



Draft Determination

Applications for Authorisation

Amendments to the National Electricity Code

Review of Directions in the NEM

Date: 4 September 2002

Authorisation Nos:

A90818
A90819
A90820

Commissioners:

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Glossary

Code	National Electricity Code
Commission	Australian Competition and Consumer Commission
Ergon	Ergon Energy
Macquarie	Macquarie Generation
NECA	National Electricity Code Administrator
NEL	National Electricity Law
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company Ltd
NGF	National Generators Forum
Snowy	Snowy Hydro Trading Pty Ltd
TPA	Trade Practices Act 1974
Tribunal	National Electricity Tribunal

1. Introduction

On 18 February 2002, the Australian Competition and Consumer Commission (Commission) received applications for authorisation (Nos A90818, A90819 and A90820) of amendments to the National Electricity Code (Code). The applications were submitted by the National Electricity Code Administrator (NECA).

The proposed Code changes are designed to implement the conclusions and recommendations of a joint NECA/NEMMCO review of directions in the National Electricity Market (NEM).

Authorisation under Part VII of the *Trade Practices Act 1974* (TPA) provides immunity from court action for certain types of market arrangements or conduct that would otherwise be in breach of Part IV of the TPA. Authorisation may be granted where the Commission concludes that the public benefits of the arrangements or conduct would outweigh the anti-competitive detriment of such arrangements or conduct.

The Commission has prepared this draft determination outlining its analysis and views on the applications for authorisation of the Code changes. Chapter 2 of this draft determination sets out the statutory test that the Commission must apply when assessing an application for authorisation. Chapter 3 contains an outline of the Commission's public consultation process. The Commission's analysis of the proposed Code changes is set out in chapter 4 and the Commission's draft determination is in chapter 5.

2. Statutory test

The applications were made under sub-sections 88(1) and 88(8) of the TPA.

Applications made under sub-section 88(1) of the TPA are for authorisation to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of the TPA; and to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of the TPA. Further sub-section 88(6) provides that an authorisation made under sub-section 88(1) has effect as if it were also an authorisation in the same terms to every other person named or referred to in the application.

Applications made under sub-section 88(8) of the TPA are for authorisation to engage in conduct that constitutes, or may constitute, the practice of exclusive dealing in accordance with the provisions of section 47 of the TPA. Further, sub-section 88(8AA) provides that where authorisation has been granted under sub-section 88(8) and this particular conduct is expressly required or permitted under a code of practice, the authorisation applies in the same terms to all other persons named or referred to as a party or proposed party to the code. Authorisations may also apply to any corporation who becomes a party in the future.

The TPA provides that the Commission shall only grant authorisation if the applicant satisfies the relevant tests in sub-sections 90(6) and 90(8) of the TPA. While sub-section 90(6) and sub-section 90(8) relate to different types of anti-competitive behaviour, the tests are essentially the same.

Sub-section 90(6) provides that the Commission shall grant authorisation only if it is satisfied in all the circumstances that:

- the provisions of the proposed contract, arrangement or conduct would result, or be likely to result, in a benefit to the public; and
- that benefit would outweigh the detriment to the public constituted by any lessening of competition that would, or would be likely to result from the proposed contract, arrangements or conduct.

Sub-section 90(8) provides that the Commission shall grant authorisation only if it is satisfied in all the circumstances that the proposed provision or conduct would result, or be likely to result, in such a benefit to the public that the proposed contract, arrangement, understanding or conduct should be allowed.

The detriment to be considered is limited to detriment caused by a lessening of competition. However, consideration of public benefits is less restricted and public benefits recognised in the past include:

- fostering business efficiency;
- industry rationalisation;
- promotion of industry cost savings;
- promotion of competition in industry;
- promotion of equitable dealings in the market;
- expansion of employment;
- development of import replacements;
- growth in export markets; and
- arrangements which facilitate the smooth transition to deregulation.

In considering whether or not to grant authorisation the Commission must consider what the position is likely to be in the future if authorisation is granted and what the future is likely to be if authorisation is not granted.

If the Commission determines that the public benefits do not outweigh the detriment to the public constituted by any lessening of competition, the Commission may refuse authorisation or grant authorisation subject to conditions.

The value of authorisation for the applicant is that it provides protection from action by the Commission or any other party for potential breaches of certain restrictive trade provisions of the TPA. It should be noted, however, that authorisation only provides exemption for the particular conduct applied for and does not provide blanket exemption from all provisions of the TPA. Further, authorisation is not available for misuse of market power (section 46).

A more expansive discussion about the Commission's authorisation process and the statutory test that the Commission applies can be found in: *Guide to authorisations and notifications*, Australian Competition and Consumer Commission, November 1995.

3. Public consultation process

The Commission has a statutory obligation under the TPA to follow a public process when assessing an application for authorisation.

The Commission received the applications for authorisation of Code changes on 18 February 2002. Notification of the applications and a request for submissions was placed in *The Australian Financial Review* on 15 March 2002 and placed on the Commission's web site. Interested parties were asked to make submissions to the Commission regarding their views on the issues of public benefit and anti-competitive detriment arising from implementation of the proposed changes. The Commission received submissions from:

- NEMMCO;
- Macquarie Generation;
- Snowy Hydro Trading Pty Ltd; and
- Ergon Energy.

The Commission has produced this draft determination outlining its analysis and views of the Code changes according to the statutory assessment criteria set out in chapter 2. The Commission invites the applicant and other interested persons to notify whether the applicant or other interested persons wish the Commission to hold a conference in relation to this draft determination.¹

If the applicant or an interested party notifies the Commission in writing within 14 days of 5 September 2002 that it wants the Commission to hold a conference, the Commission will hold a conference in Canberra, at a time and place to be notified. The applicant, interested parties who receive a copy of the draft determination and any other interested parties whose presence the Commission considers appropriate are entitled to participate in the conference.

Following the conference, the Commission will take into account relevant issues raised at the conference, and any related submissions, and will issue a final determination. If no pre-determination conference is called then this draft determination will become the final determination.

