

National Electricity Market Management Company Limited

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Melbourne Vic 3000

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11 November 1996

Professor Allan Fels
Chairman
ACCC
P.O. Box 19
BELCONNEN ACT 2616



Dear Professor Fels

National Electricity Code and Applications for Authorisation and Acceptance of an Industry Access Code

552 7956

I refer to the National Electricity Code ("the Code"), which was delivered to you on 9 October 1996 (marked "Version 2.0"), together with draft applications for authorisation of the Code and a draft application for acceptance of some of its chapters as an access code.

National Electricity Code Administrator Limited (NECA) and National Electricity Market Management Company Limited (NEMMCO) now submit to the ACCC the following:

1. Two applications under Sections 88 (1) (Forms A and B) and one application under Section 88 (8) (Form E) for authorisation of the Code for the purposes of Part VII of the Trade Practices Act and the Competition Codes.

As all three applications relate to the same market, the application described in Form A is lodged as the first application and the others are additional applications under Regulations 28 (5) and (6) of the Trade Practices Act Regulations.

Accordingly a cheque for \$10,500, representing the fee of \$7,500 for the first application and \$1,500 for each of the additional applications, is also enclosed.

2. Draft application for acceptance of the Code as an access code under proposed amending section 44ZZAA of the Act.

Details and arguments in support of both the draft access code application and the Section 88 applications are in the one **Submission** document enclosed.

The documents referred to in Chapter 1.8 of the **Submission**, which are lodged with the applications, have already been lodged with you on 9 October 1996, when the Code was delivered to you.

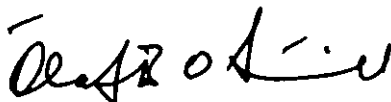
Both NECA and NEMMCO are the applicants in the applications for authorisation. NECA is proposed as the industry body to apply for acceptance of the Code as an access code.

As you will know, legislation to amend the Act to allow for acceptance by the ACCC of an access code submitted by an industry body has yet to pass the Commonwealth parliament and accordingly application for such a code cannot yet be lodged with the Commission. When the legislation passes a formal access code application will be lodged.

As your officers have pointed out in recent correspondence, it may be necessary, as the legislation currently stands, for all who may engage in actions under the Code which may breach section 47 of the Act, to join in an application for authorisation under section 88 (8) of the Act. In these applications for authorisation, only NECA and NEMMCO are applicants. Although we have requested that the Commission exercise its discretion to grant authorisation on terms that extend to future code participants. If our request is unable to be met, it will be our intention, following lodgement of these applications, to work with the Commission to arrange for all those who may require authorisation to be accounted for.

The Code and accompanying draft applications are commended for the consideration of the Commission.

Yours sincerely



Olaf O'Duill
Chairman
National Electricity Market Management Company Limited

13 November 1996

FORM E
COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section 88(8)
EXCLUSIVE DEALING:
APPLICATION FOR AUTHORIZATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(8) of the *Trade Practices Act 1974* for an authorization under that sub-section to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

- | | |
|--|--|
| 1. (a) Name of applicant | National Electricity Code Administrator Limited
(ACN 073 942 775) ("NECA")
and
National Electricity Market Management
Company Limited (ACN 072 010 327)
("NEMMCO") |
| (b) Short description of business carried
on by applicant | NECA: administration of the National
Electricity Code.

NEMMCO: management of the National
Electricity Market. |
| (c) Address in Australia for service of
documents on the applicant | Level 8
350 Collins Street
Melbourne Vic 3000
Facsimile: (03) 9642 8526
Telephone: (03) 9642 8363
Attention: Mr Neville Henderson

until 31 December 1996, and thereafter

Executive Chairman
National Electricity Code Administrator Limited
Level 7
14 Martin Place
Sydney NSW 2000
Attention: Mr John McMurtrie |
| 2. (a) Description of the goods or services
in relation to the supply or acquisition
of which this application relates | Electricity supplied and services provided by or
to Code Participants under the initial National
Electricity Code as defined in section 6(1) of the
National Electricity Law (" the Code "). A copy
of the proposed Code (Version 2.0, as proposed
to be amended by Addendum 1) is provided as
Attachment 1 to the applicants' submission
(" Submission ") to the ACCC lodged in support
of this application dated 13 November 1996. |

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- (b) Description of the conduct that would or may constitute the practice of exclusive dealing
 - (i) making the Code, to the extent that making the Code is making a contract or arrangement or arriving at an understanding that contains provisions that would or may constitute the practice of exclusive dealing, including the provisions of the Code identified in the Submission, and participating under the Code;
 - (ii) giving effect to each and any provision of the Code that would or may constitute the practice of exclusive dealing, including the provisions of the Code identified in the Submission; and
 - (iii) engaging in each and any practice required under a provision of the Code, being a practice that would or may constitute the practice of exclusive dealing, including the practices identified in the Submission.

3. (a) Class or classes of persons to which the conduct relates

The classes of persons are:

- (a) the applicants;
- (b) Code Participants under the Code; and
- (c) all persons involved in, or who seek to be involved in, the generation, transmission, distribution and purchase of electricity as well as those involved in, or who seek to be involved in, the provision and use of electricity transmission and distribution network services.

(b) Number of those persons:

(i) At present time	NEMMCO and NECA	2
(ii) Estimated within the next year	NEMMCO and NECA	2
	Generators	not less than 30
	Customers	not less than 30
	Traders	not less than 10
	Network Service Providers	not less than 25
	Special Participants	not less than 20
	Others as described in 3(a)	unknown

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- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses
Details are provided in schedule 1 of the Submission.
- 4. (a) Grounds for grant of authorization
Authorization is sought on the grounds set out in the Submission.
- (b) Facts and contentions relied upon in support of those grounds
The facts and contentions relied on by the applicants are set out in the Submission.
- 5. (a) Does this application deal with a matter relating to a joint venture
No
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture
Not applicable
- (c) If so, by whom or on whose behalf are those other applications being made
Not applicable
- 6. Name and address of person authorised by the applicant to provide additional information in relation to this application
Mr Neville J Henderson
Level 8
350 Collins Street
Melbourne Vic 3000
Telephone: (03) 9642 8363
Facsimile: (03) 9642 8526

until 31 December 1996, and thereafter

Mr John McMurtrie, Executive Chairman
National Electricity Code Administrator Limited
Level 7
14 Martin Place
Sydney NSW 2000

Dated 13th November, 1996.....

Signed on behalf of NECA

John McMurtrie
(Signature)

Mr John McMurtrie
Chairman, National Electricity Code Administrator Limited
Level 7
14 Martin Place
Sydney NSW 2000

Signed on behalf of NEMMCO

Olaf O'Duill
(Signature)

Mr Olaf O'Duill
Chairman, National Electricity Market Management Company Limited
Level 25
367 Collins Street
Melbourne Vic 3000



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* Note: References in this application to the Act also include the Competition Codes of each participating jurisdiction as defined in the Competition Policy Reform legislation now in force in each participating jurisdiction.

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business in the course of which the conduct is engaged in.
4. Where particulars of a condition or of a reason of the type referred to in sub-sections 47(3) to (9) (inclusive) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be furnished with the application.
5. In item 3(a), describe the nature of the business carried on by the persons referred to therein.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the applicant is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

1. In relation to item 4, your attention is drawn to sub-section 90(6) of the *Trade Practices Act 1974* which provides as follows:

“(6) The Commission shall not make a determination granting an authorization under sub-section 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if -

 - (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
 - (b) the proposed covenant were given, and were complied with; or
 - (c) the proposed conduct were engaged in,

as the case may be.”