

Energy Market Reform

National Electricity Law and Rules Consultation Session

10 December 2004

Program

1. Introduction (Garry Goddard)
2. Draft National Electricity Law
(Rhonda Andrieux)

Break

3. Draft National Electricity Rules
(Grant Anderson)
4. Questions (Panel)

Introduction

- Purpose of this consultation session
- Background
- Scope of the draft National Electricity Law and Rules
- Timetable for implementation

Purpose of this consultation session

- Outline of reforms proposed in draft National Electricity Law and Rules
- Timetable for implementation

Previous Consultation

- Previous consultation has included:
 - SCO Discussion Paper, “*Streamlining of the Code Change Process*”, March 2004
 - SCO Information Paper, “*Legislative and Regulatory Framework*” August 2004
 - SCO Consultation Paper, “*Proposed National Electricity Rule Change Process*”, August 2004
 - Public information sessions 16 to 20 August 2004

Background

- Governance of energy markets:
 - Establishment of MCE for high-level policy oversight
 - MCE subsumed NEM Minister's Forum
 - MCE Report to CoAG, December 2003
 - CoAG acceptance of IGA in June 2004
- Separation of rulemaking from enforcement:
 - Establishment of AEMC and AER (Chair appointments under consideration by MCE)
 - New regulatory and operational arrangements for AEMC, AER and ACCC (incl. MoU, which will be executed by Chairs)
 - National approach to energy access to be developed
 - Distribution and retail framework

Scope of the Draft NEL and Rules

- Provides statutory power to AER and AEMC to carry out their NEM functions
- Conversion of the Code into statutory Rules
- Not imposing new regulatory obligations on participants in the national electricity market

Scope of Draft NEL and Rules (cont.)

- Matters not dealt with in exposure drafts of National Electricity Law and Rules:
 - Environmental policy issues
 - Distribution and retail pricing
- Matters still under consideration by MCE:
 - Access
 - Long term funding arrangements for AEMC and AER (MCE considering options)
 - Merits review

Timetable for Implementation

- Initial submissions on draft NEL close – 24 December 2004
- Final submissions on draft NEL close – 7 January 2005
- Pre-finalisation hearing on draft NEL – 7 January 2005, Melbourne
- Submissions on draft Rules close – 28 January 2005
- Pre-finalisation hearing on draft Rules – 1 February 2005
- Introduction of NEL into SA Parliament – Early February 2005
- Gazettal of Rules by SA Minister

Draft National Electricity Law

Rhonda Andrieux

Key Definitions (s.2)

- NEM – wholesale exchange plus national electricity system
- NE Rules – initial Rules and ongoing
- Registered participant and “relevant” participant
- Regulatory obligation

New NEM Objective (s.6)

- The national electricity market objective is to promote efficient investment in, and use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability, safety and security
- See s.2 definition of “electricity services”

The Old Code / Market Objectives

- A competitive market
- Choice of supplier (both generators and retailers)
- Open access to the interconnected network
- Non discrimination between:
 - new and existing market participants
 - particular energy sources or technology
 - intrastate and interstate trading of electricity

Rationale for Single Objective

- Economically and legally robust basis for rulemaking
- Avoids uncertainty of “layered” multiple sub-objectives
- “Efficient investment and use” embodies old market objectives
- Economic efficiency is in the long term interests of consumers of electricity

Registering in NEM

- New Part 2 includes old s.9 plus old Code exemptions
- Registered Participants under NEL and/or Rules (old Code participants other than NEMMCO)
- Other participants - Metering Providers

MCE Policy Direction Role

- MCE power to issue Statements of Policy
Principle to guide decision making of AEMC (s.7, s.42)
- MCE may request or direct AEMC to carry out review of any matter relating to NEM (ss.39-43)
- MCE may initiate a Rule change proposal, which is then subject to Rule change procedure (s.90)

The Australian Energy Regulator (AER)

- A Commonwealth body which takes functions under the NEL (s.14)
- Responsible for economic regulation of transmission (see s.14(f) and definitions)
- Enforcer of NEL and Rules
- Not subject to direction of MCE