A person dissatisfied with the final determination may apply to the Australian Competition Tribunal for its review.

¹ For the purposes of the conference, an interested person is a person who has notified the Commission in writing that the person, or a specified unincorporated association of which the person is a member, claims to have an interest in the applications and the Commission is of the opinion that the interest is real and substantial.

4. The application

4.1 Existing Code arrangements for issuing directions in the NEM

The power to direct is part of the safety net arrangements in the market, which NEMMCO may use if one of the normal market mechanisms does not function adequately or if no market mechanism exists. At present, the normal market mechanisms include the bidding, dispatch and common clearing price arrangements in the energy and ancillary services spot markets, and the tendering process for procuring "non-market" ancillary services.

The current provisions of the Code and the National Electricity Law (NEL) allow for directions to ensure reliability, security and safety of the power system as separate categories of direction. Each of the powers to direct is in effect required to be used as a last resort.

The role of safety nets is to ensure that the operation of the competitive market arrangements are maintained by the following three essential outcomes:

- a reliable operating state;
- a secure operating state; and
- public safety and other obligations required under the NEL.

Reliability directions

The power system is in a reliable operating state if there is no involuntary load shedding and projected capacity reserves are within the standards set by the Reliability Panel. Code clause 3.12.9(a) states that NEMMCO should only consider issuing a reliability direction when a low reserve or lack of reserve condition can not be solved by existing reserve contracts and there is insufficient time to negotiate new reserve contracts. Therefore, a reliability direction helps ensure failure of the energy market to balance supply and demand does not lead to involuntary load shedding.

Security and safety of power system directions

A secure operating state ensures the power system is technically viable in the event of a credible contingency (eg. the failure of a transmission line or a large power plant). In such an event, the power system can continue operating in a satisfactory state.² It is an important criterion for orderly operation of the electricity market and hence the ability to supply customers.

² A secure operating state is a subset of the group of satisfactory operating state (defined in clause 4.2.2 of the Code). That is, a secure operating state is always a satisfactory operating state, but not always vice-versa.

Section 76 of the NEL allows NEMMCO to act to maintain public safety and power system security. Clause 4.8.9 of the Code allows NEMMCO to issue power system security directions thereby ensuring the power system is maintained in a secure state that can support trading and ensure public safety.

Ancillary Services directions

NEMMCO, in accordance with clause 4.8.9A of the Code, can issue ancillary service directions to ensure failure of market based procurement of ancillary services do not jeopardise the power system security.

Pricing when directions are in effect

Under the current arrangement, “what-if” pricing is used if a direction for reliability is issued. The what-if price is an estimate of the clearing price that would have occurred if the direction had not been issued, bids and offers were the same, and the event triggering the direction had occurred.

However, “outturn” pricing is used in the case of directions for ancillary services or power system security. The outturn price is the price that is determined inclusive of the effects of a direction. It is the common clearing price when there is no attempt to offset the effects of the direction.

Payment arrangements for directions

Under the Code, parties subject to direction are entitled to payment for the service they provide. Although there are existing payment arrangements for reliability directions, up until 1 July 1999 there was no methodology for determining how those parties subject to security and safety of the power system directions were to be compensated. NEMMCO was required to develop such a methodology under clause 4.8.9(h) of the Code, taking into account the other methods in the Code for compensating those subject to a direction.

NEMMCO developed a compensation methodology in July 1999 and sought a derogation to delay such payments until funding provisions had been codified. A derogation to this effect was granted by the Commission.³ The derogation also added a new clause 4.8.9(j), which requires NECA and NEMMCO to conduct a joint review of power system directions.

Compensation for reliability directions are cost based whereas compensation for power system security and ancillary services directions is based on “market value” (where it can be ascertained).

4.2 Review of directions in the NEM

In accordance with clause 4.8.9(j) of the Code, NECA and NEMMCO jointly conducted a review of directions in the NEM. The review commenced on

³ See clause 4.8.9 Generator Compensation Derogation in *Derogations (Chapter 8) Part 5 of the Code*.

4 November 1999 to consider the Code provisions, under which NEMMCO may issue directions that affect the overall operation of the power system and market, in particular to propose arrangements for:

- developing a consistent framework for directions;
- issuing of directions;
- pricing during periods of direction;
- payments to parties arising from directions; and
- funding of those payments.

On 21 March 2000, NECA and NEMMCO published a draft report on their review of power system directions in the NEM. Following consultation with Code participants on the draft, the final report was released on 19 May 2000.

The main recommendations of the report were:

- directions should be employed only as a last resort;
- a single and consistent arrangement should apply to the use of the power of direction;
- provisions to improve transparency in the application of directions and to report on their uses ought to be strengthened;
- when NEMMCO exercises its power of direction, it should direct the most appropriate physical resource to correct the identified deficiency;
- in the event of a direction, market prices should so far as practicable be set on a “what-if” basis;
- directed parties should receive fair payment reflecting prevailing market conditions. However, payment should not be set automatically to the prevailing spot price;
- third parties affected by directions should also be compensated; and
- payments to directed parties and compensation to third parties should be funded from the sector of the market that would normally meet the costs of the service concerned.

NECA’s application for changes to the Code is to implement the conclusions and recommendations contained in the joint final report on the review of directions in the NEM.

4.3 Issues for the Commission

In its December 1997 determination, the Commission had considered that the public benefits arising from the Code provision for directions in the NEM appeared to

outweigh any anti-competitive detriment that may arise. Whilst the application of any direction in the NEM may create a distortion and as long as NEMMCO's power to direct is retained, it is necessary to implement a regime that creates the least amount of distortion. With this in mind, the Commission will consider whether the proposed changes ensure that the provisions associated with a direction lessen the impact of distortions within practical constraints. Furthermore, to the extent that the Code fails to provide adequate compensation to directed parties in the event of a direction by NEMMCO, participation in the market will be discouraged and the public benefits of the NEM arrangements reduced. Conversely, over compensation may induce participants to exit the market and await a direction.

