



29 April 2009

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box A2449
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By email: submissions@aemc.gov.au

Dear Dr Tamblyn

Implementation of Rules change - Arrangements for managing risks associated with transmission network congestion

This group of generators which includes: Loy Yang Marketing Management Company Ltd.; AGL Hydro Pty. Ltd.; International Power; and TRUenergy Pty. Ltd, appreciates the opportunity to provide feedback on the proposed National Electricity Rules (the Rules) changes.

The Final Report includes a package of four Rules changes to implement the arrangements for managing risk associated with transmission network congestion. The four proposed Rules changes listed below.

- A National Electricity Amendment (Fully Co-optimised and Alternative Constraint Formulations) Rule 2009.
- B National Electricity Amendment (Negative Inter-regional Settlements Residue Amounts) Rule 2009.
- C National Electricity Amendment (Congestion Information Resource) Rule 2009.
- D National Electricity Amendment (Network Augmentations) Rule 2009.

The draft determination released on 23 April 2009 proposes to proceed with the first three of the above listed rules changes.

A. Draft National Electricity Amendment (Fully Co-optimised and Alternative Constraint Formulations) Rule 2008.

We support the intention of the proposed amendment on “Fully Co-optimised and Alternative Constraint Formulations” but we have concerns in relation to the detailed

drafting. In order to clarify these concerns, we will first discuss the history of the NEMMCO implementation of co-optimised network constraint equations.

The variables that impact on the flow in a critical part of the network may vary greatly in their materiality; with some having a large effect while others have a very small effect on the critical flow. In its early implementation of such equations, NEMMCO included terms with a wide range of materiality. This was found to have adverse effects in dispatch, with large and abrupt changes in dispatched variables for little gain in terms of managing the critical network flow.

NEMMCO then, correctly in our view, defined a materiality threshold, such that variables which fell short of this threshold were located on the right-hand side of the constraint equation and hence not controlled by it.

We believe that the proposed paragraph 3.8.10(c) is consistent with the NEMMCO practice as described, in particular through sub-paragraph (iii).

However, the proposed definition of “fully co-optimised network constraint formulation” is inconsistent with this practice, as it requires the equation to control “all the variables that can be determined through the central dispatch process within the equation”. This definition fails to allow for the different treatment of variables on the basis of materiality, as is the current practice.

We propose that the definition be altered so that it recognises the different treatment of variables based on materiality as permitted by guidelines formulated under paragraph 3.8.10(c)(iii).

B National Electricity Amendment (Negative Inter-regional Settlements Residue Amounts) Rule 2009.

This Rules change is supported as drafted as a non-contentious amendment to the Rules which lies outside the primary focus of the current Market Frameworks Review.

C National Electricity Amendment (Congestion Information Resource) Rule 2009.

This Rules change is supported as drafted as a non-contentious amendment to the Rules which lies outside the primary focus of the current Market Frameworks Review.

D National Electricity Amendment (Network Augmentations) Rule 2009.

We support the draft determination and oppose any suggestions this Rules change should proceed as it fails to address the concerns raised by generators, further confuses the application of the Rules in a manner which is not consistent with the National Electricity Objective, and undermines the validity and independence of the ongoing Market Framework’s Review where this and related issues are part of that review’s primary focus.

A more detailed analysis of this proposal forms attachment A and should be reviewed in light of any submissions supporting progression of this Rules change which is not supported by the draft determination.

Conclusion

The AEMC has recommended four Rules changes as a consequence of the Congestion Management Review. The MCE has endorsed these recommendations and requested that the AEMC progress the Rules changes via the fast track Rules change process under the National Electricity Law. Since that time a draft determination has proposed that three of the four Rules changes should proceed.

We support the findings in the draft determination subject to the AEMC's due consideration of the issues raised in relation to National Electricity Amendment (Fully Co-optimised and Alternative Constraint Formulations) Rule 2009.

We welcome the AEMC's endeavours to provide additional clarity to the operation of the access and compensation mechanisms related to generator investment through the Market Frameworks Review and therefore we endorse the position of the AEMC on the National Electricity Amendment (Network Augmentations) Rule 2009.

Should you have any enquiries in relation to this submission, please contact the undersigned on (03) 96122211.

Yours faithfully,



Manager, Regulation
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(on behalf of the participants listed)

Alex Cruickshank Manager Wholesale Markets Regulation AGL Energy Limited	Mark Frewin Regulatory Manager TRUenergy Pty. Ltd.
David Hoch Regulatory Policy Manger International Power	Ken Thompson General Manager Loy Yang Marketing Management Company Pty Ltd

Arguments against the National Electricity Amendment (Network Augmentations) Rule 2009 proposed following the Congestion Management Review but not supported in the draft Rules determination of 23 April 2009.

