



Final Submission

Ministerial Council on Energy (MCE)
Standing Committee of Officials (SCO)

National Electricity Rules (NERs)

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EXECUTIVE SUMMARY

In summary, the EUAA recommends:

- a preamble to the NERs be inserted, expressly stating that the Rules are intended to give effect to the market objective, and should be interpreted in light of the objective;
- clause 8.10.4 be deleted;
- clause 8.8.2 be amended to:
 - permit two end-user representatives;
 - preserve the independence of non-TNSP members of the Panel;
and
 - remove the AEMC's arbitrary right of removal of end-user representatives.

Further amendments should also be necessary to clarify the AEMC's removal rights pursuant to clause 8.8.2(d) and to ensure consistency of nomenclature;

- merits review be permitted at the very least for those decisions which were previously deemed to be reviewable decisions. The EUAA again submits that it is for the SCO to identify any difficulties, which it considers merits review may raise. The industry and users, together with the SCO, can then consider how best to resolve these difficulties;
- clause 4.3.2 be amended to ensure load shedding guidelines are subject to public consultation and are made available publicly. In addition, Principle 10 of the Guiding Principles concerning load shedding be deleted; and
- a "Register of Interested Persons" should be created, whereby non-participants can register to receive notice of any events required to be notified to registered participants. In addition, it should be possible to register to receive such information in relation to specific provisions of the Rules.

INTRODUCTION

The Energy Users Association of Australia (**EUAA**) takes this opportunity to provide its written comments on the draft National Electricity Rules (**NERs**).

The EUAA is a non-profit organisation focused entirely on energy issues. Members determine EUAA policy and direction. The EUAA represents a wide spectrum of end-users in all Australian states. The EUAA currently has over 75 members (and growing), predominantly business users with activities across all states and many sectors of the economy. This includes many of Australia's largest gas and electricity users. EUAA activities cover both national and sub-national issues. [See <http://www.euaa.com.au/> for more information on the EUAA.

A summary of the EUAA's recommendations and the points for which it seeks clarification is set out above. Meanwhile, Appendix 1 contains EUAA's proposed amendments to the draft NERs.

The EUAA confirms that it will be taking the opportunity to present its view on the draft NERs at the consultation hearing on 1 February 2005.

As a preliminary point, the EUAA notes that this submission is premised upon the assertion of the MCE/ SCO that no substantial changes have been made to the NERs.¹ Given the sheer volume of the Rules, this commitment is critical and the EUAA notes that it has relied heavily upon this commitment in preparing these comments. Consequently, the EUAA reserves its position in the event that any substantive changes come to light.

¹ The EUAA notes the MCE/ SCO's commitment that:

[T]he changes proposed in the National Electricity Rules are not aimed at changing the regulatory obligations that are currently placed on participants in the national electricity market... Accordingly, the substantive rights and obligations of participants in the market under the current NEL and the NEC will remain the same under the new NEL and the National Electricity Rules [National Electricity Rules: Consultation Paper (December 2004), page 5].

THE CONSULTATION PROCESS

As previously mentioned, the EUAA has concerns about the consultation process in relation to both the NERs and the National Electricity Law (**NEL**). In addition to the EUAA's previously expressed concerns in relation to the inadequate time for considered comment, the EUAA has grave reservations about the piecemeal approach to consultation.

At this time, we are not privy to:

- 1.1 the proposed means by which access issues are to be addressed;
- 1.2 the regulations to be enacted pursuant to the NEL;
- 1.3 the savings and transitional provisions for the NEL and the NERs;
- 1.4 funding arrangements for the AER and the AEMC; and
- 1.5 the Memorandum of Understanding between the ACCC, the AER and the AEMC.

Without these critical details, it is simply not possible to reach a co-ordinated view about the process of electricity reform.

The EUAA notes the SCO's promise to release the complete NEL/NER package upon its introduction to South Australian parliament. This, however, is entirely inadequate, as there will be insufficient opportunity for public consultation at this late stage.