4.4 What the applicant says

NECA states that the package of Code changes arises from an obligation under the Code (clause 4.8.9(j)) for NECA and NEMMCO to conduct a joint review of directions in the NEM. In April 2001, NECA invited comments on draft changes to the Code, which were intended to give effect to the conclusions and recommendations of that review. In addition, NECA sought comment on whether further changes should be considered in light of a reliability direction issued on 7 and 8 February 2001. NECA also sought comments on clause 4.8.9(g) of the Code, which allows NEMMCO to withhold payment to parties who act recklessly or intentionally in connection with the circumstances leading to a direction.

In light of the comments received by NECA, its application recommends a refined and amended package of Code changes in particular aimed to:

- minimise the number of participants and regions affected by a direction, through amending the provisions about how NEMMCO should select which participants are to be affected as a result of a minimum loading requirement on a directed unit;
- provide for directed parties who had been presenting to the market but, for reasons outside their control were unable to be accepted by the NEMMCO systems, to be paid at the price they were offering;
- include holders of settlement residues entitlement as affected parties able to claim compensation;
- introduce a two-stage settlement to ensure that significant funds will be available to affected participants within the normal settlement cycle of the spot market and external financial markets;
- restrict compensation to spot market impacts by removing the requirement to take a participant's hedges into account when determining compensation; and
- amend a number of other provisions to clarify drafting and strengthen the rights and obligations of NEMMCO and other participants.

NECA also proposes that the power to withhold payment to parties who acted recklessly or intentionally in connection with circumstances which led to a direction be brought under the umbrella of proposed arrangements for bidding and rebidding.

Specifically, NECA proposes to delete clause 4.8.9(g) and add a new clause 3.8.22B(d). The National Electricity Tribunal (Tribunal) will determine if a participant has recklessly or intentionally without reasonable cause created the situation, which has materially contributed to the need for a direction. The inclusion of clause 3.15.10C(c) will adjust any interim payments following a Tribunal decision. NECA argues that this arrangement will recognise genuine conditions. Pre-existing or long standing circumstances, which see the direction of a participant would unlikely be considered as having contributed to the situation.

4.5 What the interested parties say

The Commission received four submissions from interested parties:

- NEMMCO;
- Macquarie Generation (Macquarie);
- Snowy Hydro Trading Pty Ltd (Snowy); and
- Ergon Energy (Ergon).

NEMMCO, in conjunction with NECA, was involved in the development of the proposed Code changes. Its submission address issues concerning systems implementation timing and some material drafting that could be interpreted differently and alters the intent of the Code changes.

Macquarie believes that the proposed Code changes represent a pragmatic step forward by providing a more consistent framework in the event of a direction being employed by NEMMCO, and clarify the rights and obligations of NEMMCO and market participants. Macquarie further states that when NEMMCO issues a direction, only those who benefited will be required to pay and not all customers on a consumption basis as currently billed, which would remove significant market distortions and allow participants to manage their exposure to the cost of NEMMCO issuing directions.

Similarly, Snowy states its support for the intent of the proposed Code changes. Snowy argues that the Code changes in principle address the majority of the objectives of the review of directions in the NEM. However, Snowy also has a number of issues for consideration and these are discussed below in this section.

Ergon notes that the parallel process employed by NEMMCO and NECA by simultaneously consulting on the Code changes and the processes/procedures to support them have caused confusion amongst market participants as to the current status of the Code changes and the consultation process. Ergon also raises concerns regarding the proposed cost allocation under the Code changes and the proposed use of the regional benefit factor. These issues are discussed below in this section.

Timing of systems implementation and Code changes gazettal

The proposed Code changes contain various clauses where NEMMCO must develop procedures in accordance with Code consultation procedures including the following:

- clause 3.9.3(b) – Intervention Pricing Methodology;
- clause 3.15.8(b2) – Procedures for the Determination of Regional Benefits;
- clause 4.8.6(c) – Procedures for the Dispatch of Reserves; and
- clause 4.8.9(b) – Procedures for the issuance of Directions.

NEMMCO argues that it will require a reasonable indication of the outcomes of these consultations before the development of markets systems can commence. It further argues that the consultations are likely to be complex and will probably take up the full five-month period set aside in the Code consultation procedures. NEMMCO states that it will commence the development of required system changes when the draft determination of these consultations is published. NEMMCO stresses that the earliest time in which the market systems required under the proposed Code changes could be implemented is 30 March 2003.

Scheduled plant definition

The glossary in the proposed Code changes defines “scheduled plant” as “market generating units, scheduled network services and scheduled loads”. In its current wording, scheduled plant would not include non-market generators. NEMMCO contends that this is not the intention of the Code changes and the definition of “scheduled plant” should be altered so that it reads:

“In respect of a *Code Participant*, a *scheduled generating unit*, a *market non-scheduled generating unit*, a *scheduled network service* or a *scheduled load* classified by or in respect to that *Code Participant* under Chapter 2.”

Compensation inconsistency for ancillary service direction

NEMMCO states that in so far as the determination of compensation for directed parties is concerned, clause 3.15.7 outlines the methodology for directions. However clause 4.8.9A provide NEMMCO with the power to issue a direction for the provision of ancillary services and clause 4.8.9A(d) goes on to prescribe directed party compensation for ancillary service directions in line with the current methodology. NEMMCO argues that these two clauses (3.15.7 and 4.8.9A) conflict with each other.

Similarly, Snowy argues that the provisions of clause 4.8.9A suggest separate and different arrangements will continue to apply to the provision of ancillary services provided under a direction. Snowy notes that this is in contradiction to the review report’s key recommendation for “a single and consistent arrangement should apply to the use of the power of direction”. NEMMCO proposes that clause 4.8.9A has been overlooked and should be removed from the Code.

Reckless or intentional acts leading to a direction

Snowy argues that it is inappropriate and premature that the proposed directions Code changes, in particular clause 3.8.22B(d), refer directly to the proposed bidding and rebidding Code changes currently before the Commission and which have not yet been authorised. Snowy notes that the effect of clause 3.15.10C(c)(1) is for a directed participant to merely repay any compensation received, together with interest if it is

found by the Tribunal to be in breach of clause 3.8.22B. Snowy argues that the conduct in question can be extremely costly to the market and other market participants, resulting in significant transaction costs associated with determining compensation payments for all affected participants.

