- (g) The *Advocacy Panel* must ensure, to the extent reasonably practicable, that the financial records and accounts of the *Advocacy Panel*, and the financial records and accounts and expenditure reports prepared and maintained by a successful applicant for funding, are audited by an independent auditor appointed by the *Advocacy Panel* and approved by the AEMC.

8.10.4 (deleted)

Ministerial Council on Energy

Energy Market Reform Bulletin No. 5X

Arrangements for Consumer Advocacy in the Energy Sector

As foreshadowed in the Ministerial Council on Energy (MCE) Communiqué dated 4 November 2005, the MCE will implement new arrangements to strengthen consumer advocacy across the entire energy sector.

The MCE has decided that consumer advocacy arrangements for both gas and electricity users should be dealt with by a single body. The long term model for consumer advocacy will comprise a new independent Panel which has the capacity to allocate funding for the purpose of energy end user advocacy, with a particular focus on small to medium consumers. In addition to providing grants, the Panel will be able to commission research on matters of concern to consumers. The Panel will publish the results of research it commissions and funds and will report on the outcomes of funded activities.

The new Panel will be accountable to the Australian Energy Market Commission (AEMC) with the MCE responsible for appointment of Panel members and approval of grant allocation guidelines. Panel members will be selected on the basis of their technical expertise rather than sectoral representation.

The MCE has decided that the most appropriate way to implement this model is by giving the body a legislative basis. In order for the new advocacy arrangements to deal with both gas and electricity, and to enable clear and transparent governance and accountability mechanisms, legislative amendments are necessary to implement the new model. This will include amendments to the National Electricity Law and National Gas Law, which will be progressed in the first half of 2006. These amendments will take effect from 1 January 2007.

To improve the accountability and governance of the existing National Consumers Electricity Advocacy Panel (NCEAP), the MCE will immediately request the AEMC to amend the National Electricity Rules as an interim measure prior to the commencement of the new arrangements. This timeframe is to ensure continuity of advocacy funding beyond 30 June 2006. The Rule change would enable the AEMC to appoint the NCEAP in consultation with the MCE and approve both the NCEAP's funding allocation guidelines and its budget. Consistent with the long term model, NCEAP members would be appointed on the basis of their expertise. The Rule change will also enable funding for advocacy purposes to be available until the long term arrangements come into force.

In light of the future arrangements for advocacy, the AEMC will be tasked with ensuring appropriate provisions are made for a seamless transfer between current and future arrangements.

MCE Standing Committee of Officials
X December 2005