

**Australian Competition
&
Consumer Commission**

Authorisation of the National Electricity Code:
Applications for authorisation Nos: A90773, A90774, A90775

PRE-DETERMINATION CONFERENCE

**13 September 2001
Carlton Room
Olims Canberra Hotel**

Minutes

Rod Shogren, a Commissioner with the Australian Competition and Consumer Commission (the Commission) chaired the pre-determination conference.

The conference commenced at 2pm Thursday 13 September 2001.

Attendees:

ACCC Staff:

- Mike Rawstron
- David Jones
- Scott Haig

Interested parties

Dr Tony Cook (TransEnergie Aust); Ray Coxe (TransEnergie US); Scott Klose (TransEnergie Aust); Phil Gall (TransGrid); Leon Arkinstall (TransGrid); Gordon Jardine (Powerlink); Alison Gray (Powerlink); Charlie Macaulay (NEMMCO); Mark Landis (Origin Energy); Tim George (NEMMCO); Michael Pucar (Yallourn Energy); David Swift (NECA); Barry Foster (Electranet SA); Bess Ramsay (Transend); Stephen Clark (Transend); Stephen Wallace (Intelligent Energy Systems); Dennis King (DISR).

Dr Tony Cook (TransEnergie)

- noted that TNSPs have certain obligations under the National Electricity Code (NEC) and that these were of an intra-regional nature, not of an inter-regional nature. Considered that the proposed Code changes had an inter-regional focus;
- considered that TNSPs do have reliability responsibilities but that reliability augmentations can be met under different frameworks and that these should be considered. Referred to those proposed by the US Federal Energy Regulatory Commission (FERC);
- considered that regulated investments should not pre-empt non-regulated investments;
- considered that safeguards to prevent gaming in the market place were needed, considered the SNI project was an example of where gaming is occurring;
- considered that investors in a competitive market should know the risks;
- argues that it should be a more streamlined process, as there are adverse impacts from a drawn out process;
- identified the main forms of checks and balances in the model to be improved information provision and the Dispute Resolution Panel;
- considered that information asymmetry problems would not be corrected by an augmentation report, but that they could be corrected through the publishing of information;
- believed that the reviewing of augmentation reports by interested parties would be time consuming and that the framework adopted should give participants a degree of comfort that the analysis is right the first time without requiring them to perform their own review;

- noted that the proposed framework places a high reliance on dispute resolution and questioned why there should be such a confrontational approach;
- stated that their preferred approach is for an independent party (the Commission as economic regulator) to undertake a review after a TNSP has published their augmentation report; and
- considered that the onus should be on the TNSP to prove its case, rather than on the interested parties to disprove the TNSP's case. Believes that parties would then have a greater degree of comfort regarding the accuracy of the assumptions used and the analysis conducted by the TNSP.

Market Network Services

- stated that the proposed Code changes remove the role of the IRPC in the technical coordination of MNSs and that, consequently, proponents of MNSs would have to rely on obtaining system data etc from TNSPs. TransEnergie stated that it has had difficulty obtaining data from TNSPs even with NEMMCO's assistance. It therefore believes this arrangement is unworkable;
- stated the proposed Code changes remove the need for IRPC technical coordination of interconnectors; and
- stated that system security requires that NEMMCO should perform a technical assessment.

Maintenance of reliability levels

- considered that both regulated and non-regulated options maintain reliability levels;
- considered that reliability and service obligations of TNSPs should:
 - not pre-empt non-regulated options;
 - be the option of last resort (that is, only when non-regulated options have not provided a solution);
 - be largely intra-regional, rather than inter-regional; and
 - be subject to a competitive tender process.
- considered that the ability to game through regulated network proposals should be reduced. Believed that all regulated proposals need to prove their credibility by selecting and permitting a route, completing the project design and providing a construction timetable. The timetable should be used by the Commission to determine the latest date assets could be granted regulated status;
- considered that reasonable costs associated with 'reasonable' projects that do not proceed should be able to be recovered through a component of TUoS; and
- stated that issues about transmission planning and TNSP obligations are not unique to Australia. Referred the Commission to recent FERC rulings.

Suggested amendments to the Code changes

- considered that a framework was required that recognises TNSP service obligations and is consistent with market objectives and principles (that is, with an emphasis on competitive market outcomes);
- believed that the Commission should play a more active role, consistent with its position as the 'economic regulator'. TNSPs should provide an augmentation report

directly to the Commission and it should perform an independent economic assessment of the augmentation on behalf of the Code participants;

- TNSP report is only one input to the economic assessment; input from other parties (for example, from the various consultation stages) should also be taken into account in the Commission's assessment;
- the IRPC (or NEMMCO) must perform a technical assessment (for both regulated and MNSP proposals); and
- Commission approval for reliability augmentations should be delayed as far as possible consistent with the TNSP's schedule.