Snowy expects that any market participant who intentionally or recklessly cause such damage to the market should not only have to repay any “ill gotten gains” but also pay costs to NEMMCO, NECA and other affected participants, as well as some form of penalty or fine. Snowy further argues that in the absence of a liability for damages related to such conduct, market participants have the incentive to act in a manner prejudicial to the market since they can only gain but not lose.

Inconsistency in the requirement of submissions by affected participants

Snowy notes that the wording of clause 3.12.11(c) could be improved to create consistency, eliminate contradiction and interpretational issues. Snowy argues that, as it stands, the clause states that an affected participant and market customers may make a submission claiming that the amount calculated by NEMMCO is greater than, less than or equal to the correct amount, which implies an optional submission. However, clause 3.12.11(c2) states that if no submission in accordance with clause 3.12.11(c) is delivered, then an entitlement to compensation will cease, implying a compulsory submission even if the parties agree with NEMMCO’s calculation.

Snowy is of the view that the intention is to have an affected participant or market customer either confirm in writing its acceptance of the amount calculated by NEMMCO or make a submission as to why that amount should be different. Therefore Snowy contends that this would make clause 3.12.11(c) compulsory.

Clause relating to compensation for affected participants

Snowy notes that it is unclear as to why clause 3.12.11(d)(1)(iv) to (vii) is deleted from compensation to affected participants when similar clauses are included in additional compensation for directed participants under clause 3.15.7B(a3).

Recovery of compensation amounts from market participants

Snowy argues that there are problems with the arrangements of clause 3.15.8(g) for funding directions relating to services other than energy and ancillary services being recovered as a fixed component of participants’ fees. Snowy raises two concerns in respect of this issue.

Firstly, Snowy argues that fixed fees are currently set on the basis of historical capacity for generators and on market customers’ previous year’s load. Snowy states that there is no economic reason for linking recovery of compensation for current directions in the market to historical capacity or load. Snowy also notes that the NEM is an energy market and it would be inconsistent with the design of the market to link compensation to capacity. This is specifically of concern to Snowy, since its generation assets are high capacity but low energy plants. Snowy is of the view that it is merely a device for recovering the residual compensation amounts from large market participants.

Secondly, Snowy notes that there is currently a dispute between NEMMCO and the National Generators Forum (NGF) relating to the determination of fixed participants' fee. Snowy believes that it is unwise to link the recovery of residual compensation for directions to a factor that may change substantially, which may result in a very different and perhaps unintended recovery allocation. Snowy advocates that where there is no mechanism to recover the full costs of a direction, the charge to participants should be on an energy basis (ie. \$/MWh).

Principles to guide an independent expert's determination

Snowy argues that the proposed Code changes on compensation to directed participants for services other than energy or market ancillary services (clause 3.15.7A) should be rewritten to encompass clear economic principles to guide an independent expert's determination of a "fair payment" price that reflects a market under scarcity condition. Snowy argues that there is no explicit economic criterion for the determination of fair payment (eg. SRMC; contract compatibility; incentive compatibility; willingness-to-pay). Snowy is of the view that this ambiguity may result in vast differences in the assessment of compensation by experts.

Snowy raises concerns regarding the two new principles inserted (clause 3.15.7A(c)(1)(ii)(C) and (D)) which it argues leave considerable room for interpretation of what may constitute "similar" conditions. Snowy notes that there may not be any similar supply/demand conditions for services other than energy and market ancillary services, including such services as system restart. Snowy further notes that the criteria to be employed by NEMMCO in determining whether an expert can or cannot be expected to make a determination are not specified.

The existence of the option to bypass the expert determination process and restrict compensation to revenue losses, cost and return on capital employed is of concern to Snowy. Snowy argues that any compensation on this basis may be lower than market prices under scarcity condition, and it would also appear to shift the burden of determining compensation from NEMMCO to the market participants. Therefore, Snowy argues that NEMMCO may have an incentive to choose this option in preference to the more expensive and complex expert determination route. This option may also deter NEMMCO from contracting for the provision of emergency services, which are currently not traded in the market, and would raise concerns where no contracts exist.

Snowy also has some concerns regarding the procedural aspect of an independent expert's determination. Snowy notes that while there are merits in using precedent for future determination, as in clause 3.15.7A(e), it is unclear what would happen if a new and separate direction for the same service is issued prior to the date of publication of the expert's report. Snowy is of the view that it would appear that a separate independent expert must determine compensation for such a direction. Snowy contends that this may cause ambiguity regarding the status of the second report and its effect on the precedent value of the first expert report.

Definition of affected participants

Ergon does not support the narrow definition of "affected participants" under the proposed Code changes. Ergon argues that the definition precludes:

- a consideration by NEMMCO of the cost impact of a direction on market customer; and
- market customers from recovering compensation in circumstances where a direction occurs, with the exception of scheduled load.

Ergon notes that the Code changes create a bias in favour of the supply side of the market by ignoring the cost impact on market customers when deciding who to direct, at the same time as precluding market customers from the recovery of compensation for all but scheduled load. Ergon suggests that the Code changes should encourage a process whereby the minimisation of total market costs (affected participants and market customers) drives NEMMCO's management of the direction process and where all market customers, whether scheduled load or not, are eligible to claim compensation.

Payment price

Ergon argues that the basic payment to directed participants for energy and ancillary services which is set at the 90th percentile of historical spot prices is too high and would result in directed participants being unfairly and unreasonably compensated for the direction. Ergon further notes that this would mean that directed participants would be paid a price that significantly exceeds the median and would not act as a disincentive to prevent actions giving rise to a direction.

Ergon suggests that the payment should be fixed at between 50th and 60th percentiles, which would be a closer representation of the average price and minimise the gaming of directions. Ergon notes that this is supported by the additional compensation provisions of clause 3.15.7B, which allows a party to claim an additional payment if it believes its costs were not covered by the fair payment price. In light of this mechanism and because the initial payment is automatic, Ergon contends that the initial fair payment should be reflective of the average price for the service.