Again, therefore, the EUAA seeks:

- 1.1 specific responses from the SCO in relation to recommendations which are not adopted (as identified in Appendix 1); and
- 1.2 a commitment from the SCO to an ongoing reform process, whereby a process is developed for addressing various issues which - for whatever reason - cannot be addressed at the implementation stage (for example, the mitigation of market power within the national electricity market (**NEM**)).

The EUAA also requires the opportunity for public consultation in relation to the package as a whole, with sufficient time to permit informed consideration and meaningful consultation.

LINKING THE MARKET OBJECTIVE TO THE NERS

The EUAA considers that the NERs should expressly recognise the rights and the role of end-users in the NEM. To this end, the EUAA is concerned that the NERs do not refer to the market objective. In the EUAA's view, it would be important to include a preamble to the NERs, expressly stating that the Rules are intended to give effect to the market objective, and should be interpreted in light of the objective.

In addition, there are a number of instances where the NERs appear to depart from the spirit of the market objective. Some of these instances are discussed below in this submission: see, for example, the discussions in relation to funding arrangements, the Reliability Panel, load shedding schedules and notices. In relation to each of these matters, the EUAA has proposed amendments designed to ensure that the NERs give better effect to the market objective.

FUNDING

The EUAA is gravely concerned at the proposed funding arrangements for end-users. As per the submission of 7 January 2005, the EUAA is firmly of the view that a general right to funding for end-users should be embedded in the NEL.

Aside from this issue, the EUAA is concerned about the manner in which funding is addressed in the NERs. The funding arrangements established by clause 8.10.3(c) are, by reason of clause 8.10.4, for an interim period only (with an expiry date of 30 June 2006).

Whilst the EUAA understands that the intention is for separate funding arrangements to be established by the MCE, these arrangements will require amendment to clause 8.10.3(c) in any case. Accordingly, there is no need for clause 8.10.4 to establish a sunset date and we request that it be removed in order to provide certainty to end users and market participants about the continuing role of end user advocacy in the NEM.

Furthermore, the uncertainty that the funding arrangements create for end-users are inimical to the market objective, which turns upon the "long-term interests of consumers".² These interests are not served over the long-term by a funding arrangement which is only set to last until June 2006.

Accordingly, the EUAA submits that clause 8.10.4 should be deleted.

² Noting the EUAA's submission of 7 January, in which the word "end-users" was suggested in place of "consumers".

CONSTITUTION OF THE RELIABILITY PANEL

Removal of members: The EUAA is concerned at the proposed ability of the AEMC to remove the end-user representative "at any time for any reason" (clause 8.8.2(d1)). The ability to remove, without justification, the end-user representative, is clearly in complete contradiction to principles of representation, accountability and good governance as well as the market objective itself.

Accordingly, the EUAA recommends that (other than in the case of removal pursuant to clause 8.8.2(d)) the AEMC only be permitted to remove end-user representatives with the prior written approval of the MCE. In light of the AEMC's ability to remove members for non-performance of their functions (pursuant to clause 8.8.2(d)(6)), the removal of the end-user representative should be an extraordinary event, warranting scrutiny from the highest level.

Independence: The EUAA strongly opposes the removal of the requirement that Reliability Panel members be independent of System Operators. While the EUAA recognises that the new constitutional arrangement of the Reliability Panel would mean that TNSPs are represented, there is no reason why the independence of the remaining Panel members cannot be preserved. Indeed, such an approach is more in keeping with the MCE/ SCO commitment to making only such changes as are necessary to implement this stage of the reform program.³

Representation: The EUAA reiterates its concerns about the balance of membership of the Reliability Panel under the proposed NERs (see further the EUAA submission of 7 January 2005). While market participants each have a representative (totalling four representatives), end-users only have a single representative (proposed clause 8.10.2). This clearly creates a bias in favour of the industry against consumers and, again, is inimical to the market objective, as well as providing end users with a 'worse outcome' than exists presently.