Phil Gall (TransGrid)

TransGrid advised that it considered the Code changes being proposed:

- encouraged a national perspective to the NEM;
 - addressed the accountability issues;
 - were consistent with international developments and incentive based transmission regulation;
 - did not pre-empt policy outcomes; and
 - enabled investment decision-making, subject to rectification of a number of matters.
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- disagreed with TransEnergie's assessment of developments in the US;
 - considered that the Federal Energy Regulatory Commission (FERC) was in a position where it basically had to approve everything due to a shortage of generation capacity;
 - considered that there was no equivalent of Australia's TNSPs in the US;
 - considered that reliability was linked to constraints;
 - advised that they would be concerned if they had to rely on a market-based approach to maintain reliability standards;
 - referred the Commission to the 'reliance model'; and
 - questioned who was responsible for decisions concerning reliability - the Dispute Resolution Panel (DRP) or the Commission? Considered that the DRP was too slow and would delay the process.

TransGrid raised the following transitional issues in relation to the proposed model:

- that guidelines on 'material inter-network impact' and 'reliability augmentations' had not been developed. Considered that their development would take time and that the IRPC would be required to use the Code consultation process in doing so;
- questioned what would happen in the transition period, advised that their submission would provide options, including 'grandfathering' provisions; and
- considered that once a consultation commences it needs to be made clear that the rules at the start would apply throughout the entire process.

Advised that potentially dangerous delays could be caused by the requirement to consult on new large network assets (it was suggested that the process could take up to a year). Noted that responsibility to augment on time remained with the TNSP.

The following options were suggested to minimise delays with the proposed process:

- increasing the project threshold from \$10m to \$25m;
- allowing the Commission to approve the fast tracking of projects;
- reasonable criteria on who can raise a dispute – making them more limited in scope;
- removal of the two-tier dispute resolution process as it is currently overly complex; and
- the elimination of frivolous disputes in second stage of the process.

A number of other matters were raised by TransGrid, in particular that:

- proponents should not be conflicted out of the IRPC;
- TNSP's have incentives to get the answer right as they are accountable for the outcomes; and
- disputants should be responsible for paying the Commission's fees for the conduct of the regulatory test.

Gordon Jardine (Powerlink)

1. Reliability augmentations and the accountability of third parties

- refuted TransEnergie's statement that the proposed Code changes were focus on inter – regional augmentations ; rather there was significant intra-regional emphasis with reliability augmentations almost all falling into that category
- considered the proposal to allow third parties to dispute reliability augmentations to be flawed public policy, poor economics and threatened reliability augmentations;
- considered that the Energy Ministers' primary concern is to 'keep the lights on' and that the proposed changes would not be welcomed by the NEM Ministers Forum;
- believed that basically anyone is able to challenge a reliability augmentation under the proposed Code changes, but that the TNSP was the only party accountable (legally liable) for maintaining the reliability of the network. Believed that third parties were being given unfettered rights without any corresponding obligations - Suggested that third parties should be required to indemnify the TNSP;
- believes that the Commission should rely on the risk of optimisation to make the TNSPs accountable; and
- considered that the parties paying the TUoS are the only ones who should be able to dispute the proposed reliability augmentations. These parties are retailers – knowledgeable buyers, for whom any increase in TUOS represents a decrease in their own profit margin. This constitutes more than adequate checks and balances on the TNSP.

2. *Role of the IRPC – development of reliability guidelines*

- did not see a role for the IRPC in determining the criteria for what constitutes a reliability augmentation;
- believed that whilst the members of the IRPC are highly skilled professionals, the IRPC structurally was an unaccountable body with responsibility for determining what constituted a reliability augmentation, but at the end of the day the TNSP would be held accountable for its decisions;
- noted that the IRPC already had a backlog of work but the proposed Code changes require the IRPC to take on the additional task of developing guidelines in relation to what constitutes a reliability augmentation;
- considered it to be a futile exercise the IRPC's guidelines could be overridden at any time by jurisdictional governments;

3. *General observation*

- believes that if Australian regulators are considering overseas model, the UK model is better one than the US models, as it has a successful track record of meeting the basic function of 'keeping the lights on' for more than 10 years

Charlie Macaulay (NEMMCO)

1. *Annual Inter-connector Review (AIR)*

- considered that a national approach is only in the Code because NEMMCO raised it. Agreed that it is not appropriate to exclude TNSPs from the IRPC on the technical side of the assessment;
- noted that NEMMCO recently published a report on inter-connector development which raised a number of issues (for example, a lack of information on options);
- believe that the AIR is an important step forward but that there is an issue regarding the scope of the review, warned that if a minimum scope was adopted then it would not be worth doing the review. Considered that the final scope should lie somewhere between the minimum and maximum scopes;
- requested that the ACCC define the scope of such a review (for example, should it include economic ranking of relevant options, assessment of the benefits and costs of each project);
- believed that the requirement for an AIR to be conducted needs to be unambiguously stated in the Code as the IRPC is not able to agree on its scope; and
- Gordon Jardine stated that the annual inter-connector review should be about identifying options and perhaps costs but not the value of options. He said that TNSPs do not have the information to calculate the benefits. Charlie Macaulay stated that the AIR alleviates information asymmetry and disagreement on how far IRPC should go in doing the economic assessment.

