

**Electricity Transmission Network Owners**

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

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

**1 February 2005**

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

# **Transmission Network Owners Submission on Draft National Electricity Rules**

## **1. Introduction**

This is a submission on behalf of Electranet Pty Limited, Powerlink Queensland, SPI Powernet Pty Limited, Transend Networks Pty Limited and TransGrid (the "TNSPs") on the exposure draft of the National Electricity Rules.

The TNSPs consider that, in general terms, the proposed National Electricity Rules achieve the objective of translating the current provisions of the National Electricity Code (the "Code") into statutory rules. However, there are a number of areas where amendments have been made which have a substantive effect in circumstances where this may not be well understood or where further amendment is required to be consistent with the proposed rationale of the National Electricity Rules.

The TNSPs are particularly concerned that a number of the amendments potentially have a very significant effect. The TNSPs consider that it is not appropriate for these amendments to be made as part of the conversion of the Code into statutory rules without allowing further time for consultation on the amendments.

This submission is divided into 4 parts. The main body of the submission discusses a number of material issues which the TNSPs consider need to be addressed as part of the finalisation of the National Electricity Rules.

The submission also contains a number of Attachments, namely:

- (a) Attachment 1 which sets out a number of matters of a more minor or typographical nature which the TNSPs also consider should be addressed as part of the finalisation of the Rules;
- (b) Attachment 2 which discusses the impact on a number of the current Code provisions of the removal of the concept of reviewable decisions; and
- (c) Attachment 3 which sets out a number of proposed amendments to the provisions of the Rules relating to load shedding.

## **2. Material Issues**

### **(a) Status of System Operators and registration issues**

At present the current provisions of the National Electricity Code regarding registration and the appointment of System Operators have been retained in the exposure draft of the National Electricity Rules. The TNSPs have a number of concerns regarding these provisions which, to a large extent, are related to the issues raised by the TNSPs in their submission on the National Electricity Law.

#### *(i) Appointment of System Operators*

At present, the draft National Electricity Rules retain the current clause 4.3.3 (subject to minor amendment) relating to the appointment by NEMMCO of agents as "System Operators".

As discussed in the TNSPs' submission on the National Electricity Law, the TNSPs consider that the concept of an appointment of an agent to perform some or all of NEMMCO's functions under chapter 4 is inconsistent with the status of the National Electricity Rules as statutory rules. Rather, the TNSPs consider that these provisions should be amended to provide for NEMMCO to delegate certain functions to appropriate persons or entities.

If appropriate amendments were made to the National Electricity Law, the TNSPs query whether the provisions of clause 4.3.3 dealing with the appointment of agents are in fact necessary at all (although the TNSPs note that it will be necessary to retain the provisions of the National Electricity Rules dealing with the engagement of service providers).

If a delegation mechanism is adopted, the TNSPs also query whether it is necessary or appropriate to require the delegates of NEMMCO to separately register under the National Electricity Rules given that as a delegate of NEMMCO's powers or functions, the party to whom the functions or powers are delegated will be bound to perform them in the same manner as NEMMCO. In these circumstances, it appears anomalous and unnecessary to require parties to whom functions are delegated to register under the rules.

Further, the TNSPs note that removing the requirement for System Operators to register under the rules would appear consistent with the rationale for the changes in the manner in which the National Electricity Rules as opposed to the National Electricity Code are enforced against NEMMCO. If System Operators are to be required to register under the National Electricity Rules then, based on the proposed regime for enforcement of the Rules as the TNSPs understand it, the System Operators to whom NEMMCO's functions are delegated are potentially exposed to a different enforcement regime than NEMMCO is in respect of the same functions. This would seem anomalous. For this reason, the TNSPs suggest that clause 2.6 should be deleted.

#### *(ii) Other Registration Issues*

The TNSPs note that there are a number of other aspects of chapter 2 which appear to be either inconsistent with the draft National Electricity Law or appear to be inconsistent with the rationale for the non-authorisation of the Code. In particular:

- Clauses 2.2.1(c) and 2.5.1(e) refer to NEMMCO and the AER respectively providing exemptions for "classes of persons" who are otherwise required to register. However, as discussed in the TNSP's submission regarding the draft NEL, on the basis of the provisions included in the exposure draft of the NEL, it does not appear that NEMMCO or the AER will have the power to grant class exemptions.
- The NEL retains 2 classes of participant for whom registration is a voluntary act. Section 10(4) of the NEL requires a person purchasing electricity directly through a wholesale exchange to register with NEMMCO. However, clause 2.3.1(a) of the National Electricity Rules contains a broader test for eligibility for registration as a Customer under the Rules being any person who "engages in the activity of purchasing electricity supplied through a transmission or distribution system to a connection point". Clauses 2.3.2 and 2.3.3 make it clear that parties can register as Customers under the Rules even if that party purchases its electricity from a retailer. Given that there appears to be no need for first or second tier Customers to register under the rules, and that such registration would appear to involve a consensual act on the part of that Customer, the TNSPs consider that for consistency with the rationale as to why the National Electricity Rules not be submitted to the ACCC for authorisation, the references to first and second tier Customers should be deleted.

#### **(b) System Security Directions**

At present, under clause 4.8.9 of the Code, it appears that NEMMCO has 2 separate powers to issue "directions" relating to power system security being that granted to it under clause 4.8.9 of the Code and the current section 76 of the National Electricity Law. At present, the way the Code is drafted it appears that these are separate powers. This has the anomalous result that if NEMMCO were to rely on its power under section 76, then the person taking the relevant action or authorised to take the relevant action would be protected from civil monetary liability under section 76(3) or (4). However, if NEMMCO were to rely on clause 4.8.9(a)(i) of the Code then they would not be so protected.

It is not clear why this distinction was included in the Code as the power granted to NEMMCO under section 76 of the National Electricity Law is broad enough to enable it to take any of the actions otherwise contemplated by clause 4.8.9(a).