We refer to our letter dated 16th May in response to the Exposure Draft of this Rules change where we identified a number of reasons why this Rules change should not proceed. Our view has not changed and we refer you to additional information supporting this position. This information includes: our submission to the Market Frameworks Review 1st Interim Report (available at <http://www.aemc.gov.au/electricity.php?r=20090224.113006>) and further legal advice which has not previously been sighted by the AEMC as attached.

The Rule change proposed does not address the concerns raised by generators, or the issue as described by the Commission

The Exposure Draft described 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.

This summary is ambiguous; with respect to the first point, we are seeking access rights which are consistent with the Rules, this would provide “firmer” access than the current interpretation and application of the Rules but it is not clear that this is what the AEMC means.

The Exposure Draft recommends amendments to the Rules aimed at further clarifying the arrangements for the recovery of costs or reduction in ongoing charges. The AEMC then notes that the issue is addressed because 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 does not address the issue raised by generators or as described by the AEMC in the Exposure Draft. The real issue relates to the need for greater specificity on exactly how the access and compensation provisions operate. The proposed Rules change does not provide this specificity but introduces uncertainty with respect to the access arrangements.

Furthermore, on the basis that the proposed Rules change is only to clarify “*how participants who fund network augmentations can recoup some of their costs ... in the*

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

event new parties subsequently connect” then we believe that these changes should not proceed, noting that we have:

- sought clarification from the AEMC in a letter dated 03 Feb 2009 as to the definition that the AEMC has provided with respect to the costs that are directly attributable to a (generator) participant’s connection to a network, i.e. negotiated use of system charges. Our interpretation of the access provisions (based on our legal advice) is clearly different to the AEMC’s interpretation as presented in the 1st Interim Report;
- received a response from the AEMC which has not resolved the issues we have raised with the access provisions because it restates the interpretation the AEMC provided in the Market Framework’s Review 1st Interim Report which we believe is problematic because it implies an artificial separation between “connection and extension assets” and “augmentations” by treating them in separate sections of the report. However, the letter from the AEMC acknowledges that the issues we have raised with respect to 5.4A will be considered in the Market Frameworks Review;
- made a submission to the Market Framework Review (dated 23 Feb 2009) which fully outlines the issues we see with the access provisions and their interpretation, provides significant additional information including a background to the development of the access arrangements, an economic justification and quantification of the dynamic efficiency benefits and a legal interpretation of the access provisions.

In our view, it is premature to implement this Rules change since the issues that were not fully resolved during the earlier Congestion Management Review are to be considered as part of the Market Frameworks Review. This includes the substantive issues we raised with respect to the access provisions (which resulted in this proposed Rules change) now being part of the Market Frameworks Review and therefore still under active consideration by the AEMC.

Furthermore, the problems we raised in our response to the Exposure Draft remain and in that regard the Market Frameworks Review provides an opportunity to resolve these ongoing oversights. These concerns, restated here, are supported by the attached legal advice from Norton Gledhill.

Therefore, undermining the validity of the Market Frameworks Review by proceeding with this Rules change is highly inappropriate and raises questions as to the validity of that process.

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

Insofar as it is the AEMC’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:

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

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- (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.*

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 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 standards of performance of power transfer capability to prescribed services.

The Rules change creates a high level of uncertainty particularly for those generators who have connection agreements that specify a level and standard of performance and power transfer capability to prescribed services.

In view of this, it should be clear that any Rules 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.

Attached to this background information is a legal opinion that challenges the perceived benefits of a link between clause 5.4A of the Rules & clause 6A.9.1.

Norton Gledhill

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9 May 2008

By e-mail

Mr C Noutso
Manager Regulation (Access)
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Dear Con,

FIRM ACCESS

Congestion management review

Arrangements for recouping costs for participant funded network augmentations

I refer to the changes to the National Electricity Rules (**Rules**) proposed by the Australian Energy Markets Commission (**AEMC**) in its *Congestion Management Review*, Exposure Draft – Arrangements for recouping costs for participant funded network augmentations, 2 May 2008, Sydney.

On behalf of AGL, Ecogen, International Power Australia, Loy Yang Power and TRUenergy (**Victorian Generators**), you have asked me to consider whether the proposed Rule changes would adversely affect Victorian Generators' access rights under the Rules.

The short answer is they ought not.

Rather, what the proposed Rules change seek to do is to make it clearer that in a negotiation between a transmission network service provider (**TNSP**) and a generator on transmission network user access arrangements, under clause 5.4A of the Rules, the principles stated in clause 6A.9.1 are to be observed.

Insofar as the free-rider problem is concerned, there is something for the Victorian Generators to like about this.

