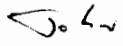


31 May 2006

Dr John Tamblyn
Chair
Australian Energy Market Commission
PO Box H166
Australia Square NSW 1215


Dear Dr Tamblyn

RE: Draft Rule: Dispute Resolution Process for the Regulatory Test

Thank you for the opportunity to comment on the AEMC's Draft Rule amending the process for regulatory test dispute resolution.

The AER supports the intent of the draft Rule to streamline the dispute resolution process and eliminate unnecessary duplication of functions through the removal of the Dispute Resolution Panel (DRP) from the regulatory test dispute resolution process. Whilst the AER generally supports the draft Rule, we would appreciate the AEMC's consideration of the following issues in making its final determination.

Timeframes for reliability disputes

The AEMC's draft Rule implements the MCE's proposal to apply tighter timeframes for resolving disputes involving a reliability augmentation. In its draft determination the AEMC has concluded that the timeframe of 30 business days as proposed by the MCE is appropriate.

The AER considers that without any progress to clarify the definition of reliability augmentation or create a set of guiding criteria, the shortened timeframe for reliability augmentation disputes will be challenging. Given the complexities around this issue, and the fact that most regulatory test applications use the reliability limb, the AER believes progress is required on how to define a reliability augmentation for the AER to properly conduct its role as a dispute resolution body.

The AER notes that in a recent submission to the AEMC the Inter-Regional Planning Committee (IRPC) has recommended removing references to any IRPC criteria on reliability augmentation from the Rules entirely. In light of this, the AER encourages the AEMC to consider how the development of a definition for a reliability augmentation might be progressed.

The AER also considers that the draft Rule needs to take into consideration the current timeframes for disputes involving multiple parties. Under the current Rules, the DRP must resolve disputes within 30 business days where they involve only two parties. However, this timeframe is increased to 70 business days where a dispute involves more than 2 parties. Given the breadth of matters considered in a regulatory test report and the wide potential for transmission investment to affect many parties, it is highly possible that the AER will hear a dispute involving more than 2 parties. The AER notes that the draft Rule requires the AER to resolve such a dispute in less than half the time currently provided to the DRP.

Furthermore, the current Rules provide a degree of flexibility to the DRP by allowing it to extend its deadlines in difficult or complex cases, where it can obtain the agreement of the AER and disputing parties. However, the draft Rule limits any extension in time to cases where further information from the disputing parties is required to make a decision. This has limited value in complex or difficult cases.

In light of the above comments, the AER considers that the AEMC should further consider the proposed time limit of 30 business days for dispute resolution of reliability augmentations, and the level of flexibility for this timeframe before preparing its final determination. The AER would urge the AEMC to balance the MCE's objective of streamlining the dispute resolution process with the need to promote sound and well-considered dispute resolution decisions.

Drafting issues

The AER has found the following drafting issues in the draft Rule which need to be addressed.

Clause 5.6.6(j)

The current Rules provide that parties may not dispute any matters which are regarded as 'externalities by the regulatory test.' However, the MCE's proposal includes an amendment that changes the wording in this provision to 'economic side-effects that are periphery to the regulatory test.'

The AER understands the AEMC is concerned that the wording in the MCE's Rule change proposal may inadvertently affect the promulgation of the regulatory test. As such, the AER supports the AEMC's intention to keep the wording used in the current Rules. However, the AER believes that this objective has not been achieved as the draft Rule states: '*a dispute under this clause may not be in relation to matters.. which are regarded as externalities to the regulatory test.*'

In reinstating the wording of the current Rules, the AEMC has used 'to' in the draft Rule instead of 'by.' This single word subtly changes the meaning of the clause to exclude any matters that are generally not related to the regulatory test, when it should refer to matters that are excluded from consideration in the application of the regulatory test.

The AER therefore considers that clause 5.6.6(j) should be corrected to read '*a dispute under this clause may not be in relation to matters.. which are regarded as externalities by the regulatory test*' to prevent confusion and inconsistency in interpretation.

Clause 5.6.6(o)

The AEMC has modified the MCE's proposal to include a provision in the draft Rule that imposes a time limit on any AER request for further information (7 business days prior to expiry of the overall dispute timeframe) and any response to such a request (14 business days from receipt of a request).

However, the AER notes that an inconsistency exists between the provision providing the AER with the power to make a request for further information and the provision stipulating the timeframes that apply to this function. Clause 5.6.6(l)(4) of the draft Rule allows the AER to request further information from *a party bringing a dispute, or from the applicant*. However, in allowing the AER to extend its decision-making timeframe by the time required to obtain required additional information, clause 5.6.6(o) only refers to the time taken by the *applicant to provide any additional information requested* but does not include a party bringing a dispute. Also, clause 5.6.6(o)(2) requires *that the applicant provides the additional information within 14 business days of receiving the request* but does not mention the disputing party, even though the AER may require them to provide additional information.

This is most probably a drafting oversight but without correction, the effect of these two clauses is potentially to:

- prevent the AER from extending its decision-making timeframe in cases where it seeks additional information from the party bringing the dispute; and
- exempt the party bringing the dispute from the time limits on providing further information.

The AER therefore considers that clause 5.6.6(o) and clause 5.6.6(o)(2) should include *a party bringing a dispute*.

We look forward to discussing this response with you and participating in the subsequent stages of the review.

Yours sincerely



Steve Edwell
Chairman