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DATE:	10 October 2001	PROJECT #:	
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FROM:			
NAME:	Tony Cook		
NUMBER OF PAGES TRANSMITTED INCLUDING COVER PAGE:			

MESSAGE:

**RE: A Network and Distributed Resources Package**

Please refer to the attached second submission.

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10 October 2001

Mr Michael Rawstron,  
ACCC,  
PO Box 1199,  
Dickson, ACT 2602.

Dear Mr Rawstron,

**Re: Network and Distributed Resources Code change package**

**Background**

TransEnergy Australia Pty Ltd (TransEnergy) has previously provided comments to both the National Electricity Code Administrator (NECA) and the ACCC on the above set of National Electricity Code (the Code) changes. Following the recent pre-determination conference on these Code changes TransEnergy has decided to provide two submissions – a general submission and this additional supporting submission. TransEnergy has prepared this second submission to highlight our concerns regarding various aspects of the Code changes, and the desire to provide supporting information to the ACCC based on TransÉnergie’s own experiences which have given rise to those concerns.

TransEnergy’s concerns with the Code changes relate to the potential for a TNSP to misuse its monopoly position to the detriment of other market participants, whether they are proposing other generation, demand side or market network service options. TransEnergy notes that the ACCC also shares that same concern. For example, in its Draft Determination dated 20 August 2001 the ACCC stated:

‘The Commission does, however, recognise the potential for a TNSP to use its monopoly position in the planning process to the detriment of feasible alternative non-network options and also feasible inter-network alternatives. The Commission is therefore interested in how the proposed Code changes deliver a streamlined, but transparent and impartial network planning and development

process that ensures efficient development of the market-wide transmission network.’

The Draft Determination discusses the mechanisms on which the ACCC is relying to prevent any misuse of monopoly power:

‘The Commission considers a TNSP’s self interest in these matters may hamper an impartial regulatory test assessment being undertaken. The Commission, however, accepts that the dispute resolution provisions included in the Code changes should act to encourage transparent and objective decision making by TNSPs. The Commission also notes that the proposed Code changes introduce greater information disclosure requirements and make consultation procedures explicit for all network augmentations.’

TransEnergie has commented on the ineffectiveness of relying on the dispute resolution process to prevent misuse of monopoly power in its general submission. The purpose of this submission is:

- to highlight the monopoly position of TNSPs when it comes to network information,
- to illustrate the ineffectiveness of relying on greater information disclosure by the TNSPs (as envisaged by the Code changes) to prevent misuse of monopoly power, and
- the difficulties in obtaining information from TNSPs.

Given these facts, the explicit consultation procedures that have been mandated for network augmentations become of little, if any, value. This raises serious issues as to whether the Code changes have adequately dealt with ‘the potential for a TNSP to use its monopoly position in the planning process to the detriment of feasible alternative non-network options and also feasible inter-network alternatives’– in TransEnergie’s view the Code changes do not.

### **Supporting Information**

As a developer of the Directlink market network service between Queensland and New South Wales, and also the Murraylink market network service between Victoria and South Australia, TransEnergie has had extensive dealings with all the TNSPs presently registered in the National Electricity Market. The following are but two examples of problems associated with obtaining information from TNSPs.

#### *Southernlink*

TransEnergie is developing Southernlink through its wholly owned subsidiary Southernlink Transmission Company (STC). ElectraNet SA (EN) first agreed to provide technical information to STC on 12 April 2001. At a meeting that was held on 24 April EN advised that a confidentiality agreement was required. However, it was not until some three months later on 25 July 2001 that negotiations regarding the confidentiality agreement were completed and it was signed. At that time STC also provided a payment for the work required to be performed to collect the information. Despite the fact that STC paid EN for the information, it was only after intervention by NECA (regarding a potential Code breach by EN) that EN undertook to provide the required information by September 28, 2001.

#### *Murraylink*

TransEnergie requested VENCORP co-ordinate with other potentially affected NSPs in relation to the Murraylink connection. In that role VENCORP first wrote to Transgrid on 23 February 2001.

Seven months after the information request was first made by VENCORP Transgrid has still not provided any of the requested information.

The stumbling block has been Transgrid's Connection Investigations Agreement (CIA). VENCORP refused to sign the CIA because it believed it was neither necessary nor appropriate.

TransEnergie is now in continuing negotiations with Transgrid regarding the CIA, and is hopeful that it will be signed in the near future.

TransEnergie considers that these two examples illustrate that it is straightforward for TNSPs to misuse their monopoly position to the detriment of other market participants. On that basis TransEnergie considers that:

- The increased voluntary information disclosure requirements on TNSPs as proposed by the Code changes will be of little value, and
- Stricter obligations need to be placed on TNSPs to ensure that all relevant information is disclosed.

TransEnergie considers that its information requests to TNSPs also raise other issues not covered by the Code changes, including:

- Confidentiality of information,
- Whether information should be provided in a timely manner, and
- Payment for information.

### **Code Change Recommendations**

TransEnergie considers that the required level of information disclosure will only be obtained through increased involvement of parties such as the IRPC and the ACCC, who are potentially able to force TNSPs to provide any required information.