The exposure draft of the Rules proposes to make a number of changes to the regime for system security directions. These include the introduction of a strict obligation to comply with a direction given by or on behalf of NEMMCO under clause 4.8.9A. These changes increase the difficulty referred to above as the current deficiencies in the Code and National Electricity Law provisions are carried through into the National Electricity Rules. As discussed above, this has the anomalous result that, if NEMMCO relies on its powers under section 115 of the National Electricity Law, then a person taking the relevant action is protected by section 115(4) or (5) of the NEL. If however, NEMMCO were to rely on its powers under clause 4.8.9(a)(i) of the National Electricity Rules then the relevant Registered Participant would not be so protected.

To overcome this anomaly, the TNSPs suggest that the provisions of clause 4.8.9 are amended so that it is clear that any instruction given under that clause is in reliance upon NEMMCO's power under section 115 of the National Electricity Law and that, as a result, a person giving effect to that direction is protected under section 115.

### **(c) "Contingency Event" Changes**

The TNSPs note that a number of amendments have been made to the provisions of clause 4.2.3 relating to the definition of "contingency events". The TNSPs consider that the proposed amendments to the Code may have significant and unintended consequences. Contrary views can be taken as to whether the change has the effect of varying the standard by which events are determined credible. For example, the TNSPs note it is possible to argue whether the change has the effect of lowering the standard for the determination of what is a single credible contingency event.

At present the definition refers to the reasonable expectations of a person adversely affected by an event. The proposed amendment replaces this with a reference to events which, assuming the application of good electricity industry practice, the system would withstand. The change could be seen as lowering the standard by which events are determined credible since, under the current definition, a person adversely affected by an event would view things from their own perspective and could, even acting reasonably, take the view that given the effect on them, the system should withstand a wider range of events than would be the case if someone else was making the determination based on a more "global" view as would occur under the proposed definition.

Further, the TNSPs note that it may be reasonable for the person adversely affected to assume that at times parties will not follow good electricity industry practice and that the design and operation of the system should allow for this.

The TNSPs consider that any change to these definitions needs to be carefully considered rather than made as part of a "tidy up" of the Rules. As a result, the TNSPs believe that the proposed change to the definition of "single credible contingency event" should be reversed and any amendment to this definition made only after careful consideration through the Rule change process.

The TNSPs also note that resolution of the uncertainty which the deletion of clause 4.2.3(e)(iii) was designed to overcome may require further amendment to be made to the relevant provisions. In particular, it is not clear whether NEMMCO considering the impact of the loss of an interconnection under abnormal conditions under clause 4.2.3(c) is the reclassification of a non-credible contingency event under clause 4.2.3(f). The TNSPs suggest this be clarified.

### **(d) Load Shedding**

In December 2004, the MCE released a "Statement on Review of Under Frequency Load Shedding Arrangements". This Statement included a number of guiding principles to ensure that the outcomes achieved under the relevant provisions of the Code and National Electricity Rules were consistent with that agreed by the MCE on 27 August 2004. However, the TNSPs are concerned that, as currently

drafted, the exposure draft of the National Electricity Rules fails to give effect to the guiding principles in the MCE Statement. The TNSPs have attached as Attachment 3 to this submission some suggested amendments to the relevant provisions of the National Electricity Rules.

By way of explanation of the suggested amendments, clause S5.1.10.1 of the proposed Rules fails to accommodate the guiding principles identified by the MCE including that at least 60% of load in each region (or such other level as is determined by the Reliability Panel) should be under the control of under-frequency load shedding. Accordingly, clause S5.1.10.1(a) should be amended to state that at least 60% of load (or such other level as is determined by the Reliability Panel) is under the control of underfrequency relays in distributed locations and clause S5.1.10.1(c) should be amended to state at least 60% of load is under manual control from Network Service Provider control centres to allow load shedding procedures to be implemented.

The guiding principles also included the requirement that under frequency load-shedding settings be established so that the power system frequency remains within the relevant standards as set by the Reliability Panel following any event which the system is designed and operated to withstand. Clause S5.1.10.3 sets out the obligations of TNSPs with respect to testing and the notification of settings for load shed relays. The TNSPs consider that this clause should be amended to reflect that the settings of load shed relays are determined by NEMMCO for system security purposes in consultation with the relevant TNSP, and that the TNSP notifies the settings of load shed relays to Distribution Network Service Providers and Market Customers whose loads are directly connected to the network of the TNSP.

The TNSPs have also suggested a number of more minor changes to improve the manner in which clause 4.3.5 and the relevant parts of Schedule 5.1 interrelate.

#### **(e) Application of Chapter 6**

The TNSPs note that a number of amendments have been made to chapter 6 to remove references to transmission networks and replace those references with a reference to "transmission services". However, not only have the changes not been made consistently, but in many places where a change has been made, uncertainty results as to the treatment of connection assets.

Chapter 10 defines a transmission service as:

"The services provided by *transmission system* which are associated with the conveyance of electricity through the *transmission system*"

Chapter 10 defines a transmission system as a:

*Transmission Network*, together with the *connection assets* associated with the *transmission network* which is connected to another *transmission or distribution system*"

While the TNSPs support the clarification of matters within chapter 6, the TNSPs note that the apparent effect of the changes is that all connection assets will now become subject to the regulatory regime in chapter 6. However, in many cases those assets are contestable in most of the NEM jurisdictions and, as a result, those assets are not at present subject to the revenue capping arrangements provided for by chapter 6. Given this, the TNSPs suggest that the proposed amendments to chapter 6 should be clarified to ensure that, what the TNSPs understand to be drafting changes, do not have the effect of altering the existing regulatory arrangements and that it should be clear that contestable connection assets continue to be excluded from the revenue capping arrangements in Chapter 6.

In addition to this, the proposed amendment to the definition of "contestable" and the removal of the italicisation of the reference to contestable in clause 6.2.4(f) should also be reversed.

#### **(f) Network Planning**

The exposure draft of the National Electricity Rules contains a number of amendments to the provisions relating to the planning and the development of networks. The TNSPs have a number of concerns regarding the manner in which the proposed amendments are intended to operate.