2. *Need for an IRPC technical analysis*

- believes that TNSPs currently have the option of whether or not to have the IRPC conduct the technical analysis;
- considered that NEMMCO operates a very complex market and intra-regional augmentations can have material interstate impacts. Believed that it would be

wrong not to have the IRPC involved as it provides peer review and adds to the transparency of the process. Considered that NEMMCO needs to be there from the start; and

- stated that TNSPs have a lot of information but that it was difficult for NEMMCO/IRPC to identify the constraints. Considered that although not a legally accountable body, the IRPC added a degree of expertise and transparency.

Considered the proposed process to be problematic and that there was too much scope for disputation. Considered that the process needed to be streamlined and that the TNSP should develop the proposal, the IRPC should do the technical assessment and that the Commission should do the regulatory test.

Tim George (NEMMCO)

- considered that there was a need for national planning but not for a separate body (or NEMMCO by itself) to undertake this joint planning. NEMMCO believed that it was essential for network owners to be at the table as they had the necessary data for the technical analysis;
- considered that the AIR should deliver substantial benefits but that the scope needed clarification ; and
- questioned whether the obligations on NEMMCO to have the IRPC conduct the AIR should be matched by a symmetric obligation on each IRPC member to constructively participate in the AIR.

Michael Pucar (Yallourn Energy)

- Yallourn Energy argues that the framework for planning and development of regulated transmission augmentations should first require an exhaustive evaluation of market based solutions.
- considers that NECA's proposal "internalises" rather than "streamlines" the planning and development process for regulated interconnections. This in turn reduces the transparency of the process and runs the risk of damaging the development of competitive non-network solutions and entrepreneurial interconnections within the NEM.
- however, should the Commission authorise NECA's proposed Code changes, then comprehensive safeguards and a rigorous testing procedure must exist for planning and development of regulated interconnectors.
- supported TransEnergie role of greater independence and role of the IRPC nationally;
- considered that the proposal would be difficult to change if authorised because of problems with its operation are discovered, considered that more analysis was required and that there was a need to look at the definition of reliability;
- prefers the market based model as opposed to centralised planning – likes the VenCorp model – separation of ownership and planning (Victorian model);
- rejects centrally planned approach as considers that it is TNSP focused and leads to fragmentation of the NEM. Considered that the proposed model will require greater checks and balances, transparency and enforcement. Noted that fines may not be enough to address deadweight loss due to poor decision making – significant role for the Commission;

- considered that the incentives are not strong enough, that it will distort investment and send the wrong signals;
- supports the Commission role in conducting the regulatory test, a whole-of-market planning approach and Commission concern about TNSP impartiality; and
- in relation to reliability augmentations, considered that there was a need for greater information and a more transparent process.

1. Institutional roles and procedures

- supports the Commission's proposed role and whole-of-network planning approach;
- questioned TNSPs' impartiality in conducting the regulatory test; and
- believes that the IRPC has a conflict of interest and to overcome this it requires more diverse representation.

2. Framework for regulated new investment

- supported the imposition of greater information requirements on TNSPs and the consultation process;
- supported increased TNSP accountability but that market solutions should be considered first;
- considers that investment proposals should be reviewed by the Commission; and
- noted that the Commission should use optimisation and penalties for projects incorrectly categorised as reliability augmentations.

3. Funded augmentations

- agreed with the principles, however, concerned about common ownership as it may lead to a distortion of options; and
- considered that if proponents are not affiliated then they need to go through extensive checks and balances.

4. Dispute resolution

- supported Code participants' rights to challenge new large assets;
- considered that clarification was needed in relation to what is an inter-network material impact;
- considered that the IRPC was stacked with TNSPs.

Overall considered that there was a feeling amongst many interested parties that a market based solution was too difficult, but that there had not been enough analysis to date to come to this conclusion

Mark Landis (Origin Energy)

- believes that the IRPC has failed the market;
- considers that MNSPs are not on the same level playing field as TNSPs;

- believes a central national planning body is required that sits outside the market;
- stated that the IRPC could not come to an agreement on what scope the AIR should have (Charlie Macaulay stated that he agrees that the IRPC has not done an annual planning review due to disagreement within the IRPC but the proposed Annual Interconnector Review (AIR) has broad support); and
- agreed that the AIR proposal has broad acceptance as it provides the right information to the market

David Swift (NECA)

- noted that the proposed Code changes were not meant to address the debate of MNSPs versus regulated investments;
- stated that the current hurdle remains understanding reliability driven investment and indicated that the definition of what constitutes a reliability investment could be refined;
- noted that the changes did not seek to change inter-connector planning;
- advised that proposed Code changes were developed after extensive consultations and that NECA believes that they adopt a balance between seeking timely and efficient investment and giving transparency to non-regulated alternatives;
- considered that there is a need for TNSPs to disclose their proposals and alternatives; and
- understands the varying views but believes the balance in the Code changes should be maintained.

12 October 2001