POWERLINK QUEENSLAND

RESPONSE TO: AEMC DRAFT RULE

Reform of Regulatory Dispute Process

23 May 2006

Powerlink welcomes this opportunity to comment on the draft rule proposed by the Australian Energy Market Commission (AEMC), which is intended to replace the existing clause 5.6.6 of the National Electricity Rules (the Rules).

Powerlink supports the effort made by the AEMC to improve the clarity of the rule, whilst implementing a dispute procedure in line with the policy intent of the Ministerial Council on Energy (MCE). In particular, we support the improvements to the draft rule with respect to the allocation and payment of the costs incurred by the Australian Energy Regulator (AER) when employing consultants to assist in determining a dispute, thereby removing a potential delay in the regulatory approval of necessary investment.

Potential and/or Perceived Conflict for the AER

The combination of this draft rule, which establishes the AER as the "one stop shop" for resolving regulatory test disputes, and the AER's desired approach to contingent projects[1], which is under consideration as part of the AEMC's Chapter 6 review, appears to create a potential and/or perceived conflict of interest for the AER if its regime for contingent projects is adopted in its entirety. Appendix G of the Australian Competition and Consumer Commission (ACCC) background paper[2] to the decision on the statement of regulatory principles details a process the ACCC intended would apply for the implementation of contingent projects. In step 1 of that process, the ACCC stated that:

> *"The TNSP should then apply the regulatory test (if applicable) or other investment appraisal processes to the investment in the contingent project. While primary responsibility rests with the TNSP to undertake the project assessment, this assessment should be* ***conducted in consultation with the ACCC*** *[emphasis added]. This means that the ACCC expects to closely monitor key assumptions and the analytical approach adopted with the TNSP."*

In practice, the ACCC in its first application of its contingent projects regime for the TransGrid revenue final decision in April 2005, went much further. In Appendix F of the final decision, the ACCC stated that:

> *"detailed assessments of the alternative options should be available* ***so that the ACCC can determine the most efficient option*** *[emphasis added]."*

In Appendix G of the final decision, the ACCC go on to provide, for each contingent project, a detailed list of the network and non-network options that the network owner should consider in the regulatory test.

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[1] As outlined in the AER Statement of Regulatory Principles.

[2] ACCC, "Statement of principles for the regulation of electricity transmission revenues — background paper", 8 December 2004.

We fully support the MCE proposal that the AER should be the "one stop shop" for resolving disputes on the application of the regulatory test. This will deliver the streamlining sought by the MCE.

However, it raises the issue of whether the AER should also have the degree of "hands-on" involvement in the regulatory tests for contingent projects that it appears to be advocating. For example, consider what would happen if TransGrid conducted a regulatory test to compare the options detailed in Appendix G of its final decision (as specified by the ACCC) and a dispute was raised on the basis that some plausible option was not included.

Powerlink supports the concept of the contingent projects regime, and is not suggesting that this issue is a "showstopper" for such a regime. To avoid this potential and/or perceived conflict, the framework incorporated into Chapter 6 of the Rules to address contingent projects should exclude the AER from being party to the regulatory test. This would allow the proponent to conduct the regulatory test independently and, if necessary, to keep the AER informed on an arms length basis.

Drafting Issues

Powerlink supports the proposal to remove the requirement in the Rules for the Inter-Regional Planning Committee (IRPC) to establish an objective set of criteria for determining whether an augmentation is a reliability augmentation, by the deletion of clause 5.6.3(l). This would consequently improve the clarity and drafting of this rule 5.6.6 by the simplification of clauses 5.6.6(d) and 5.6.6(j)(4), in that the references to satisfying the criteria defined by the IRPC for a reliability augmentation may be removed.

Clause 5.6.6(h) introduces the new term "clause 5.6.6(h) report". This replaces the familiar and accepted terminology of a "final report" with respect to the final consultation document issued pursuant to the existing clause 5.6.6. It is our belief that clarity would be better served by retaining the term "final report".

Powerlink believes that clause 5.6.6(j) has been improved in that it clarifies who can dispute a final report and that the final report may only be disputed on the matters described in the clause. However, clause 5.6.6(j)(3) appears to repeat the ground for dispute that is presented in clause 5.6.6(j)(5). Powerlink would suggest that clause 5.6.6(j)(3) is unnecessary and should be deleted from the draft rule.

In clause 5.6.6(m) it should be clarified that the dispute notice must be lodged with the AER, and copied to the applicant, within 30 business days after publication of the summary of the final report on NEMMCO's website.

There is a minor typographical error in clause 5.6.6(n)(1), in that the clause should read "must, subject to clause~~s~~ 5.6.6(o)…"

Finally, we believe that clause 5.6.6(q) could be clarified by rearranging the order, such that the AER may determine who pays and then render invoices accordingly.