

25 July 2006

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Mr Anthony Englund
Australian Energy Market Commission
PO Box H166
AUSTRALIA SQUARE NSW 1215

Dear Anthony,

Submission on Draft Report – Review of Enforcement and Compliance with Technical Standards

Pacific Hydro Pty Ltd thank the Commission for the opportunity to make comment on these recommendations and submit the following comments.

Recommendation 1

“That NEMMCO and/or the electricity supply industry request a Rule change that proposes to:

- Require that generators provide NEMMCO with a confidential copy of the relevant connection agreement;
- Provide for binding and enforceable arbitration to resolve particular issues where the parties disagree and gives the arbitrator the powers to perform this role including the power to compel the production of relevant documents;”

Submission

The Draft Report states that, “connection agreements between the generators and NSPs will be key documents for settling the content of the deemed performance standards”. Given that connection agreements are typically heavily negotiated and commercially sensitive documents between generators and NSPs, it does not seem appropriate for the whole connection agreement to be disclosed to NEMMCO, even on a confidential basis. Usually a connection agreement will set out technical information in a separate schedule which can be easily referenced as an independent document. Accordingly, we submit that only the relevant technical information set out in the connection agreement should be required to be disclosed to NEMMCO, and not the whole connection agreement.

We submit that the proposal to provide for arbitration where there is a need to decide a performance standard needs much more detailed consideration before it can be requested as a Rule change. Some of the issues which require consideration include:

- Which Participants are required to be party to the arbitration, and which Participants may be joined to any proceedings

- The identity and qualifications of the arbitrator
- The confidentiality of the arbitration proceedings
- The process and grounds for appeal from any decision of the arbitrator
- How costs of the arbitration will be borne
- The scope of the arbitrator's power to compel the production of documents

Recommendation 12

"That the MCE directs the AEMC to conduct a further review into the appropriate penalties for breaches of technical standards to be completed before June 2007, once the process of determining deemed performance standards for existing plant is completed. The further review should consider and further develop the Commission's preliminary views that:

- If recommendations for fault-based liability and removal of benefits resulting from technical breaches are adopted, a higher level of penalty, similar to the rebidding penalty is likely to be appropriate;"

Submission

It is our understanding that rebidding offences are similar to the competition law offences which attract high penalties under the *Trade Practices Act 1974*. A corporation (and its directors and officers) might be tempted to flout competition laws because anti-competitive behaviour could be rewarded by inflated profits, at least in the short term. Although the penalties are probably designed to reflect a balance between deterrence and compliance, the deterrence aspect of the penalty must go some way to outweigh the temptation to engage in anti-competitive conduct. Presumably, similar justifications exist for the relatively high level of penalties attaching to rebidding offences.

We submit that there is little justification for using rebidding penalties as a kind of benchmark for breaches of technical standards because the type of behaviour leading to rebidding offences is quite different from the type of behaviour that would lead to breaches of technical standards. Furthermore, it would be useful to consider the circumstances that should be taken into account when fixing the penalties. In our view, relevant circumstances would include:

- The impact the breach had on the system as a whole
- Any impact the breach had on other Participants
- Any benefit obtained by the breaching Participant as a result of the breach
- The level of non-compliance resulting from the breach

We trust that the process which has been put in place for resolution of the deemed performance standards will result in resolution of the outstanding technical standard issues.

Yours sincerely



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Regulatory Compliance Manager