On a fundamental level, the TNSPs are concerned that it is inappropriate to introduce a number of these amendments as part of the replacement of the Code with statutory rules. The volume of material to consider and the abbreviated consultation timetable introduces a significant risk that the implications of the proposed changes will not be fully considered.

(i) *Inter-regional planning committee*

The exposure draft proposes to amend the functions of the IRPC set out in clause 5.6.3. Among the proposed amendments is the deletion of the IRPC's functions of assisting NEMMCO in the preparation of the statement of opportunities and undertaking an annual interconnector review of the inter-regional transfer capabilities. It is unclear why these provisions have been deleted. Further, contrary to the rationale for the proposed changes set out in the explanatory document which accompanied the exposure draft, neither of these functions has ceased. In the event that these functions did cease and the provisions were deleted, it would present a number of practical difficulties to NEMMCO in the discharge of its duties.

Accordingly clause 5.6.3(a) should be amended as follows:

“NEMMCO must establish an Inter-regional Planning Committee. The functions of the Inter-regional planning Committee are to:

- (1) assist NEMMCO in the preparation of the statement of opportunities;
- (2) assist NEMMCO in the preparation of the Annual National Transmission Statement.”

As a consequential change, clause 5.6.5(e) should also be amended to accommodate the IRPC's assistance to NEMMCO in the preparation of the ANTS as follows:

“In carrying out the ANTS review, NEMMCO must obtain the assistance of the Inter-regional Planning Committee.”

(ii) *ANTS*

Clause 5.6.5 sets out the basis under the Rules for the preparation of the Annual National Transmission Statement ("ANTS"). Under this proposed clause, NEMMCO is solely responsible for the preparation of the ANTS and is only required to consult with Registered Participants and interested parties in relation to data and assumptions to be used as part of the ANTS and content of the ANTS. There is no general requirement on NEMMCO to consult beyond these limited areas or to seek any comments by Registered Participants and interested parties in relation to any other issues.

The TNSPs consider that NEMMCO should have a general obligation to consult with interested parties concerning all matters related to the preparation of the ANTS.

Under the proposed clause 5.6.5, NEMMCO must review the national transmission flow paths (both interstate and intrastate) and identify those options which, in its opinion, have the technical capability of relieving forecast constraints on the national transmission flow paths. In undertaking the review NEMMCO must consider the location of potential national transmission flow paths (both interstate and intrastate) under clause 5.6.5(c)(2), and under clause 5.6.5(c)(9) it must also consider “transmission network options for relieving forecast constraints on the national transmission flow paths” which in its opinion, deliver technically feasible solutions to meet the requirements for generation expansion scenarios.

The TNSPs consider that these amendments significantly exceed, and are inconsistent with, the MCE's intentions in relation to the ANTS. In particular, on 6 May 2003, the MCE released the ANTS “Scope and Content” document which stated (at pages 5 and 6):

” JPBs (Jurisdictional Planning Bodies) and NEMMCO to collaboratively develop transmission options, transfer capabilities, and indicative capital costs to address:

- transmission options to meet identified major national transmission flow path projections

- reactive power and other NCAS projections (eg load shedding or generator runback) to support the transfer target within technical parameters

NEMMCO due diligence via power system analysis and/or market simulations that the network options deliver the projected capability.”

Accordingly, clause 5.6.5 should be amended to reflect the MCE statement that Jurisdictional Planning Bodies and NEMMCO collaboratively develop the ANTS transmission options, transfer capabilities, and indicative capital costs. To give effect to this stated intention, the words “and Jurisdictional Planning Bodies” must be inserted after every reference to “NEMMCO” in clause 5.6.5 . Alternately the TNSPs consider that this function should be placed on the IRPC.

In conjunction with the above proposed Rule changes, clause 5.6.5(a) should be further amended to make it explicit that NEMMCO prepare and publish the ANTS.

*(iii) New large transmission network assets*

The TNSPs consider it inappropriate to allow NEMMCO to dispute the outcome of network augmentation consultations. If NEMMCO disputes a proposed transmission augmentation is a reliability augmentation or satisfies the regulatory test, it is taking a position in the market which is inconsistent with its role in the operation of the spot market (as it is no longer impartial). Accordingly, references to NEMMCO in clauses 5.6.6(h) and (l) in the proposed Rules which allow it to dispute applications to establish new large transmission network assets should be deleted.

**(g) Discounting**

As part of the conversion of the Code to statutory rules, it is proposed to amend clause 6.4.3C(b)(5)(ii) and 6.4.3C(c)(1)(i) to refer to amounts which a transmission network service provider was entitled to recover under clause 6.5.8(c) but did not so recover.

The TNSPs agree that both of these changes clarify the operation of the amended clauses however, they note that they highlight a more fundamental problem with the manner in which the transmission pricing provisions in Part C of the National Electricity Rules operate with respect to discounts which are allowed under clause 6.5.8. At present, clause 6.5.8(c) provides an ability for a TNSP to recover the amount of a discount in accordance with clause 6.4.3C or 6.5.6. However, neither clause 6.4.3C nor 6.5.6 specifically allow for the charges payable by other customers to be adjusted to reflect allowed discounts. The TNSPs suggest that, for consistency with the amendments made to clause 6.4.3C(b)(5)(ii) and clause 6.4.3C(c)(1)(i), both clauses should be specifically amended to refer to the ability of the relevant TNSP to recover these amounts.

**(h) Status of the ACCC Statement of Regulatory Principles**

The TNSPs note that substantial work has been undertaken by the ACCC in consultation with the industry in the finalisation of the ACCC's Statement of Regulatory Principles ("SRP").

The TNSPs consider that it would be unfortunate if this work were to be overlooked when the review of chapter 6 envisaged by section 91 of the draft NEL is carried out. If this review were effectively to start afresh this would ignore and waste the significant effort already undertaken by many industry stakeholders with the ACCC.

At the same time, the TNSPs acknowledge that it would be inappropriate to bind the AEMC to simply give effect to the SRP in its current form.