#### *Role of the IRPC*

The present role of the IRPC is to perform a technical analysis of proposed projects. TransEnergie's experience to date is that despite TNSP involvement in the IRPC, NEMMCO's oversight of the IRPC has been sufficient to force TNSPs to disclose the required information. For that reason TransEnergie considers that a technical review of all proposed interconnection projects (and market network services) by the IRPC should be mandatory, and not voluntary.

Note that TransEnergie's experience to date is only with interconnection projects. TransEnergie therefore has no experience with information disclosure requirements for intra-regional projects. However, it is difficult to understand why TNSPs would adopt different approaches to information disclosure for inter and intra-regional projects. TransEnergie therefore also has concerns that TNSPs may not be disclosing all the relevant information related to intra-regional projects.

#### *Role of the ACCC*

The proposed Code changes suggest a Dispute Resolution Process between the TNSP and market participants. Given the TNSPs have the bulk of information and market participants have little, TransEnergie considers that the DRP will be completely one-sided, and therefore of little value in achieving more efficient market outcomes. TransEnergie considers that efficient market outcomes will only be achieved through the involvement of the ACCC as the economic regulator.

The DRP between TNSP's and market participants should be abandoned, and the ACCC should perform an independent review on behalf of the market participants it represents.

### **Further Recommendations**

Clause 5.3.4(f)(2) of the Code allows a connection applicant to “lodge one *application to connect* with the Network Service Provider who processed the *connection* enquiry and require it liase with those [Network Service Providers who will need to be involved in planning to make the connection]”.

Clause 5.3.5 (d) of the Code requires a “*Network Service Provider* in preparing the offer to *connect* ...[to]...consult with ... other *Code Participants* with whom it has *connection agreements*, if the *Network Service Provider* believes, in its reasonable opinion, the terms and conditions of those *connection agreements* will be affected, in order to assess the *application to connect* and determine ... the performance requirements for the equipment to be connected.”

Murraylink Transmission Company (MTC) has requested VENCORP to liase with other Network Service Providers (NSPs) who will need to be involved in the Murraylink connection, and this is the basis of the correspondence in Appendix 2.

While these clauses would require VENCORP, in assessing the Murraylink connection application, to consult with other NSPs, Chapter 5 of the Code contains no clear corresponding clause requiring other NSPs to cooperate with VENCORP.

This outcome (ie absence of obligation to cooperate) seems to be an (unintended) flaw in the design of the chapter 5 access regime and does not accord with the principles of chapter 5. Particularly:

- the principles of chapter 5 of the Code outlined in clause 5.1.3 include that:
  - “All *Code Participants* should have the opportunity to form a *connection* to a *network* and have access to the network service provided by the *networks* forming the *national grid*.”
  - “The operation of this *Code* should result in the achievement of ... open communication and information flows between *Code Participants* relating to *connections* while ensuring the security of *confidential information* belonging to competitors in the *market*.”
- the combined operation of clauses 5.3.3(5) and clause 5.3.4(d) provides for:
  - a connection applicant to pay an application fee that covers the reasonable costs anticipated to be incurred by other NSPs whose participation in the assessment of the application to connect will be required; and

- for the NSP to whom the application to connect is made to pay these reasonable costs to the NSPs associated with assessing the connection application.

The above principles seem to imply that the drafters of chapter 5 of the Code intended that NSPs would co-operate in processing a connection application. Nevertheless, where a connection application has been made to a particular NSP, chapter 5 of the Code places no clear obligation on other NSPs to cooperate with that NSP in relation to the application.

Clause 5.2.3(d)(3) of the Code does however require a NSP to “co-ordinate the design aspects of equipment proposed to be *connected* to its *networks* with those of other *Network Service Providers in accordance with clause 5.4* in order to seek to achieve *power system* performance requirements in accordance with schedule 5.1” (emphasis added).

Clause 5.4 of the Code generally requires a NSP and Code Participant to negotiate where there is any **inconsistency between the proposed [connection] equipment and the provisions of the relevant connection agreements.**

Clause 5.4.3, provides that a “*Code Participant* must provide any additional information in relation to its *plant* or associated equipment as the *Network Service Provider* reasonable requests.” “Code Participant” includes a NSP and would include other NSPs. Taken alone, this clause may require other NSPs to provide “additional information in relation to its plant or associate equipment” as reasonably requested by VENCORP

However, given the subject matter of clause 5.4, the other NSPs could argue that the term “Code Participant” in clause 5.3.4 should properly be restricted to mean the connection applicant who has subsequently entered into a connection agreement with the relevant NSP (in this case, TransEnergie/Murraylink would be the “Code Participant” and VENCORP the “Network Service Provider.”)

Chapter 5 of the Code does not clearly require other NSPs to cooperate with VENCORP in processing Murraylink’s connection application. MTC considers that this is an unintended flaw in the Code that needs to be resolved.

TransEnergie requests that the ACCC should consider this matter in the present set of Code changes, with a view to closing this loophole.

I would be pleased to further discuss any of the matters raised in this letter with the ACCC.

Regards,

Dr. A. Cook  
Managing Director

THIS LETTER HAS BEEN SENT ELECTRONICALLY AND THEREFORE BEARS NO SIGNATURE