Regional benefit factor

Ergon believes the use of a regional benefit factor is arbitrary in nature and fails to recognise the broader market security and reliability benefits provided by the directions processes. Ergon notes that it would be a rare instance where it could confidently be submitted that the true benefits of a directions process is able to be successfully isolated on a geographic (regional) basis.

Ergon also argues that cost allocations can not be separated from the broader consideration of market compensation and funding. Ergon is of the view that there is a need for a more detailed examination of beneficiaries and causers, on the demand and supply side of the market. The assessment should not be limited solely to the demand side as appears advocated through the Code changes but should also encompass the market's supply side and NEMMCO as a causer (eg. as a result of forecasting error).

4.6 Commission's considerations

In some circumstances, market based mechanisms may fail to provide enough supply to balance non-scheduled demand or enough ancillary services to ensure system security.

In other cases, system security or public safety may be threatened by circumstances that are outside the influence of market based mechanisms. In such cases, a market direction needs to be given to ensure security, reliability or safety are maintained.

The Commission supports the role of directions in the NEM and the objectives in the proposed Code changes, stemming from the joint NECA/NEMMCO review.

The Commission acknowledges that the current arrangements for issuing directions are unsatisfactory due to a lack of clarity on which type of direction should be issued, when it should be issued and the amount of compensation that should be awarded. The current arrangements also suffer from inadequate transparency and are less than practical to implement.

The Commission recognises the difference between the need for a direction to maintain system security, a direction to provide ancillary services, and at times for reliability is problematic to interpret and can place NEMMCO in a difficult position.

The Commission notes that compensation has sometimes been the subject of protracted negotiation and dispute resolution over many months, as directed parties seek to maximise the value of payment they receive. Such lengthy processes and disputes impose transaction costs on the market, which may be above the level of costs that would be associated with a fair payment for services provided by a direction.

Subsequently, it is argued by the applicant that the proposed Code changes would provide public benefits by:

- minimising the impact of distortions and provide an efficient arrangement for directions in the NEM;
- offering adequate compensation to directed parties and maintain participation in the NEM; and
- improving the transparency and fairness of directions, thereby diminishing the scope for disputes, and reduce any adverse effects that directions may have on the ability of the NEM to deliver system security, public safety and reliability.

The Commission also considers that the proposed Code changes provide clarification and streamline the arrangements for all types of power system directions. Such clarification gives participants a better understanding of their roles, obligations and entitlements within the framework for directions in the NEM.

Accordingly, the Commission accepts the public benefits argument and concludes that the proposed Code changes have the potential to improve overall operation of the existing arrangements for directions in the NEM. Nevertheless, the Commission considers that there are numerous minor drafting and editorial changes that must be made so that the Code provisions are on a consistent basis. The Commission therefore has imposed a number of conditions to amend and clarify the interpretation of the Code changes, so as to help ensure the anticipated public benefits can be realised. Further, there are a number of concerns that interested parties have raised, which may prevent potential benefits being realised. The Commission will address these issues below.

Timing of systems implementation and Code changes gazettal

The Commission recognises that NEMMCO will require sufficient time to develop and implement market systems that have arisen out of the proposed Code changes. The Commission acknowledges that the Code provisions for the development of procedures by NEMMCO are likely to be complex and will probably require the full five-month period set aside in accordance with the Code consultation procedures.

The Commission notes NEMMCO's concerns that it will require time to complete the required Code consultation and carry out the necessary work to implement the Code changes into its market systems. However, the Commission is not in a position to gauge what would be a more appropriate period. Consequently, the Commission does not propose to mandate any particular time extension and leaves the issue of any time extension to NEMMCO and NECA to resolve.

Scheduled plant definition

The Commission notes NEMMCO's proposal to alter the definition of "scheduled plant" so that the intention of the Code changes is recognised. However, the Commission considers the inclusion of "market non-scheduled generating unit" into the definition of scheduled plant seems counter-intuitive and may cause confusion.

In light of this, NECA proposes an amendment to the definition of scheduled plant, which would also require a subsequent change to clause 4.8.9(a1)(1). The Commission considers these amendments appropriate. Therefore, conditions C4.1 and C4.2 gives effect to these requirements.

C4.1 The definition of "scheduled plant" must be amended to read:

"In respect of a Code Participant, a scheduled generating unit, a scheduled network service or a scheduled load classified by or in respect to that Code Participant under Chapter 2."

C4.2 In Clause 4.8.9(a1)(1), the words "or market non-scheduled generating unit" must be inserted after "...in relation to scheduled plant".

Compensation inconsistency

The Commission notes NEMMCO and Snowy's concerns with regard to retaining clause 4.8.9A. The principles for compensation to directed participants for the provision of market and non-market ancillary services under clause 4.8.9A differ substantially from the principles for compensation to directed participants for energy and market ancillary services set out in the proposed clause 3.15.7. Clause 3.15.7 sets compensation at bid price, or in the absence of a valid bid, at the 90th percentile of the historical spot price. Conversely, clause 4.8.9A sets compensation at a market value plus additional cost and retains an element of ambiguity, which the proposed Code changes aim to eliminate. Market value is not defined by the Code changes and lack of specificity may lead to protracted and expensive processes to settle appropriate compensation amounts.

Therefore, the Commission agrees with NEMMCO that clause 4.8.9A has been overlooked. The Commission also agrees with Snowy's view that retaining clause

4.8.9A would contradict the objective of a single and consistent arrangement to apply for the use of directions.

Accordingly, the Commission considers that clause 4.8.9A must be removed to provide consistency and avoid confusion over conflicting arrangements for the provision of ancillary service direction. Condition C4.3 gives effect to this requirement.

C4.3 Clause 4.8.9A must be deleted from the proposed Code changes.

Reckless or intentional acts leading to a direction

The current arrangement under clause 4.8.9(g) is that NEMMCO will determine whether a market participant has breached the clause, and also determine whether the market participant will be eligible for compensation. In the proposed Code changes, clause 4.8.9(g) has effectively been separated into two clauses within the Code.