Therefore, to provide an appropriate balance between the need for the benefit of the work carried out to date not to be lost and the need to ensure appropriate discretion for the AEMC, the TNSPs suggest that a provision be inserted into the National Electricity Rules requiring the AEMC, in making the rules provided for by section 91 of the NEL, to reflect the principles underlying the SRP.

## (i) Status of Reviewable Decisions

Previously, various decisions taken under the Code were classified as "reviewable decisions". This classification enabled affected parties to seek a merits review of that decision in the National Electricity Tribunal. However, under the Rules, the concept of a reviewable decision has been abolished along with the National Electricity Tribunal. As a result, clause 8.2.1(h) of the Rules has been amended to specifically exclude from the operation of clause 8.2 all those reviewable decisions which were made by NEMMCO under the Code. The decisions previously made by NECA under the Code, which will now be made by the AER, are not specifically excluded from the operation of clause 8.2 as the AER is not a Registered Participant for the purpose of clause 8.2.

The TNSPs note that there does not appear to be any policy rationale behind the exclusion of a number of the matters listed in the new clause 8.2.1(h) from the operation of clause 8.2. This is particularly the case as Registered Participants will remain able to dispute other matters which may be more significant under clause 8.2. For example, it appears that a Market Participant would remain able to potentially challenge NEMMCO's fee structure under clause 8.2. Given this, it is not clear why there is no ability to challenge a number of the matters in clause 8.2.1(h) which are operational in nature (such as a the rejection of a reallocation request).

While Registered Participants will be able to seek judicial review of a decision of the AER, AEMC or NEMMCO under the Rules, there is at present no right of merits review. However, the TNSPs are concerned that in some instances merits review has been replaced with judicial review with seemingly little consideration of the subject matter and wording of the provision under which the relevant decision is made. The wording of many of the provisions under which the formerly "reviewable decisions" are made under the Rules is so broad as to make it very hard for stakeholders to judge whether a discretion has been appropriately exercised.

The broad discretionary nature of the decisions means that it will be difficult to ensure that decisions are taken in an accountable and transparent way by the decision-maker. This is a substantial flaw in the governance arrangements under the new regulatory structure. This is particularly serious with respect to a number of the decisions which can have substantial financial impacts upon Registered Participants such as NEMMCO determining the remote monitoring and control equipment TNSPs must install under clause 4.11.1(d), and the AER's decision approving the network pricing software that TNSPs must use under clause 6.8.2. Attachment 2 to this submission is a table setting out each matter which was a reviewable decision under the Code identifying the issues which may arise from the decision being subject to judicial review without amendment of the underlying provision.

The TNSPs consider that, pending the outcome of the review of merits review, there are two ways in which this issue can be resolved:

- (a) the decision-making provision itself in the Rules can be amended to include the specific factors which NEMMCO must take into account in making the decision, so that the relevant considerations that NEMMCO is required to take into account are clearly identified; or
- (b) the decision could be made subject to the dispute resolution procedure in clause 8.2 of the Rules.

In terms of the first of these alternatives, the TNSPs note that, in many cases, the subject matter of the decision itself is such that judicial review may not be a sufficient or time/cost-effective remedy. In particular, many of the decisions which were previously "reviewable decisions" may be matters where the nature of the decision or the party affected are such that there is no realistic ability for a party affected by the decision to ensure that the decision was appropriately taken. For example, where a small generating unit is seeking an exemption from registration as a generator under the Rules, a party which does not agree with a decision taken by NEMMCO would face the difficulties that:

- (a) the cost of seeking judicial review of any decision by NEMMCO to refuse its application may well be prohibitive in terms of the potential cost of the relevant unit; and

- (b) even if the applicant is successful, in all likelihood the proceedings would not deliver the outcome sought by the applicant as in most cases, a court would refer the matter back to NEMMCO to remake the decision.

Given this, the TNSPs consider that there would be substantial benefit in allowing many of the decisions which were previously reviewable decisions to be the subject of a dispute under Chapter 8 of the Code.

In relation to decisions taken by the AER, pursuant to clause 8.2.1(a1), the dispute resolution procedure set out in clause 8.2 of the Rules applies to a dispute which may arise between two or more Registered Participants. For the purposes of most of the provisions of clause 8.2, the term Registered Participants also includes NEMMCO and Connection Applicants. However, neither the AEMC nor the AER is subject to the dispute resolution procedure in clause 8.2 of the Rules.

Under section 8 of the National Electricity Law the Rules have the force of law. As a result, there appears to be nothing to prevent clause 8.2.1(a1) of the Rules being amended to provide that the AER and/or the AEMC are subject to clause 8.2 with respect to specific decisions that they make under the Rules.

### **(j) Definition of CPI**

The exposure draft of the National Electricity Rules proposes to delete the definition of "CPI". The document setting out the rationale for the amendments proposed to the National Electricity Code states that the reason for this amendment is that the term in the sense defined does not appear in the Rules. The TNSPs note that, at present, clause 6.2.4(a) does utilise the term in the sense defined. In the exposure draft of the National Electricity Rules, the term is no longer italicised in this clause. As this is not marked as an amendment nor highlighted in the document setting out the rationale for the changes, the TNSPs assume that this amendment was inadvertent. However, the TNSPs note that the certainty given to them by the specification of the relevant CPI is of substantial importance to them in terms of the regulation of their revenue. Further, the term as defined, is referenced in a substantial number of their contracts.

Given this the TNSPs consider that the definition of CPI should be restored to the National Electricity Rules and that the term should be italicised where it appears in clause 6.2.4(a). However, to reflect current regulatory practice, the TNSPs consider that the reference in the definition to the "March quarter" CPI should be replaced with a reference to the "quarter preceding the commencement of the relevant *Transmission Network Service Provider's* regulatory year as determined by the *AER*"

### **(k) Stylistic Issues**

The TNSPs note that, in the preparation of the draft National Electricity Rules, in many places provisions have been deleted or new provisions inserted with non-sequential numbering (that is given clause numbers involving upper-case letters or similar). Given that the Rules as promulgated will form the basis of the National Electricity Rules for many years to come, the TNSPs consider it would be strongly preferable if the initial draft of the Rules could proceed on the basis that the Rules be renumbered to take account of provisions being deleted.

