

Electricity Transmission Network Owners

**Response to the Exposure Draft
of the National Electricity Regulations**

**Submission to the Ministerial Council on Energy
Standing Committee of Officials**

3 March 2005

ElectraNet ♦ *Powerlink* ♦ *SPI PowerNet* ♦ *Transend* ♦ *TransGrid*

TRANSMISSION NETWORK OWNER'S SUBMISSION
ON THE EXPOSURE DRAFT OF THE NATIONAL ELECTRICITY
(SOUTH AUSTRALIA) REGULATIONS 2005

This is a submission on behalf of ElectraNet Pty Limited, Powerlink Queensland, SPI PowerNet Limited, Transend Networks Pty Limited and TransGrid ("TNSPs").

In general terms the TNSPs consider that the draft regulations are appropriate. However, there are 3 aspects of the draft regulations, which are of concern to the TNSPs. These are:

- (a) the short life of regulation 8 relating to the maximum civil monetary liability of NEMMCO and Network Service Providers providing system operation functions or powers;
- (b) the reference in regulation 9(1)(a) to functions or powers of NEMMCO performed by an agent engaged by NEMMCO under clause 4.3.3(a)(1) of the National Electricity Rules; and
- (c) the apparent retrospective effect of the new enforcement regime as a result of clause 19 of schedule 2 of the draft regulations.

1. Liability Cap

Regulation 8 of the draft regulations provides that regulation 14 of the current National Electricity Regulations continues to apply until 13 November 2005 as if the reference to section 77(a)(4) of the National Electricity Law in regulation 14 of the current regulations were a reference to section 119(3) of the amended National Electricity Law.

As the TNSPs understand it, there is no proposal to review the current level of the maximum civil liability currently provided for under regulation 14 under the new governance arrangements.

However, if regulation 8 stays in its current form, it will be necessary to make a fresh regulation extending the period which this maximum civil monetary liability applies prior to 13 November 2005. Given that this will be required while the work on the new regulatory regime, including the finalisation of the National Electricity Rules, is completed, or a very short time thereafter, the TNSPs are unsure of the reason for this.

The TNSPs consider that more sensible approach would be to amend the proposed regulation 8 to extend the current maximum civil liability provisions for a period of 2 years after 13 November 2005.

2. Clause 9(1)(a)

Following the TNSPs submission on the exposure draft of the National Electricity Law, the *National Electricity (South Australia New National Electricity Law) Amending Bill 2005* was amended to include section 52 of the draft bill relating to the delegation of functions by NEMMCO as opposed to the appointment of agents by NEMMCO to perform those functions.

However, in their current form, the draft regulations have yet to reflect this amendment. Regulation 9(1)(a) continues to refer functions or powers performed by agents engaged by NEMMCO under clause 4.3.3(a)(1) of the National Electricity Rules.

The TNSPs assume this is an oversight and suggest that it be corrected.

3. Retrospective Effect of an Enforcement Regime

Paragraph 19 of Schedule 2 of the draft regulations provides that (amongst other things):

- (a) any action taken under a provision of the National Electricity Code by any person or body (which includes any Code Participant) is taken to be an action taken under the provision of the National Electricity Rules that corresponds to that provision of the National Electricity Code; and
- (b) an obligation or liability that has accrued or been incurred under a provision of the National Electricity Code is taken to have accrued or been incurred under the provision of the National Electricity Rules that corresponds to that provision of the National Electricity Code.

This would appear to the TNSPs to have the effect that the enforcement regime which is to be put in place under the new National Electricity Law is to be put in place with retrospective effect. As a result, it appears that actions taken under the National Electricity Code before the commencement of the National Electricity Rules will become subject to the new penalty regime provided for under the National Electricity Law.

As far as the TNSPs are aware, at no stage during the consultation process has the MCE or the SCO highlighted to interested parties that this was proposed.

The TNSPs consider that it is not generally considered to accord with best regulatory practice for regulatory changes to have retrospective effect, particularly as the changes will have effect in periods substantially before it could have been apparent to Code Participants that actions taken under the National Electricity Code would become subject to the enforcement regime for the National Electricity Rules.

The TNSPs consider that actions taken under the National Electricity Code should be remain subject to the current enforcement mechanism provided for in the National Electricity Code and that the operation of the new regulatory regime should be restricted to actions taken after the commencement of the new regime.

3 March 2004