As per its earlier submission, the EUAA considers there should be at least two representatives for end-users, and consideration should be given to creating a "super vote" for certain decisions of the Reliability Panel in order to better give effect to the single market objective. This may require, for example, the agreement of at least one end-user representative before certain decisions can be made.⁴

Finally, as a point of nomenclature, the EUAA considers the term "end-users" to be clearer than "end use customers". "End-users" also has the advantage of consistency

³ See above at footnote 1.

⁴ The EUAA is currently considering those decisions in relation to which a super vote may be considered necessary, and will advise the MCE/ SCO in due course.

with the EUAA's recommended amendments to the market objective (see further the submission of 7 January 2005).

Conclusion: The EUAA recommends that clause 8.8.2 be redrafted in accordance with Appendix 2. Please note, however, that these amendments do not incorporate any super voting rights.

DISPUTE RESOLUTION/ MERITS REVIEW

The EUAA notes that decisions which were previously reviewable are to be excluded from the dispute resolution process (see clause 8.2.1(h)).

While the EUAA accepts that these decisions are not amenable to dispute resolution, this results in the extraordinary outcome that such decisions - whilst previously being subject to special review rights - are now never to be subjected to scrutiny (other than by means of judicial review).

This establishes a completely inappropriate governance regime. Accordingly, the EUAA reiterates its calls for proper consideration of and consultation on the need for merits review. In doing so, we again note that it is for the SCO to identify any difficulties which it considers merits review may raise, thereby allowing the industry and users - together with the SCO - to consider how best to resolve these difficulties.

LOAD SHEDDING SCHEDULES

The EUAA notes the changes in relation to system security as set out in clause 4.3.2, in particular the Jurisdictional System Security Coordinators' obligation to provide NEMMCO with load shedding schedules.

The EUAA notes that these load shedding schedules are essential to the proper functioning of the market, including demand-side management. The EUAA has reviewed, and by and large supports, the Guiding Principles released by the MCE in December last year.⁵

The EUAA is extremely concerned, however, by the Principle 10, which purports to treat such schedules as confidential. Such an approach does not support a transparent and accountable governance structure, nor is it consistent with the single market objective.

In the EUAA's view, transparency and accountability are essential to ensuring the long-term interests of end-users.

Accordingly, it is imperative that the NERs entrench appropriate principles of transparency, by requiring such schedules to be made publicly available. In addition, the EUAA considers that the Jurisdictional Coordinators should first consult with the industry and end-users before preparing the schedules. This raises a broader issue of the lack of openness and transparency in the role and work of the Jurisdictional Coordinators, which is something that needs to be addressed.

Accordingly, the EUAA submits that clause 4.3.2 should be amended in accordance with Appendix 2 and Principle 10 of the Guiding Principles be deleted. We also request a proper review of the need for greater transparency and openness in the role and work of the Jurisdictional Coordinators.

⁵ See Statement on Review of Under Frequency Load Shedding Arrangements (December 2004).

NOTICES AND CONSULTATION WITH STAKEHOLDERS

The EUAA notes a number of instances where NEMMCO and various other parties are required to provide notices directly to registered participants (e.g. suspension of the spot market pursuant to clause 3.14.4). While these notices are also published on the NEMMCO website, experience to date indicates that such publication is not timely.

Accordingly, the EUAA considers that "any interested person" should be permitted to request NEMMCO (or such other party bearing the obligation to provide notice) to provide certain notices directly to that person. This approach is in accordance with the broad standing provisions established pursuant to the NEL (see, for example, sections 68, 83, and 90).

This could be achieved by creating a "Register of Interested Persons", to be managed by NEMMCO. All notices required to be provided to registered participants should also be provided to those who have asked to be listed on the register. In addition, NEMMCO should ensure such person are informed of, and invited to participate in, any consultation processes undertaken pursuant to the NEL or the NERs.