The TNSPs acknowledge that this would be a substantial exercise but believe it would be appropriate given the status of the Rules as the "initial" rules to be promulgated. Further, the TNSPs note that they do not consider that this exercise would materially exceed the checking which would be required to ensure that none of the deleted provisions are referred to elsewhere in the Rules and that with the addition of new provisions all cross-referencing remain correct.

# Attachment 1

## Other Matters

Clause No of Code/Rule	Suggested Amendment	Comment
3.15.10(a)	"AEMC" should be italicised	
3.15.21(j)	First appearance of "AER" should be italicised	
3.15.25	Heading should refer to "Interest on" rather than "Intereston"	
4.10.6(c)	Third appearance of "NEMMCO" should be italicised	
4.1.1(b)	Replace reference to the "National Electricity Rules" with a reference to the "National Electricity Law"	The amendment in this clause refers to the National Electricity Rules. This reference should be to the National Electricity Law.
5.2.3(d)(10)	Clause 5.2.3(d)(10) should be amended to say "provide to NEMMCO and other <i>Network Service Providers</i> all data available to it and reasonably required for modelling the static and dynamic performance of the power system as well as all subsequent updates of that data, and to the best of its	This clause should be amended to reflect the fact that clause 5.2.3(d)(9) of the Rules has been deleted.

Clause No of Code/Rule	Suggested Amendment	Comment
	ability and knowledge ensure that all data used for the purposes referred to in clause 5.3 is consistent with data used for such purposes by other <i>Network Service Providers</i> "	
5.3.1		<p>Clause 5.3 is drafted so that the process and procedures in clause 5.3 <u>must</u> be followed by a <i>Registered Participant</i> and <u>may</u> be followed by any other person wishing to establish or modify a <i>connection to a network</i>'.</p> <p>The consensual nature of this clause appears inconsistent with the position taken by the MCE regarding authorisation of the Code.</p>
5.6.6	Replace references to "applicant" with " <i>Network Service Provider</i> "	The terms "applicant" used in clause 5.6.6 of the Rules is not defined. Further, no application is required to establish a "new large transmission network asset". As a result, there is some uncertainty as to whom the clause applies. The reference to "applicant" should be replaced with a reference to "Network Service Provider".
5.6.6A(c)	Restore references to clause 5.6.2A(b)(4) and (5)	This sub-clause incorrectly refers to clauses 5.6.2(b)(4) and (5) as the reference to clause 5.6.2A(b)(4) and (5) has been deleted. This should be reinserted as the correct reference.
5.6.6A(e)(2)	Deleted the words "the process of"	A reference has been inserted in this sub-clause to "the process of" the AER's determination. On its face the wording would require the AER to have regard to the consultation process carried out by the relevant TNSP in a procedural sense rather than as an input into its determination. The TNSPs consider these words should be deleted.
5.6.6(b)(4)	Replace reference to the Network Service Providers whose networks "are" materially affected with a	This clause has been amended to allow for the need for an " <i>augmentation technical report</i> " if the relevant Network Service Provider has the consent of all Network Service Providers whose networks "are" materially affected by the "augmentation". Given the impact will be in the future, the use of the present tense "are" introduces some confusion

Clause No of Code/Rule	Suggested Amendment	Comment
	reference to "will be"	as to when consent must be given and should be registered with a reference to "will be".
5.6.6(p)	Amend definition of "regulatory control period" to include a reference to chapter 5	Under clause 5.6.6(p) a determination of the AER pursuant to clause 5.6.6(o) will only apply to the end of the regulatory control period in which the determination is made. However, regulatory control period is a defined term only with respect to Chapter 6 of the Rules. In order for it to have that defined meaning in Chapter 5 of the Rules, the definition of "regulatory control period" in Chapter 10 of the Rules will have to be changed to reflect this.
5.7.7(k)	Replace the reference to "may" with "must"	Clause 5.6.3(a)(6) makes one of the functions of the IRPC to publish guidelines to assist Registered Participants to determine when an inter-network test may be required in accordance with clause 5.7.7(k) of the Rules. However, under clause 5.7.7(i) the IRPC has a discretion as to whether to do this.
5.9.3(a)(1) and 5.9.4	Restore clause 5.9.4(b)	<p>The National Electricity Tribunal is to be abolished under the new NEL. Disconnection orders previously made by the Tribunal may now be made by a Court. NEMMCO then implements this by direction to the NSP.</p> <p>The Rules therefore largely reflect the Code in this regard. NEMMCO and the NSP disconnecting in accordance with the order are to have no liability to the Registered participant who is disconnected.</p> <p>Clause 5.9.4(b) is deleted in the Rules. That provided that the Code Participant must not bring proceedings against NEMMCO or a NSP to recover loss or damage as a result of the disconnection made to give effect to the Tribunal's order.</p> <p>The explanation given is that clause 5.9.4(b) 'has been deleted because it is repetitive of clause 5.9.4(a)' - i.e. the clause providing for no liability in that situation.</p> <p>The TNSPs consider that the deletion of this clause weakens the NSPs' position as it is one thing to have no liability but the bringing of proceedings may, in itself, lead to significant cost.</p>