The requirement for participants not to intentionally or recklessly cause an issuance of a direction is highlighted in clause 3.8.22B(d). Clause 3.15.10C(c) states that market participants will not be entitled to receive compensation if it was found that they contributed to the cause for direction as a result of an intentional or reckless act. The effect of the proposed clause 3.15.10C(c) is to allow the Tribunal to determine whether a market participant has breached clause 3.8.22B(d). The benefit of this change is to have an independent body, rather than a market operator, who is not associated with the market to ensure that there is probity in determining a breach.

The Commission believes that clauses 3.8.22B(d) and 3.15.10C(c) are critical as they link entitlement of compensation and aims to prevent market participants from acting in a reckless manner that causes a direction to be issued by NEMMCO. The Commission notes Snowy's concern on whether clause 3.15.10C(c), as it stands, is sufficient to deter market participants from acting in a prejudicial manner and whether a penalty should be incorporated into the Code.

The Commission is of the view that prejudicial conduct can be costly to the market and other market participants, which may result in significant transaction costs associated with settlements. Therefore, the Commission sees merit in Snowy's comment that a market participant that causes damage to the market should not only have to repay any "ill gotten gains" but also pay costs for other affected parties, as well as some form of penalty.

However, as the Code change currently stands, the party that causes damage would have to repay any money it was paid and face a penalty through the Tribunal. The Commission considers the powers of the Tribunal, pursuant to the NEL, are broad. Discretionary powers of the Tribunal extend so far as to require a Code participant that was found to have breached the Code to repay any costs directly arising from the breach. These actions would not limit Code participants from exercising their common law rights to seek recovery of damages for breaches of the Code by other Code participants. The Commission considers this is consistent with the legal framework around the Code.

The Commission also acknowledges Snowy's argument that it is inappropriate and premature for clause 3.8.22B(d) to refer directly under the proposed bidding and

rebidding Code changes currently before the Commission. The Commission notes that the recent draft determination for the rebidding Code changes proposes not to authorise clause 3.8.22B. In light of this, NECA recommends that clause 3.8.22B(d) be moved to become clause 4.8.9(c2). The Commission considers this to be appropriate and also would require a consequential change to correct the cross-reference in clause 3.15.10C(c). Therefore, conditions C4.4 and C4.5 below gives effect to these requirements.

C4.4 Clause 3.8.22B(d) must be moved to become clause 4.8.9(c2).

C4.5 Clause 3.15.10C(c) must be amended to cross-reference clause 4.8.9(c2).

Inconsistency in the requirement of submissions by affected participants

The Commission notes Snowy's concern regarding the interpretation of clauses 3.12.11(c) and 3.12.11(c2). The Commission's concern is that if the interpretation or ambiguities of clauses in the Code are left unamended, then it may lead to confusion especially if an affected participant does not read the clauses in their entirety.

For instance, if an affected participant was to read clause 3.12.11(c) and agree with NEMMCO's compensation assessment but does not read further, it will be under the impression that there is no requirement to make a submission. In fact, it is required to lodge a submission if it wishes to receive compensation. In this case, if the affected participant does not lodge a submission then its entitlement to any compensation would lapse.

The Commission recognises the intention of the two clauses is to separate the entitlement and obligation of an affected participant. However, the Commission considers a minor redrafting can be made to avoid confusion and clarify the readability of the clauses. Condition C4.6 gives effect to this requirement.

C4.6 Clause 3.12.11(c) must be amended to cross-reference that it is "subject to clause 3.12.11(c2)".

Clause relating to compensation for affected participants

The Commission sought clarification from NECA as to why compensation to affected participants, pursuant to clause 3.12.11(d)(1)(iv) to (vii), is deleted when similar clauses are included in additional compensation for directed participants under clause 3.15.7B(a3).

NECA states that clause 3.12.11(d)(1)(iv) to (vii) is deleted as these events are not relevant to an affected participant. An affected participant is not directed to undertake any particular action by NEMMCO, which creates a right to compensation for such events. The Commission accepts NECA's comments and considers that the joint review of directions has clearly and unequivocally established that affected participants should only be entitled to compensation where a direction or dispatch of a reserve contract affects dispatch levels and nothing more.

Recovery of compensation amount from market participants

The Commission notes Snowy's concern that since its mix of generation assets are high capacity but low energy plants, it would be disadvantaged by the clause 3.18(g) provision for recovering residual compensation amounts from market participants.

However, the Commission considers that there is a need to allocate funding of the compensation payable for directions not related to energy or ancillary services to market participants. The Commission recognises that, by definition, services other than energy or ancillary services do not have an immediate candidate to pay as oppose to the more typical directions related to energy or ancillary services. Consequently, these services need to be recovered in some reasonable manner, determined to be the same as the fixed component of the participants' fees. This reflects the joint review of directions, which recommended:

Where there is no normal mechanism for allocating the costs of the directions to specific sectors of the market, payments should be funded using the same methodology used for allocating the fixed component of pool fees.

The Commission notes that in economic theory, one might go for least distortionary and others might go for most equitable reasoning. The Commission further notes that the Code sets out a few principles under clause 2.11.1, thus this is why clause 3.15.8(g) sets out such an arrangement. The Commission considers that such an arrangement is not endorsing recovery against a particular fee structure based on generator capacity or any other measure.

The Commission also notes Snowy advocates the recovery of compensation for services other than energy or ancillary services on the basis of an energy measure, in light of the current dispute relating to fixed participants' fees. The Commission recognises that there is currently a dispute over the participants' fees. However, this is outside the scope of the Code change determination process before the Commission. The Commission considers it would be premature to make further piecemeal changes prior to the settlement of the dispute and also inconsistent with the way forward as proposed in the review of directions.

Further, the Commission acknowledges NECA's statement that the issue of directions is most likely related to the energy or ancillary service markets, thus it would be difficult to definitely identify examples of services that would not be in those categories. However, the Commission considers direction to disconnect an unstable plant from the power system or direction for voltage control would fall into the category of services other than energy or ancillary services.

