



3 March 2005

MCE Standing Committee of Officials  
MCE Market Reform

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## **RE: National Electricity Regulations and comments in relation to the National Electricity Law Amendment Bill**

United Energy Distribution (UED) appreciates the opportunity to comment in relation to the National Electricity Regulations and has one comment in relation to the relevant participant approach which the company will come to later in this letter.

### **Additional amendments from the Exposure Draft to the Introduction Print of the National Electricity Bill**

First, however, UED wishes to voice its concern about several issues that have arisen in the Introduction Print of the National Electricity Law and which have not been publicised in any communication from the MCE nor noted within the MCE table *Response to Key Issues Raised by Stakeholders on the Exposure Draft of the National Electricity Law*.

UED believes that these issues undermine the integrity and transparency of the change process for the Rules and the obligations of participants/roles within the national electricity market.

### **Australian Energy Markets Commission (AEMC) choice not to make a Rule that meets the National Electricity Market (NEM) objective**

In clause 87(3) of the Exposure Draft, if the Australian Energy Markets Commission (AEMC) was satisfied that a proposed rule change would contribute to the achievement of the NEM objective the AEMC was obliged to make the change. This sub-section has been removed in clause 88 of the Introduction Print of the Bill without tabling the change and the reason. In addition, this is in contrast to the proposed accountability, integrity and streamlining of a new and improved rule making process. Even if proposed rule changes get to the end of the rule change process and the AEMC is satisfied that the change to the rules meets the NEM objective, the AEMC can still not make the rule – this is a change from the current Code (see clause 8.3.6(c)) and so contradicts the MCE's commitment of no substantive changes to the rights and obligations of participants in the move from the Code to the Rules.

### **Carve out for relevant participants such that the NER is not enforceable**

Earlier information papers and presentations on the new framework advised the introduction of the concept of a "relevant participant". The relevant participant may not have filled one of the registration categories outlined in chapter 2 of the National Electricity Code (NEC)/Rules, however there was a proposal to ensure that the Rules were enforceable against appropriate persons, e.g. metering providers.

Under the definition of relevant participant in the Bill (unlike in the Exposure Draft), it is now possible for the Regulations to prescribe a Registered Participant that would otherwise be a “relevant participant” not to be a “relevant participant”. This now allows a carve-out mechanism from being a relevant participant which appears to defeat the whole purpose of the concept that was being introduced. Why is the mechanism of “participant derogations”, which undergo an open and transparent process as a rule change, insufficient to meet the apparent objective of this change? If there are going to be participants or classes of participants that general regulatory obligations under the Rules no longer apply to then this is a matter that should undergo consultation not simply be the subject of a governmental Regulation making power where no transparency is assured.

UED strongly recommend that both of these changes be reversed; if there is a need for these changes to the current status quo then, as many participants have suggested, such changes should undergo rule change consultation and pass AEMC consideration and the new market objective.

## **Regulations**

UED has noted above the earlier policy communications from the MCE concerning the introduction of the concept of a “relevant participant”. Yet under the draft Regulations, metering providers are not declared to be “relevant participants” (thus subject to enforcement action) despite these earlier policy announcements and even though the second reading speech says “[the power to prescribe relevant participants by regulation] will only be used to ensure that persons who have previously been bound by contract to comply with the National Electricity Code may now have the National Electricity Rules enforced against them as law”.

UED seeks an explanation of this apparent alteration in policy by the MCE.

Should you have any further questions please do not hesitate to contact me on phone:  
03 9265 7738.

Yours sincerely

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