Clause No of Code/Rule	Suggested Amendment	Comment
S5.1.9(k)	Amend second sentence to read "For the purpose of this clause S5.1.9(k), a two phase to ground fault at the external connections of equipment within a <i>substation</i> will be deemed to be a <i>short circuit fault</i> "	The TNSPs understand that the intention behind the second sentence in clause S5.1.9(k) is to deem that certain faults within equipment at a substation are treated as "short circuit faults" for the purposes of clause S5.1.9(k). This concept is not well expressed in the current Code. However, the deletion of the word "at a station" as the effect of introducing substantial uncertainty as to the operation of clause S5.1.9(k) as it now becomes unclear whether other faults with an equipment which otherwise fall within clause S5.1.9(k) are to be treated as short circuit faults for the purposes of the clause.
S5.1a.4	Insert the word "normal" between the words "the" and "voltage" in the first line of the clause and replace the words "normal level" with a reference "nominal value". The second paragraph of the clause should be amended to read "as a consequence of a <i>credible contingency event</i> , the voltage of <i>supply</i> at a <i>connection point</i> should not rise above the values provided for in clause S5.1a.1 for longer than the corresponding times"	The first change is to correct a difficulty in the Code in that under normal conditions clause S5.1a.4 suggests that the voltage at any point on the network may vary within 10% of the normal voltage. The curve in figure S5.1a.1 confirms that the relevant reference should be to the nominal voltage not the normal voltage in these circumstances. In terms of the amendment proposed to the second paragraph of the clause, the present wording incorrectly implies that the transmission connection points operate for extended periods outside the plus/minus 10% design range and as currently drafted the clause can be taken to mean that the voltage can vary by up to 10% from its value before the event.
Chapter 6		The TNSPs note that not all parties with whom they have connection agreements are necessarily "Non-Registered Customers" and that this term is used in some places in Chapter 6 (see clause 6.4.2) where other places refer to an "other person with a <i>connection point</i> on the <i>transmission network</i> " (see clause 6.7.2(a)) and others refer to "Network Users" (see Schedule 6.7). The TNSPs believe these should be standardised and ensure that the provisions work for all entities to which TNSPs provide services.
Clause 6.2.2(k)	Delete the word "interest" at	The clause currently refers to the "interest" of the "public interest"

Clause No of Code/Rule	Suggested Amendment	Comment
	the very end of the clause	
6.5.1	Replace reference to " <i>Transmission Customers</i> " with a reference to " <i>Generators</i> "	This deals with entry charges payable by Generators. Generators are not Customers or Transmission Customers for the purpose of the Code/Rules.
7.1.4(a)(1)	Delete second "that"	For clarity as second "that" is superfluous.
7.2.5(ba)	Insert the words "each of" before " <i>its metering installations</i> "	Consistency with earlier clauses.
7.3.1(ba)(2)(ii)	Insert the words "the relevant" before "metrology Coordinator"	Consistency with earlier clauses
Schedule 7.1	Replace references to "Code" with "Rules"	Diagram contains a number of references to the "Code".
Definitions of "annual national transmission review" and "Annual National Transmission Statement"	In both definitions "or" should not be in bold	The bolding of the "or" in these definitions has the effect that the entire phrase becomes the defined term rather than the alternatives intended.
Definition of "Entry Service"	Replace previous reference to " <i>transmission or distribution service</i> " with a reference to " <i>transmission service or distribution service</i> "	<p>The change to the definition of 'entry service' in the Rules could widen the scope of the term, and therefore the meaning of the term when used in the substantive provisions of the Rules.</p> <p>The reason for the proposed change is said to be 'to remove circularity in the definition of entry services due to the definition referring to "transmission or distribution" services. The term will now simply refer to a 'service provided to serve a Generator or group of</p>

Clause No of Code/Rule	Suggested Amendment	Comment
		<p>Generators at a single connection point'.</p> <p>However, the TNSPs believe that the proposed amendment potentially significantly widens the scope of service to which access must be provided. Further, the TNSPs do not consider there is circularity in the definitions as "entry service" is a form (and subset) of transmission services and distribution services.</p>
Definition of "generator access"	Restore previous reference to clause 5.5(f)(4)-(6)	<p>The change could be argued to have the unintended consequence of expanding generator access rights.</p> <p>The amended definition is also now inconsistent with the definitions of "Generator transmission use of system service" and "negotiated use of system service"</p>
Definition of "Short Circuit Fault"	The reference to "station" should be with a reference to " <i>substation</i> "	This clause is to correct an existing difficulty in the Code and for the consistency of clause S5.1.9(k)

## Attachment 2

### Reviewable Decisions

Clause of the Rules	Nature of Decision	Position under the Rules	Potential Issues
2.2.1(c)	Decision by NEMMCO whether to exempt a person from requirement to register as a generator	Excluded from clause 8.2 under 8.2.1(h)(1)	<p>NEMMCO can exempt where "<i>in NEMMCO's opinion</i>" an exemption is not inconsistent with the market objective. NEMMCO must act "in accordance" with the guidelines it issues from time to time on this issue in making the decision.</p> <p>As such, the decision whether to exempt is essentially a subjective decision of NEMMCO's which is informed by the guidelines NEMMCO itself issues. In the absence of a merits review, it is extremely difficult to impose any sort of accountability or transparency on NEMMCO for the decision it makes under this clause because of the breadth of the discretion it has.</p> <p>At the very least an obligation to make a subjective decision could be imposed on NEMMCO by the addition of the words "in NEMMCO's reasonable/objective opinion".</p>
2.2.2	Decision by NEMMCO not to approve the classification of a generating unit as a scheduled generation	Excluded from clause 8.2 under 8.2.1(h)(2)	<p>Requirement under clause 2.2.2(b) that NEMMCO must approve the classification if satisfied of stated criteria. One of the criteria is that the generating unit has "adequate communications and/ or telemetry to support the issuing of dispatch instructions". However, there is no reference to any criteria or guidelines that NEMMCO is required to take into account in determining what will be regarded as adequate.</p> <p>As a consequence, NEMMCO has a very broad discretion to make a decision under this clause and the right to judicial review may prove to be an inadequate means of ensuring that NEMMCO is accountable for its decision.</p>
2.2.3	Decision by NEMMCO not to approve the	Excluded from clause 8.2	Requirement under clause 2.2.3(b) that NEMMCO must approve the classification if satisfied of stated criteria. One of the criteria is that the physical