AER as Economic Regulator for Transmission

- Takes over ACCC role in setting transmission revenue determinations
- NEL entrenches accountability while maintaining regulatory discretion (s.15)
- Statutory duty to provide a transmission operator with the opportunity to recover efficient costs of complying with regulatory obligations (s.15)
- Statutory “hardwiring” of minimum content for Rules on revenue determinations (s.91, Schedule 1)

AER as Enforcer of NEL and Rules

- Monitoring, investigation, enforcement roles (s.14)
- Can obtain search warrants (s.20)
- AER enforces breaches by applying to Court for orders (s.54-63)

Civil Penalty Regime (Part 6)

- Maintains a civil penalty regime
- Maximum penalty \$100,000 or \$10,000 per day (s.57) (or \$1m for “rebidding” breach)
- Regulations to identify “civil penalty provisions” that attract penalties
- Does not maintain A,B,C categories or “any provision” breaches
- Infringement notice regime (to \$20,000) may apply to civil penalty provisions (Division 5)

NEMMCO (Part 5)

- Status quo for role of NEMMCO
- Conferral of functions elevated to NEL
- Statutory power for old Code Funds to be Rule Funds
- Part 8 Safety and security of system – key parts of Ch.4 protected provisions elevated to NEL

The AEMC

- A SA body takes functions under NEL (s.30).
- Responsible for managing the rulemaking procedure
- Market development function to review Rules (s.44)
- May be directed by MCE to review Rules or other NEM issues (s.40)
- Cannot initiate a substantive Rule change (s.90(2))

Initial National Electricity Rules

- Old Code quasi-consensual but indirectly “in force” under State law now Rules made under State/Territory and Commonwealth law
- Initial Rules formally made by SA Minister (agreed by all participating Ministers) (s.89)
- Initial Rules include old Code with various changes

New National Electricity Rules

- “Retro-fit” from Code to Rules
- Statutory head of power for Rules – general (s.35) and specific (Schedule 1)
- Legal status: force of law (s.8)
- Status quo on enforceability of Rules
- AER generally can only enforce Rules, and only against Registered participants, NEMMCO and “relevant participants”

The Statutory Rulemaking Regime (Part 7)

- Replaces current NECA Code change process in Ch.8
- Streamlining gains (ACCC, and fast-track mechanisms)
- Robust rulemaking test based on NEM objective for AEMC to assess whether to make a Rule change (s.87)
- Regime for participation at each stage of rulemaking process (ss.90-105)

Rights of Review

- AEMC, AER, NEMMCO subject to judicial review by “person aggrieved” (s.68 and ADJR Act)
- Registered participants may dispute matters before Dispute Resolution Panel under Rules
- Appeal on question of law from DRP decision (s.70)

Information Gathering and Sharing

- AER, AEMC & ACCC may share information (MoU)
- AEMC may request information for rulemaking and review purposes, and confidentiality claims can be adhered to (s.48)
- AER may compel production of information (s.29)

Jurisdictional Derogations

- Ministers may initiate a Rule change (after consultation with other Ministers) that is a derogation from the Rules (s.90(3))
- Must go through usual Rule change procedure
- AEMC must have regard to need for “orderly transition”(s.88)

Savings and Transitional Issues

- Savings and transitional provisions will ensure:
 - Behaviour under Code regime is “saved” and if necessary, recognised in new Rules regime
 - Referencing matters are dealt with
 - Pending matters (Code changes, determinations, proceedings) are recognised and brought into new regime
 - A smooth transition to new regime via general and specific savings and transitional provisions and a power to make regulations if necessary

Other Key Matters

- Commonwealth to be a participating jurisdiction (in the adjacent areas offshore)
- Tasmanian NEM entry foreshadowed

Draft National Electricity Rules

Grant Anderson

Background

- National Electricity Code
- National Electricity Rules - part of streamlining the Rule change process
- Scope of the National Electricity Rules:
 - substantive rights and obligations unchanged
 - accommodate new institutional arrangements
 - operate in conjunction with the National Electricity Law
 - status as “law”

Change in Juridical Basis

- Code of conduct → Rules made under NEL: change in juridical basis from consensual arrangements to law
- This is effected by:
 - removal of reference to the Rules as a code of conduct subject to authorisation under the TPA → authorisation of Rules no longer required
 - removal of concept that on registration an industry participant binds itself to comply with the Rules → the Rules apply as law

Change in Juridical Basis (cont.)

