

24 December 2004

Manager – Energy Market Reform Team  
National Energy Market Branch  
Department of Industry, Tourism and Resources  
GPO Box 9839  
Canberra ACT 2601

To whom it may concern,

**Re: Proposed National Electricity Law and National Electricity Rules**

I am writing to you on behalf of the members of the Australian Wind Energy Association (AusWEA). AusWEA represents over 240 major Australian and International renewable energy companies, complimentary manufacturing and service industries, a broad range of small wind energy system installers and suppliers and individuals involved in the Australian wind energy industry.

We would like to register several issues in relation to the proposed National Electricity Law (NEL) and National Electricity Rules (NER) that have recently been provided for consideration by relevant industry.

We would point out at this stage that given the short time frame required for submissions we have not had the resources or time to fully assess the impacts of the proposed NEL and NER changes on the Australian wind energy industry. Therefore we respectfully reserve the right to bring to your attention any further issues that we feel relevant at any point in the future during the deliberations regarding the proposed changes to the NEL and NER.

Our initial perusal of the proposed changes has revealed a number of issues that we believe to be of significant consequence to the Australian wind energy industry.

The areas of greatest concern can be categorised into 4 main areas being:

1. The National Electricity Market Objective
2. National Electricity Rules now to have statutory force
3. Explicit lack of consideration of social equity and environmental policy issues
4. The effect of NEL on existing wind energy projects

**The National Electricity Market Objective**

Under the exposure drafts of the new National Electricity Law (the **New NEL**) and National Electricity Rules (the **NER**), in making a decision on a Rule change proposal the AEMC may only amend a Rule if it is satisfied that the amendment will, or is likely to, contribute to the achievement of the NEM objective.<sup>1</sup>

The new NEM objective does not contain any aspect of 'technical neutrality', that is, there is no equivalent of the current market objective in Clause 1.3(b)(5) of the National Electricity Code (**NEC**) that a particular energy source or technology should not be treated more favourably or less favourably than if that person were already participating in the market.

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<sup>1</sup> National Electricity Law Exposure Draft, Part 7 Div 1, Section 87(1).

Wind Farms face unique technical challenges in entering the NEM; however, an objective of technical neutrality seems to have been lost in defining what is in the “long term interest of consumers”. Is it intended that the new composite definition of NEM objective reflect any aspect of technical neutrality?

It is of concern to us that, strictly, Ministers within the Ministerial Council on Energy (**MCE**) will not be able to initiate a Rule change proposal through the Rule change process in relation to a wind farm or renewable energy generation matter (such as the reduction of greenhouse gas emissions) because that is not an interest recognised within the NEM objective. Even if a Rule change proposal is put forward, the Australian Energy Market Commission (**AEMC**) cannot make the change if the change will not, or is not likely to contribute to the achievement of the NEM objective.

It is our opinion that this means there will be no governance framework for progressing Code changes with respect to matters that specifically affect (or promote) wind generation or other renewable energy generators. This exclusionary effect means that, as a matter of principle, the NEM's objective *itself* is flawed– it is not, in fact, an objective which is relevant to the *whole* of the national electricity market (renewable energy and wind facilities included). In practical terms, wind farms will have no ‘voice’ in the Rule change process under the New NEL (although they will be bound to comply with the outcomes).

### **NER to have statutory force**

It is proposed that the provisions of the NEC be converted into statutory Rules (i.e. the NERs).

There are currently specific provisions in the NEC which are directed at synchronised, scheduled generators (which cannot be interpreted to apply to the technical and operational circumstances of a wind farm). Strict compliance with the NEC is, therefore, biased to only certain types of generators and meeting these requirements is often difficult for wind farms. In the absence of a participant or jurisdictional derogation, this has lead wind farm Code Participants to rely on the ‘technical neutrality’ objective in the NEC to promote a more favourable interpretation of the NEC.

The National Electricity Rules are to have statutory force; compliance will be mandatory. Non-compliance with the National Electricity Rules may result in penalties being levied by the AER.

We are concerned that it may similarly be difficult to comply with a provision of the NER (whether the relevant provision be an “old” NEC provision that has ‘rolled-over’ into the new Rules, a new NER provision or a changed Rule that is implemented in accordance with the Rule change process in the future) and that, as a result of non-compliance, we will be faced with enforcement action that may result in us incurring penalties which:

- (a) we would not have otherwise incurred (under the current NEC); and
- (b) are likely to be of material consequence, potentially as severe as suspension or disconnection or a civil penalty (being, in the case of a civil penalty provision that is not a rebidding civil penalty, a one-off payment of up to \$100,000 plus up to \$10,000 for every day a court considers a breach continued).

Our concern is heightened because, although we will be bound as a matter of law to comply with the Rules, we will have no means to initiate changes to any Rules that adversely affect us.

In relation to this there are several industry related working groups currently underway to assist the market to resolve these issues. The Wind Energy Technical Advisory Group (WETAG) is one such working group which is designed to resolve the current bias in the market rules which have been designed for centralised synchronous generation and provide a level “technical” playing field for a range of emerging technologies including wind.

It seems logical to us that any major structural changes such as that which is proposed is delayed until such time that groups like WETAG can provide material input as to what may be required in the future.

### **Explicit lack of consideration of social equity and environmental policy issues**

The exposure drafts of the new NEL and Rules do not deal with “social equity or other environmental policy issues.”<sup>2</sup> The SCO states that “community service obligations or measures for the reduction of greenhouse emissions” are “more appropriately addressed under other policy instruments.”<sup>3</sup>

With regard to the definition of the new NEM objective, the exclusion of these sorts of initiatives from the list of matters which are stated as being within the “long term interest of consumers” seems to us to be flawed.

It is our contention that the development of sustainable energy systems to reduce greenhouse gas emissions *is* in the long term interest of consumers and should be included within the new NEM objective.

Furthermore, the NEL and Rules will have statutory force; ‘other policy instruments’ referred to by the SCO (such as the Renewable Energy Action Agenda) will not. Without firm legislative support, the stability of investment in the renewable energy sector will be reduced.

### **Effect of NEL on existing projects**

The Information Paper states that the repeal of the initial NEL will not be regarded as a change of law (however defined) under any agreement or deed.<sup>4</sup> (This principle does not, however, appear in the exposure draft of the NEL.)

Our power purchase agreements (**PPA’s**) typically contain provisions allowing us to pass-through to an off-taker any increased costs we incur in generating and supplying energy and green benefits as a result of a change in law.

If we cannot pass through increased costs that we incur as a result of the repeal of the initial NEL (and the introduction of the new NEL), this will make the revenue streams of existing

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<sup>2</sup> National Electricity Law and National Electricity Rules Information paper (Ministerial Council on Energy Standing Committee of Officials), December 2004, Section 1.3, page 8.

<sup>3</sup> National Electricity Law and National Electricity Rules Information paper (Ministerial Council on Energy Standing Committee of Officials), December 2004, Section 1.3, page 8.

<sup>4</sup> National Electricity Law and National Electricity Rules Information paper (Ministerial Council on Energy Standing Committee of Officials), December 2004, Section 1.3, page 30.

projects uncertain and, potentially, jeopardise project viability. This will be of significant concern to project lenders and is likely to impede future investment in all renewable energy projects.

We ask that you consider these issues with the highest possible priority and we look forward to presenting a more detailed case to you as part of the pre-determined consultation process.

Should you require further information or wish to discuss any element of this submission please feel free to contact me on the telephone number below.

Sincerely yours,

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