For example, the principle included in clause 6A.9.1(8) is to the effect that under the generator compensation arrangements provided for in clause 5.4A(h), what a second generator may have to pay a TNSP is an amount referable to the revenue likely to be foregone by an incumbent generator when the dispatch of a second generator causes the incumbent generator to be constrained off or constrained on.¹

¹ Clause 6A.9.1(8) provides as follows:

However, I do have a number of concerns with the proposed Rule changes, as follows:

- The proposed new clause 5.4A(h)(iii) (**New Rule**) may lend weight to the view, not held by me, that the requirements of clause 5.4A only apply where the transmission network user access arrangements being sought by a connection applicant involve negotiated transmission services.
- If there is to be a New Rule, it should not be included in clause 5.4A(h).
- The content of any New Rule should not be concerned with the manner in which access negotiations are concerned, as proposed by the AEMC, but rather with the outcomes of the access negotiations, i.e., those outcomes should give effect to and be consistent with relevant principles.
- To the extent that the objective of the New Rule is create a link between clause 5.4A and clause 6A.9.1, the New Rule is unnecessary because clause 6A.9.2(b) already establishes such a link.
- The proposed new note under clause 6A.9.1(6) (**New Note**) is not particularly helpful.

I amplify on each one of these concerns in the appendix to this letter.

The view I have reached is that the AEMC's proposed Rule change is not the best way to deal with the free-rider problem.

What I consider the free-rider problem calls for is a set of new Rules dedicated to generator access arrangements. These new Rules would:

- (a) clearly deal with how, and to what extent, a second generator must contribute towards the capital costs of an earlier network augmentation funded by an incumbent generator;
- (b) require the second generator to make that contribution whether the transmission network user arrangements it sought require the TNSP to provide prescribed or negotiated transmission services, i.e., the new Rules would not duplicate the problem inherent in clause 6A.9.1, that the application of the principles in that clause is limited to negotiated transmission services;
- (c) require the contribution to be one that gives effect to, and to be consistent with, a set of principles which may be based upon the negotiated transmission service principles in clause 6A.9.1 but which would be customised in a way that deals specifically with generator access and averts the free-rider problem.

I would be happy to discuss this advice with you further.

Yours sincerely,



Peter Nelson
Principal

any access charges should be based on the costs reasonably incurred by the Transmission Network Service Provider in providing transmission network user access and (in the case of compensation referred to in rules 5.4A(h) - (j)) on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in rule 5.4A(h)-(j) where an event referred to in those paragraphs occurs;

A second generator would be "a person referred to in rule 5.4A(h)-(j)".

Norton Gledhill

COMMERCIAL LAWYERS

VICTORIAN GENERATORS FIRM ACCESS

Congestion management review Arrangements for recouping costs for participant funded network augmentations

APPENDIX

1. **The New Rule may lend weight to the view that the requirements of clause 5.4A only apply where the transmission network user arrangements being sought by a connection applicant involve negotiated transmission services**
 - 1.1 As proposed by the AEMC, the New Rule would provide that:

all negotiations between the Transmission Service Provider and the Generator must be conducted in a manner consistent with clause 6A.9.1.
 - 1.2 The negotiations referred to in the New Rule are negotiations under clause 5.4A in respect of the transmission network user access arrangements sought by a connection applicant. The New Rule contemplates that when the negotiations are between a TNSP and a generator, they must be conducted in a manner which is consistent with the negotiated transmission services principles provided for in clause 6A.9.1.
 - 1.3 By imposing this requirement it is or may be implicit that, for clause 5.4A to apply, the transmission services the generator is requiring the TNSP to provide under the access arrangements being sought must be negotiated, rather than prescribed, transmission services.
 - 1.4 In my view that is not the position under clause 5.4A.
 - 1.5 In particular:
 - (a) Under the Rules, 'transmission network user access' is defined in Chapter 10, insofar as generators are concerned, to mean the power transfer capability of the transmission network in respect of the generator's generating units.
 - (b) Clause 5.4A therefore is concerned with its power transfer capability.
 - (c) A key point of distinction between prescribed and negotiated transmission services is whether shared transmission services are being provided at a level, whether as to quality or quantity, that exceeds such network performance requirements as apply under jurisdictional electricity legislation or under schedules 5.1a and 5.1 of the Rules.² If the services are being provided at a level that does not exceed the applicable network performance requirements then what is being provided is a prescribed transmission service and if the services are being provided at a level that exceeds those requirements then what is being provided is a negotiated transmission service.

² See paragraph (a) of the definition of 'prescribed transmission service' and paragraph (a) of the definition of 'negotiated transmission service', each in Chapter 10 of the Rules.