- modification of “application” provisions → the Rules apply as law
- removal of references to persons being bound by agreement to comply with the Rules (Metering Providers and industry participants who appoint intermediaries) → the Rules apply as law
- Enforcement of Rules: against Registered Participants, NEMMCO and “relevant participants”

Registered Participants and NEMMCO

- Registered Participants are Code participants other than NEMMCO
 - Specific references included to NEMMCO
- Registration
 - Under the NEL and/or the Rules
 - Refinements to Chapter 2.
- NEMMCO
 - Functions and manner of performing functions now included in NEL
 - Exemption from registration as a Network Service Provider

Reallocation of Functions

- Winding up of NECA
- Abolition of National Electricity Tribunal
- Australian Energy Regulator
 - economic regulation of transmission
 - regulatory test
 - monitoring of national electricity market
 - enforcement of NEL and Rules
- Australian Energy Market Commission
 - rulemaking
 - incidental spot market functions
 - approval of market regions
 - undertaking certain reviews

Rulemaking

- Rulemaking procedure (clause 8.3 of NEC; new Part 7 of NEL)
- Participant derogations (clause 8.4 of NEC; new Part 7 of NEL and “new” Chapter 8A)
- Jurisdictional derogations (Chapter 9; new Part 7 of NEL)
 - deletion of objectives clauses
 - deletion of expired derogations
 - extension of some metering derogations
 - amendments to accommodate changed circumstances
 - amendments to accommodate changes to other Rule provisions
 - metering transitional arrangements (substantially amended)
 - ancillary service provisions (expired)

Reliability Panel

- AEMC obliged to establish Reliability Panel
- Structure
 - AEMC commissioner to be chairperson
 - NEMMCO nominee
 - minimum of 5 “sectoral” representatives: Generators, Market Customers, Transmission Network Service Providers, Distribution Network Service Providers, end use customers [industry sector representatives must be independent from NEMMCO]
 - majority voting (chairperson has casting vote).
- Standing to initiate Rule changes

Other Changes

- **Market and Code objectives**
 - “national electricity market objective” in the NEL subsumes the previous market and Code objectives
- **Protected provisions**
 - elevated to NEL
- **System security and reliability**
 - Jurisdictional System Security Coordinators (s.109 of NEL)
 - Part 8 of NEL (clause 4.3.2)
 - Reliability Safety Net extended to 1 July 2006
- **Specific TPA-related amendments**
 - settlement residue auctions
 - B2B e-Hub

Other Changes (cont.)

- Reviewable decisions
 - concept deleted
 - subject to judicial review
 - not subject to dispute resolution process.
- Dispute resolution
 - Role of AER
 - AER not subject to dispute resolution process (but subject to judicial review)

Other Changes (cont.)

- Enforcement
 - Role of AER
 - Disconnection for breach (s.61 of NEL; clauses 5.9.3-5.9.4A)
 - Disconnection of defaulting Market Participant loads (clause 3.15.21(j), (k))
- Transmission-related changes
 - Statement of opportunities
 - Annual national transmission review and Annual National Transmission Statement
- Advocacy Panel
- Indemnities
- Conformity with NEL

Miscellaneous Changes

- Contractual type language modified
 - Counsels' Memorandum of Advice
 - bids, offers, acceptance, etc
- Reporting requirements
 - AEMC (annual report)
 - AER (annual report)
- References to transmission and distribution
 - network investment provisions
 - exit/entry charges
 - TNSPs & DNSPs include network owners

Miscellaneous Changes (cont.)

- Expired provisions
- Transitional provisions
- NECA reviews
- Defined terms
- Correction of manifest errors and cross-referencing errors

Miscellaneous changes (cont.)

- Drafting changes
 - Code v Rules references
 - Clear imposition of obligations and conferral of rights
 - Consistency with other Rules provisions and definitions
 - Clarification
- Access

Questions

Panel discussion

Next Steps

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Contact Details

- For submissions, registration for pre-finalisation hearings or any questions:

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