



RESPONSE TO
PROPOSED NATIONAL ELECTRICITY RULE CHANGE PROCESS
Consultation Paper – Ministerial Council on Energy

27 August, 2004

Powerlink Queensland, the owner and operator of the high voltage transmission grid in Queensland, is pleased to offer the following response to the consultation paper issued by the Ministerial Council on Energy.

Powerlink supports the elimination of the duplication in the existing Code change process between NECA and the ACCC, and other proposed measures to 'streamline' the rule-change process such as the suggested timeline. We support the proposal to allow the AEMC discretion to extend periods for submissions and for timeframes to not be mandatory. Some Rule change proposals will be complex and have significant impact, and it is important that sufficient time be allowed for consultation and consideration of relevant issues.

Powerlink does NOT support the wording of the primary market objective of the national electricity market to "promote the long-term interests of consumers of electricity with respect to price, quality and reliability of electricity services, and economically efficient investment and innovation."

We believe that consumers want " **very reliable supply at a reasonable cost** " and the message to rule-makers and regulators should reflect that.

Powerlink also has several concerns with the proposed arrangements:

1. the proposed Reliability Panel arrangements and potential uncertainties and conflicts regarding reliability standards
2. the minimal review mechanisms for Rule-making decisions by the AEMC
3. the need to ensure only worthwhile Rule changes are put up for consideration and accepted
4. confidentiality arrangements and protocols for sharing of information between regulatory bodies

Reliability Standards

Powerlink considers it is essential that reliability and system performance standards be set by appropriate bodies. We strongly support the retention of the Reliability Panel regime and its ability to initiate Rule change proposals. However, we are concerned with the Reliability Panel becoming merely an advisory body to the AEMC, rather than being an independent body which draws support from the AEMC.

Powerlink considers that the market development functions of the AEMC do not, and should not, include a role in determining the reliability and performance standards which NEMMCO, transmission entities and other market participants should satisfy.

Yet, this appears to be exactly what is being proposed with the changes to the Reliability Panel functions. The consultation paper states that the Reliability Panel's role will be to monitor, review and report on the system standards for performance of the power system, but that **any determination on such standards will be by the AEMC**.

Powerlink considers that the role of determining reliability standards is a matter of policy, with a strong role to be played by jurisdictions. Accountability for the outcomes of power system operation in terms of impact on supply to electricity consumers is a key focus for the jurisdictions, as evidenced by the recent review of the performance of distribution network service providers in Queensland.

The setting of standards by the AEMC could result in inappropriate or conflicting obligations on entities within the market, and all efforts should be made to avoid such a situation. Such a role is also considered inconsistent with the functions of a body which is supposed to have limited market development functions.

Review Mechanisms

Consideration of the proposed functions of the AEMC gives rise to a broader concern regarding the review mechanisms for rule-change decisions by the AEMC.

The AEMC has responsibilities to make decisions which could result in a significant impact on the power system, the market operation and participants. For example, the AEMC can:

- Determine whether a proposed Rule change has a net benefit and should be incorporated into the NE Rules
- determine whether a Rule change proposed by any interested party is sufficiently 'developed' and consistent with market objectives and therefore should be considered.
- determine if a change is 'minor' and initiate a related Rule change without consultation
- determine whether objections to Rule changes are well-founded

At present, a decision by NEMMCO or NECA is a 'reviewable decision' under the Code, meaning that the substance of a decision by these bodies can be challenged. The new proposal is for Rule change decisions to be subject only to judicial review.

Judicial review primarily focuses on the process of a Rule Change decision, and there is little avenue to challenge the substance or merits of a decision.

Given the potential significance of AEMC decisions, Powerlink considers the proposed process is a retrograde step from the current governance mechanisms. The proposed changes result in less transparency, and reduced accountability for decisions. In Powerlink's view, it is not acceptable that there be no mechanism to review decisions by the AEMC if the substance of the Rule change is considered incorrect.

Some form of merits review process should be adopted in the current proposal for new governance arrangements. The NE Rules are legally binding on NEM participants and AEMC decisions could potentially have a severe detrimental impact. This issue is too important to defer "until a later stage" while at the same time allowing the immediate removal of the existing 'reviewable decision' governance framework.

Criteria for a Accepting a Rule Change Proposal

Powerlink supports the proposal that the AEMC would carry out a net benefits test in relation to the achievement of market objectives when determining whether a proposed Rule Change should proceed.

There are likely to be some practical difficulties in carrying out a test based on a 'with and without' the Rule change approach. Many Code change debates in the past have been about the benefits and disadvantages of different variations of a possible Code change or the extent of the Code obligations to be imposed, rather than about whether a change should or should not proceed. However, Powerlink considers the principle of a net benefits test is appropriate and that market objectives are the appropriate basis for Rule-making criteria.

Conversely, we object to the proposal to allow any interested person to initiate a Rule change. The NE Rules will be legally binding on existing Code Participants, and Powerlink believes that the ability to initiate legally binding obligations should be restricted to Code Participants and policy and regulatory bodies.

We are concerned that, in striving to achieve wider participation in Rule development, the MCE could be creating the opportunity for parties opposed to particular network developments or with ideological objections to the NEM arrangements to obstruct efficient market processes. For example, parties may use the Rule change process to seek to impose additional obligations and responsibilities, and introduce proposals to obstruct efficient infrastructure investment.

Powerlink notes that the Code dispute process regarding new large network assets was similarly opened up in 2002 to allow participation by any interested person. This resulted in a consequence not intended by the drafters of this Code clause, namely the utilisation of the process by landowners opposing the development of a localised transmission development on 'NIMBY' grounds.

If the Rule-change process is to be opened up as proposed, the 'gatekeeper' role for the AEMC referred to in the consultation paper is critical. In Powerlink's view, the role is not articulated strongly enough and greater checks and balances need to be introduced to avoid inappropriate proposals.

The Gatekeeper Role must encompass requirements to consider the substance of the Rule change proposal, not just whether the drafting of the proposed Rule change is satisfactory in the context of the NE Rules as a whole. It also needs to be crystal clear that the 'prima facie demonstration of net benefit' required for a developed Rule change application refers to net benefit in terms of achieving the market objectives, not other possible definitions of 'net benefit'. Powerlink encourages the MCE to investigate and consider other means of ensuring that Rule-change proposals that could result in negative impacts are able to be quickly and effectively dismissed.

Powerlink again emphasises the criticality of a review mechanism of the merits of AEMC decisions, as outlined in the previous section. If any party is able to put forward a Rule change, then it is essential that a party that will be legally bound by the AEMC decision on that rule change has the right to a review of that decision.

Confidentiality Arrangements

Powerlink's final concern relates to the seeking of advice from the ACCC and AER in relation to proposed Rule changes and related information sharing arrangements between the AER, AEMC and ACCC. We appreciate that sharing of information is required to avoid duplication of consultation processes and to assist in the evaluation process. However, some information in the possession of a regulatory body may not be public information gathered through a public consultation process. Powerlink would expect that strict information sharing protocols would restrict the sharing of this information, some of which may be highly confidential, and the use of information for purposes other than that for which it was provided.

Yours sincerely,

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CHIEF EXECUTIVE

(sent electronically without signature)