In addition, it should be possible for person not wishing to be listed on the register (and thereby receiving broad ranging information), to register to receive specific information. Examples of clauses for which specific registration should be permitted include: 2.10.1; 3.3.17; 3.8.3; 3.8.17; 3.8.18; 3.11.5; 3.14.2; 3.14.4; 5.6.1; 5.9.2; 8.7.2; and 8.8.3.

Please contact the EUAA if you have an questions or comments regarding this submission or any other related matter.

Energy Users Association of Australia (EUAA)
Suite 1, Level 2
19-23 Prospect Street
Box Hill, VIC 3128
(m) +61 (0)401 030 051
(l) +61 (0)3 9898 3900
(f) +61 (0)3 9898 7499
(e) euaa@euaa.com.au
(w) <http://www.euaa.com.au>

APPENDIX: SUGGESTED DRAFTING CHANGES

Clause 4.3.2:

- (f) The *Jurisdictional System Security Coordinator* for each *participating jurisdiction* must provide *NEMMCO* with:
- (1) a schedule of *sensitive loads* in that jurisdiction...;
...; and
 - (2) a schedule setting out the order in which *loads* in the *participating jurisdiction*, other than *sensitive loads*, may be shed by *NEMMCO* for the purposes of undertaking any *load shedding* under clause 4.8.
- (g) A *Jurisdictional System Security Coordinator* may from time to time amend the schedules provided to *NEMMCO* under clause 4.23.2(f) and must provide to *NEMMCO* a copy of the amended schedules.
- (g1) In preparing or amending schedules pursuant to clause 4.3.2(f) or (g), a *Jurisdictional System Security Coordinator* must:
- (a) first publicly seek submissions from registered participants and any other interested party; and
 - (b) take such submissions into account; and
 - (c) provide any submissions received to *NEMMCO* for publication.
- (g2) *NEMMCO* must publish on its website:
- (a) any submissions provided to it by a *Jurisdiction System Security Coordinator* pursuant to clause 4.3.2(g1); and
 - (b) any schedules and amendments to schedules provided to it by a *Jurisdiction System Security Coordinator* pursuant to clause 4.3.2(f) or (g).

Clause 8.8.2:

- (a) The *Reliability Panel* must consist of:
- ...
- (3) at least 6 but not more than 8 other persons appointed by the *AEMC* for a period of up to three years, such persons to include:

...

- (E) two persons representing the interests of end-users for electricity.
- (c) In making the appointments to the *Reliability Panel* under clause 8.8.2(a)(3), the *AEMC* must, to the extent reasonably practical and subject to clause 8.8.2(c1), give effect to the intention that the persons so appointed:
- ...
- (3) must be independent of *NEMMCO* and, excepting a person appointed under clause 8.8.2(a)(3)(C), *all System Operators*,
- and if at any time a person on the *Reliability Panel*, other than the chief executive officer or a delegate of *NEMMCO*, ceases to be independent of:
- (4) *NEMMCO*; or
- (5) excepting a person appointed under clause 8.8.2(a)(3)(C), any *System Operator*,
- the *AEMC* must remove that person from the *Reliability Panel*.
- (c1) Subject to clause 8.8.2(d), the persons referred to in clauses 8.8.2(a)(3)(A), (B), (C) and (D)...
- (d) The *AEMC* may remove any member of the *Reliability Panel*, including the chairperson, at any time during his or her term in the following circumstances:
- ...
- (4) the *AEMC* is required to remove the person under clause 8.8.2(c) or 8.8.2(c1)(2);
- (5) in the case of a person appointed under clause 8.8.2(a)(3)(A), (B) and (D), the person ceases to be independent of any *System Operator*; or
- (6) the person fails to discharge the obligations of that office imposed by the *Rules*.
- (d1) Subject to clause 8.8.2(d), the *AEMC* may only remove the person referred to in clause 8.8.2(a)(3)(E) with the prior written consent of the MCE.

Clause 8.10.4:

[Deleted]