Clause of the Rules	Nature of Decision	Position under the Rules	Potential Issues
	classification of a generating unit as non-scheduled generation	under 8.2.1(h)(3)	<p>and technical attributes of the relevant generating unit are such that it is not "practicable" for it to participate in central dispatch. There is nothing in the Rules that gives any indication as to what is "practicable" in these circumstances.</p> <p>As a result, NEMMCO has a very broad discretion and as such judicial review of such a decision will provide Registered Participants with a very limited means of effectively challenging such a decision.</p>
2.5.1	Decision by AER that a person or class of persons is exempt from the requirement to register as a NSP under the Rules	Rules are silent as to means of review. However, judicial review is available of a decision of the AER under the ADJR Act.	<p>The AER must make such a decision in accordance with the guidelines it issues on this subject and may only grant an exemption where it is not inconsistent with the market objective (clause 2.5.1(d)). The guidelines are developed after consultation with Registered Participants and jurisdictional regulators.</p> <p>Given that the AER must make the decision in accordance with the guidelines there does appear to be a sufficiently specific set of criteria against which the AER's decision can be evaluated. The only area of concern is that the AER is subjectively able to determine whether such an exemption would be inconsistent with the market objective. It appears that a policy decision has been made that at this time such a decision will be subject to judicial review only.</p>
2.9.2(b)	Decision by NEMMCO that an applicant does not satisfy the requirements for registration as a Registered Participant in a specific category	Excluded from clause 8.2 under 8.2.1(h)(4)	NEMMCO required not to register if it is "not reasonably satisfied" the applicant satisfies the criteria which are contained in 2.9.2(a) which include that the applicant meets the eligibility requirements specified for the category of Registered Participant to which the application relates.
2.10.1(d)	Decision by NEMMCO to reject a notice from a Market Customer to terminate its classification of a connection point	Excluded from clause 8.2 under 8.2.1(h)(5)	<p>NEMMCO may reject a notice unless it is satisfied of criteria set out in clause 2.10.1(d). While the stated criteria are objective in nature, there is no obligation on NEMMCO to make an objective decision.</p> <p>If clause 2.10.1(d) was amended to say ...<i>"unless NEMMCO is reasonably satisfied"</i> then judicial review would probably provides a satisfactory remedy.</p>

Clause of the Rules	Nature of Decision	Position under the Rules	Potential Issues
3.3.8	Determination by NEMMCO of the maximum credit limit for a Market Participant	Excluded from clause 8.2 under 8.2.1(h)(6)	<p>NEMMCO must take into account the principles in Schedule 3.3 of the Rules for determining the limit and publish the methodology it uses to determine the limits (clause 3.3.8(c) and (d)).</p> <p>Given that there are stated transparent and detailed principles in Schedule 3.3 as well as a published methodology that NEMMCO must use to determine the limit, judicial review appears to provide a satisfactory remedy.</p>
3.8.3	Decision by NEMMCO to refuse an application for aggregation	Excluded from clause 8.2 under 8.2.1(h)(7)	<p>Under clause 3.8.3(b) NEMMCO must approve an application for aggregation if the specified conditions are fulfilled. It may approve an application even if one or more of those conditions are not satisfied if "<i>such aggregation would not materially distort the central dispatch</i>". There is no criteria within the clause for NEMMCO to use in making this decision as to what constitutes distortion or what would be regarded as material.</p> <p>Consequently NEMMCO has a very broad discretion under clause 3.8.3, and judicial review is unlikely to provide a satisfactory remedy for an aggrieved applicant as it will be very difficult to demonstrate that the decision should be set aside.</p>
3.13.2	Decision by the AEMC preventing a Market Participant from withholding information under clause 3.13.2(k)(1) or (2)	Rules are silent as to means of review.. However, judicial review is available of a decision of the AEMC under section 68 of the NEL.	<p>The AEMC may only make such a decision if in its "reasonable opinion" the information is of a type described in each of the sub-clauses. The description of the nature of the information under each sub-clause is quite broad it, and while the AEMC is required to make an objective decision it still has a considerable amount of discretion as to whether the information is of a type which is captured by either of the sub-clauses.</p> <p>In that case the effectiveness of judicial review will be limited to whether the AEMC has acted reasonably.</p>
3.15.11	Decision by NEMMCO to reject a reallocation request	Excluded from clause 8.2 under 8.2.1(h)(8)	The requirements for a reallocation request to be valid are set out in clause 3.15.11(d). Under clause 3.15.11(e) NEMMCO must "verify the acceptability" of the proposal in accordance with any rules and protocols it has established for

Clause of the Rules	Nature of Decision	Position under the Rules	Potential Issues
			<p>this purpose.</p> <p>There appears to be some potential for confusion in NEMMCO's decision making process between the notion of "validity" under clause 3.15.11(d) and "acceptability"(e). While presumably only a valid application will then be subject verification for acceptability this is not clear, nor is the notion of acceptability.</p> <p>As presently worded, the factors which NEMMCO must take into account in making a decision and the standard against which an application will be accepted or rejected are too unclear for judicial review to provide any meaningful remedy.</p>
4.11.1(d)	Decision by NEMMCO to issue a notice requiring an NSP, Generator or MNSP to install, upgrade or replace remote monitoring equipment	Excluded from clause 8.2 under 8.2.1(h)(9)	<p>NEMMCO may issue such a notice "<i>where reasonably necessary to allow NEMMCO to discharge its market and power system security functions</i>", when in its "<i>reasonable opinion</i>" certain circumstances exist.</p> <p>There are no specific criteria or guidelines which NEMMCO is required to refer to or satisfy before it can make such a decision. It simply has to have a reasonable belief that the equipment is required in the identified circumstances. This gives NEMMCO a very broad discretion to make decisions which may impose significant costs on TNSPs (and other Registered Participants) without them having any input into the decision or having any means of challenging the merit of the decision.</p> <p>In the absence of more specific factors which NEMMCO must take into account in making such a decision, judicial review is a manifestly inadequate remedy.</p>
6.8.2	Decision by the AER to approve pricing software	Rules are silent as to means of review. However, judicial review is available of a decision of the AER under the ADJR Act.	<p>The AER can only approve software which complies with the specifications in Schedule 6.4. However, that is the only limitation on the AER's decision as to which software it selects (other than the consultation required with TNSPs where software is developed).</p> <p>Given the costs such a decision potentially imposes on TNSPs and the absence of any mandatory decision-making criteria which consider non-technical issues</p>