The Commission believes clause 3.15.8(g) is a "catch all" provision to ensure that if there is compensation not recoverable under the main provisions of clause 3.15.8, then there remains a mechanism for its recovery. Therefore, the Commission considers NECA's proposal is appropriate such that the recovery of compensation payable by NEMMCO, for services other than energy or ancillary services, is in proportion to the largest single fixed component of participants' fees.

Principles to guide the independent experts' determination

The Commission notes Snowy's concern in relation to the proposed clause 3.15.7A. However, the Commission also notes that in the joint review of directions, NEMMCO and NECA did not propose explicit economic criteria for the determination of a fair payment for services other than energy and market ancillary services under clause 3.15.7A. This is because of the uncertainty as to when such a situation would arise.

The Commission considers that it may not be appropriate to set explicit criteria for the determination of a fair payment when there may be difficulty in identifying the exact nature of the service covered by this provision. Therefore, it may be prudent to have a broad general provision to cover these services as they occur.

The Commission also notes Snowy's concern regarding clauses 3.15.7A(c)(1)(ii)(C) and (D), which it argues leave considerable room for interpretation of what may constitute "similar" demand/supply conditions. The Commission, as noted above, considers it appropriate to keep these principles broad as a range of services, which do not fall under either energy or market ancillary services are captured here.

Snowy comments that the criteria to be employed by NEMMCO in determining whether an expert can or cannot be expected to make a determination are not specified. However, the Commission notes clause 3.15.7A(b) states that NEMMCO must have regard to whether a determination could be made within a reasonable time period and may develop guidelines for this purpose.

Snowy also raises concern with regard to the existence of the option to bypass the expert determination process and restrict compensation to revenue losses, cost and return on capital employed. The Commission considers that there may be circumstances where it would not be appropriate to go through the expert determination route due to the time involved. Further, it is the Commission's understanding that there is a process in place for situations where directed participants are not satisfied with the compensation calculated by the independent expert. In such circumstances, a directed participant is able to claim for additional compensation under clause 3.15.7B.

The Commission recognises Snowy's concern relating to what would happen to an expert determination if a new separate direction is issued prior to the date of publication of the expert report. The Commission agrees that there is ambiguity regarding the status of the second report and its effect on the precedent value of the first expert report. In light of this concern, the Commission considers an amendment is required. Condition C4.7 gives effect to this requirement.

C4.7 NECA must amend 3.15.7A to ensure that if a relevant determination has been made within the last 12 months or is pending, then an independent expert should not be appointed under clause 3.15.7A(b1). Compensation in that case should be based on the existing or pending expert determination.

Definition of affected participants

The Commission notes that this concern raised by Ergon has been considered in the initial Code change consultation period. The Commission acknowledges that retailers

may have concerns about some indirect exposures, for instance, being potentially sued by customers for blackouts or quality of supply. The Commission agrees with NECA that it may not be appropriate for compensation associated with market effects of directions on scheduled units to be the vehicle to deal with liability claims from retail customers.

The Code changes only provide for direct compensation based on the physical market and do not provide for compensation based on financial contract exposures. In the initial Code change consultation, it was considered that there is really no direct type of exposure that a retailer might have as the outturn price is set on a “what-if” basis, that is, on the basis that the direction does not take place.

The Commission notes that what-if pricing should ensure the final price experienced by market customers should be identical, regardless of the participant chosen to direct. Therefore, the only means by which NEMMCO can reduce the costs seen by market customers is to use reasonable endeavours to minimise the cost of the direction. This obligation is already placed upon NEMMCO under clause 4.8.9(b).

Payment price

The Commission notes that the provision of 90% market price tries to provide a market price based on compensation recognising that a direction would usually be issued in extraordinary market circumstances more typical of a high price. The provision is also made that if the directed participant has a valid bid or offer in place, then this should be the price for the service. In the event of a direction, one would expect the commodity to be in short supply at the time. As such, the payment to directed parties should be a fair payment price that reflects a market under scarcity conditions. The joint review of directions reflect this view:

When a market direction is issued, there is only one buyer (NEMMCO on behalf of all market participants) and one seller (directed party). In these circumstances, the price struck may not have resulted from a competitive market. But it may be fair in the sense that both parties are satisfied with the deal because the price lies between the maximum valuation of the buyer and the maximum valuation of the seller.

While the Commission acknowledges that the 90% figure may be somewhat arbitrary, it is meant to interpret the principles in a more definitive manner. A precise value would be more important if it was intended to be a significant market signal with long term implications. However, directions are not intended to fund capital investments. The design of the energy only market, as it stands, relies on high spot prices in times of scarcity to signal the need for investments. Normal market mechanisms should signal profitable investment opportunities without reliability and security issues declining to such an extent that a direction is needed. The Commission considers that an investor would find it very risky to rely on directions to fund capital investment, rather than the normal operation of various spot and contract markets.

The Commission notes that the proposed changes strengthen the requirement for NEMMCO to provide notice of a possible direction and the commercial incentive to participate in the market. The Code changes also guarantee the directed participant the higher of cost incurred and the codified fair payment price. This is more certain than open market participation where there is no guarantee of covering costs, particularly as market prices at times of potential direction are inherently variable. The Commission

believes that payment at a predetermined, historically based price is intended to balance certainty and transactions costs, and provide an incentive to respond to a direction and participate in the market.

The Commission also notes that there is a mechanism in place, which would disallow payment to a party found to have intentionally caused a direction. The Commission considers this provision is sufficient to eliminate any incentive a party may have to act recklessly and gain from a direction.

Regional benefit factor

The Commission notes that the Code changes require NEMMCO, as far as practicable, to minimise the number of affected participants and the number of regions with affected participants. The regional benefit factor is to be calculated in accordance with the regional benefit direction procedures, which are developed through the Code consultation procedures in accordance with clauses 3.15.8(b1) and (b2).

It should also be noted, NEMMCO considers that for the greater proportion of directions it would be quite obvious which regions were the true beneficiaries of the direction.