- (d) It would be open to a generator to seek transmission network user access – i.e., some level of power transfer capability – under which, in addition, the TNSP might be bound to provide shared transmission services at a level that either exceeded or did not exceed the applicable network performance requirements.
 - (e) Put another way, the generator might require a level of power transfer capability under access arrangements to be negotiated under clause 5.4A which also involved the provision by the TNSP of **either** a prescribed **or** a negotiated transmission service.
- 1.6 In view of this, if there is to be a New Rule, then, to avoid doubt, it should be made clear that the New Rules does not confine the scope of clause 5.4A to transmission network user access arrangements under which the TNSP is only to provide negotiated transmission services.
2. **Any New Rule should not be included in clause 5.4A(h)**
- 2.1 As I outlined in my letter of advice dated 10 April 2008, clause 5.4A(h) of the Rules is concerned with the compensation a generator may receive when it is constrained on or off, or the compensation it may have to pay when its dispatch causes another generator to be constrained on or off (**Generator Compensation Arrangements**).
 - 2.2 In particular, my advice was to the effect that if a generator sought an access arrangement under which nothing more was required of the TNSP than that the TNSP meet the minimum standards of performance set under the Rules, then the generator might negotiate for compensation to be forthcoming not every time the generator was constrained off but perhaps at least on those occasions when it was constrained off due to a failure by the TNSP to meet the minimum standards. I further advised that it would also be open to a generator to require a TNSP to meet higher standards of performance, that in order to do that it might well be necessary for the TNSP to augment the network, that the generator might have to pay for that augmentation and that, with all that in mind, the generator might negotiate for more favourable compensation arrangements, e.g., compensation whenever the generator was constrained off except perhaps when the TNSP is affected by a force majeure event.
 - 2.3 Insofar the free-rider problem is concerned, the issue to address is not so much Generator Compensation Arrangements. Rather the issue is one concerned with use of system service charges payable by a generator (**G1**), or with other amounts payable by G1 to the TNSP, such as a capital contribution to a network augmentation required in order to allow the TNSP to provide the required transmission network user access arrangements.
 - 2.4 Specifically, the issue addressed in the Exposure Draft is how G1's charges should be adjusted in G1's favour, or how G1 should otherwise get back a share of its capital contribution, when a second generator (**G2**) subsequently connects to the network and makes use of the same assets that are used to provide services to G1.
 - 2.5 Given the free-rider problem is not one concerned with Generator Compensation Arrangements per se, any New Rule should not be included in clause 5.4A(h).

3. **The content of any New Rule should not be concerned with the manner in which access negotiations are concerned, as proposed by the AEMC, but rather with the outcomes of the access negotiations**

3.1 It is apparent from the Exposure Draft that what the AEMC is seeking to achieve is to clearly provide in the Rules for the recoupment of capital costs associated with participant funded transmission network augmentations.³ The AEMC seeks to do this by way of a new Rule making an explicit connection between the negotiated transmission service principles in clause 6A.9.1 and negotiating access under clause 5.4A.

3.2 That being the case, I would have thought that any New Rule would not be concerned so much with the **manner** in which the access negotiations are conducted, e.g., whether the access negotiations are conducted in good faith etc.

3.3 Rather, the New Rule should be concerned with the **outcomes** of the access negotiations. In particular, under any New Rule the negotiated outcomes should give effect to and be consistent with the relevant principles.

4. **The proposed New Rule is unnecessary because there is already a link in the Rules between clause 5.4A and clause 6A.9.1**

4.1 Insofar as the objective of the AEMC's proposal is to create a linkage between the negotiated transmission service principles in clause 6A.9.1 and access negotiations under clause 5.4A, that is already clearly provided for in clause 6A.9.2(b) which imposes the following requirement on a TNSP in negotiating the terms and conditions of access for negotiated transmission services:

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

(1) *rules 5.3 and 5.4A, when negotiating for the provision of connection services and the associated connection service charges; and*

(2) *rule 5.4A when negotiating the use of system services charges and access charges to be paid to or by a Transmission Network User.*⁴

5. **The New Note**

5.1 A difficulty with the proposed New Note is that I cannot see that the "cost of providing the negotiated transmission service to a Service Applicant changes" when the assets used to provide that service are subsequently used to provide a service to another person. Rather, the NSP simply has another person to impose charges on in respect of those assets.

5.2 Furthermore, the proposed New Note really adds nothing to what is already provided for in clause 6A.9.1(6) itself.

³ E.g., see section 2 of the Exposure Draft.

⁴ An amount to be paid by a connection applicant to an NSP in relation to the costs reasonably incurred by the NSP in providing transmission network user access, as contemplated by clause 5.4A(g), is an "access charge": see clause 5.4A(f)(4).