Clause of the Rules	Nature of Decision	Position under the Rules	Potential Issues
			with the software such as price and compatibility with existing systems, judicial review is unlikely to provide a satisfactory form of review.
7.1.4(b)	Decision by NEMMCO to refuse to permit a Market Participant to participate in the market in respect of a connection point	Excluded from clause 8.2 under 8.2.1(h)(10)	<p>NEMMCO can only refuse if the Market Participant is not in compliance with its obligations under clause 7.1.4(a) all of which are objective in nature.</p> <p>In the circumstances judicial review would appear to provide a satisfactory remedy.</p>
7.4.3(b)	Decision by NEMMCO to de-register a metering provider	Excluded from clause 8.2 under 8.2.1(h)(11)	<p>Under clause 7.4.3 NEMMCO can de-register a Metering Provider in a number of different circumstances. One of which is if in NEMMCO's reasonable opinion the Metering Provider has acted in a way which is "<i>unethical</i>". There is no guidance whatsoever in the Rules as to what is "<i>unethical</i>" in those circumstances. NEMMCO's discretion is so broad in this instance as to render judicial review of little if any value as a remedy.</p>

# Attachment 3

## Proposed Changes to Draft Load Shedding Provisions

### 4.3.5 Market Customer obligations

(a) All *Market Customers* having expected peak demands at *connection points* in excess of 10 MW, must provide automatic ally interruptible load of the types described in clause S5.1.10.1 of schedule 5.1.

(ba) - In relation to interruptible load referred to in clause S5.1.10.1(a) of Schedule 5.1:

(i) the level of ~~this-the~~ automatic interruptible load must be a minimum of 60% of their expected demand, or such other minimum interruptible load level as may be periodically determined by the Reliability Panel, to be progressively automatically disconnected following the occurrence of a power system under-frequency condition described in the power system security and reliability standards;

~~(b)~~ (ii) Market Customers must provide ~~their~~ interruptible load in manageable blocks spread over a number of steps within under-frequency bands from 49.0 Hz down to 47.0 Hz as nominated by NEMMCO; and

(iii) Market Customers must apply settings to relays as notified by a Network Service Provider under clause S5.1.10.2(c) or clause S5.1.10.3(b) of Schedule 5.1.

(c) Any *load shedding* capability the subject of an *ancillary services agreement* or *enabled* as a *market ancillary service* can be counted as *automatic interruptible load* provided for the purposes of clause 4.3.5.

### S5.1.10.1 General

Each *Network Service Provider* ~~in consultation with NEMMCO~~ must ensure that:

(a) A minimum of 60%, or such other minimum interruptible load level as may be periodically determined by the Reliability Panel, sufficient load is under the control of underfrequency relays, in distributed locations as where required, to ensure so that, on the -in the event of the sudden, unplanned simultaneous occurrence of *multiple contingency events*, the *power system frequency* does not move outside the *extreme frequency excursion tolerance limits*;

(b) where ~~determined to be~~ necessary to minimize or reduce the risk to power system security from voltage collapse on the occurrence of multiple contingency events, sufficient load as determined by the Network Service Provider in consultation with NEMMCO is under the control of undervoltage relays or other automatic control schemes so as to minimize or reduce the risk voltage collapse on the occurrence of multiple contingency events; and

(c) a minimum of 60% of there is sufficient load is under manual ~~or automatic~~ control either locally or from one or more of its remotely located control centres to allow the *load shedding procedures* to be implemented ~~on instruction from NEMMCO to enable NEMMCO to maintain power system security~~.

A *Network Service Provider* may also require *load shedding arrangements facilities* to be installed to cater for ~~abnormal operating network~~ conditions which are not associated with power system security.

Arrangements for *load shedding* must be agreed between *Transmission Network Service Providers* and *connected Distribution Network Service Providers* and may include the opening of circuits in either a *transmission* or *distribution network*.

The *Transmission Network Service Provider* must specify, in the *connection agreement*, control and monitoring requirements to be provided by a *Distribution Network Service Provider* for *load shedding facilities*.

Network Service Providers must conduct periodic functional tests of their *load shedding facilities*, which must not require *load* to be *disconnected*.

### **S5.1.10.2 Distribution Network Service Providers**

A *Distribution Network Service Provider* must:

(a) provide, install, operate and maintain *facilities* for *load shedding* in respect of any *connection point* at which the maximum *load* exceeds 10MW in accordance with to satisfy the requirements of clause 4.3.5 S5.1.10.1 of the *Rules*;

(b) apply the settings to relays notified by the *Transmission Network Service Provider* in accordance with clause S5.1.10.3, and

(c) notify settings for relays to those *Market Customers* whose loads are directly connected to its network and who are required to provide *load interruption facilities* in accordance with clause 4.3.5.

~~(b) in accordance with the provisions of the relevant *connection agreement*, co-operate with the *Transmission Network Service Providers* in conducting periodic functional testing of the *facilities*, which must not require *load* to be *disconnected*;~~

~~(c) apply underfrequency settings to relays as determined by *NEMMCO* in consultation with the *Network Service Provider*; and~~

~~(d) apply undervoltage settings to relays as notified by the *Transmission Network Service Provider* in accordance with clause S5.1.10.3(b).~~

### **S5.1.10.3 Transmission Network Service Providers**

(a) *NEMMCO* must determine the settings of *load shed relays* for *system security purposes* in consultation with the relevant *Transmission Network Service Provider*.

(b) Each *Transmission Network Service Providers* must:

~~(a) conduct periodic functional tests of the *load shedding facilities*; and~~

~~(ia) \_\_\_\_\_ notify *Distribution Network Service Providers* regarding of the settings of to be applied to undervoltage load shed relays within the *Distribution Network Service Providers network* and of *Market Customers* directly connected to the *Distribution Network Service Providers network* as determined by *NEMMCO* in consultation with the *Transmission Network Service Provider*; and-~~

~~(bii) notify the settings to be applied to *load shed relays* to *Market Customers* whose loads are directly connected to its *network*.~~