It is the Commission's understanding that NEMMCO, through the Code consultation procedures, is currently developing the method for determining the beneficiaries of a direction. Therefore, any specific concerns as to highlighting the right factors in particular cases should be taken up through the NEMMCO consultation processes.

Other issues

The Commission considers a number of clauses in the Code changes require amendments so that the interpretation and drafting of the clauses are on a consistent basis, thus increasing the overall public benefits. The Commission sought clarification from NECA on those issues and conditions C4.8 to C4.43 gives effect to these requirements.

C4.8 In clause 3.8.1(b)(11)(A), the term referring to “*affected participants*” should be capitalised.

C4.9 Clause 3.9.1(3C) must be amended to read:

“generating units or loads which operate in accordance with a direction to provide an ancillary service are to be taken into account in the central dispatch process, but the price in a market ancillary service offer which operates in accordance with a direction, will not be used in the calculation of the ancillary service price for that market ancillary service in the relevant dispatch interval;”

C4.10 In Clause 3.9.3(a), the words “*NEMMCO has issued a direction*” must be replaced by “*a direction is in effect*”.

C4.11 Clause 3.12.11(a1) must be amended to clarify that the \$5,000 threshold applies to a single “*intervention price trading interval*”. Clauses 3.12.11(c3) and 3.15.7B(a4) must similarly be amended to ensure consistency.

- C4.12 In Clause 3.12.11(b)(2), the word “of” should be inserted after “each eligible person”.
- C4.13 Clause 3.12.11(b)(3) must be amended to read:
“each Market Customer, the amount calculated by NEMMCO in accordance with clause 3.12.11(a)(2) for that Market Customer.”
- C4.14 Clause 3.12.11(b1) must be amended to reference “a *billing period* in which one or more *intervention price trading intervals* occurred”.
- C4.15 In clause 3.12.11(d)(1)(ii), the words “*scheduled generated unit*” must be amended to “*scheduled generating unit*”.
- C4.16 To improve the certainty of the operation of clause 3.12.11(f)(1), it should be redrafted to read:
“refer an affected participant’s adjustment claim or market customer’s additional claim to an independent expert to determine such claim in accordance with clause 3.12.11A if the claim is equal to or greater than \$20,000 and the additional intervention claim that includes that claim is equal to or greater than \$100, 000; and”
- C4.17 Clause 3.12.11(f)(2) must be amended from “determine....if” to “determine....whether”.
- C4.18 Clause 3.12.11A(b1) must be amended to read “*dispatch of reserve plant*” instead of “*dispatch or reserve plant*”.
- C4.19 The first word “and” must be deleted from clause 3.13.6A(a)(8).
- C4.20 Clause 3.15.6(b) must be amended to read:
“NEMMCO is entitled to the trading amount resulting from the dispatch of plant under a reserve contract pursuant to clause 4.8.6 or a direction pursuant to clause 4.8.9(a) and for the purposes of determining settlement amounts, any such trading amount is not a trading amount for the relevant Market Participant.”
- C4.21 Clause 3.15.6(c) must be amended to read:
“A Directed Participant is entitled to the trading amount resulting from any service, other than the service the subject of the direction or the dispatch of plant under a reserve contract, rendered as a consequence of the direction.”
- C4.22 Clause 3.15.7(a) must be amended so the words “in order to comply with the *direction*” are added to the end of the clause.
- C4.23 Clause 3.15.7A(a) must be amended to read:
“Subject to clause 3.15.7(d) and clause 3.15.7B, NEMMCO must compensate each Directed Participant for the provision of services pursuant to a direction other than energy and market ancillary services, at the fair payment price of the services determined in accordance with this clause 3.15.7A.”

- C4.24** The reference to “*directions intervention settlement timetable*” in clause 3.15.7A(c)(2) must be amended and reference to “*intervention settlement timetable*”.
- C4.25** Clause 3.15.7B(a) must be amended to read:
- “Subject to clause 3.15.7B(a1) and 3.15.7B(a4), a *Directed Participant* entitled to compensation pursuant to clause 3.15.7 or clause 3.15.7A may....”
- C4.26** Within clause 3.15.7B(a3), the sub-clauses (i) to (vii) must be renumbered (1) to (7) respectively
- C4.27** Clause 3.15.7B(c)(1) must be similarly amended in accordance with the change made to clause 3.12.11(f)(1) in C4.16.
- C4.28** In clause 3.15.8(e), the first sub-clause (2) must be renumbered to (1).
- C4.29** Within clause 3.15.8(e)(2), the sub-clauses (iv) to (vi) must be renumbered (i) to (iii) respectively.
- C4.30** The double occurrence of “the” in clause 3.15.8(f)(2) must be deleted.
- C4.31** Within clause 3.15.10C(b)(7), the sub-clauses (A) to (B) must be renumbered (i) to (ii) respectively.
- C4.32** Clause 4.3.1(r1) must be deleted and clause 4.3.1(r) be amended to read:
- “To issue a *direction* or *clause 4.8.9 instruction* (as necessary) to any *Code Participant*.”
- C4.33** Clause 4.8.6(a) must be amended so the word “elapsed” is replaced with the word “arrived”.
- C4.34** In clause 4.8.9(a2), the words “, and must” are to be deleted.
- C4.35** Clause 4.8.9(b1) must be amended to require NEMMCO to publish the initial procedures for the issuance of directions.
- C4.36** The words “Subject to clause 4.8.9(c),” must be inserted into the beginning of clause 4.8.9(c1).
- C4.37** In clause 5.2.5(b)(6), the words “clause 4.8.9 instruction” must be italicised.
- C4.38** In the glossary, “additional direction claims” must be amended to “additional intervention claim” and should refer to clause 3.12.11(e).
- C4.39** In the glossary, “affected participant’s additional claim” must be amended to “affected participant's adjustment claim” and should refer to clause 3.12.11(c1)(3).
- C4.40** The definition of “Affected Participant” must be amended to read:

“A Scheduled Generator or Scheduled Network Service Provider, which was not the subject of the direction or were not dispatched under the reserve contract, that had its dispatched quantity affected by that direction or dispatch of plant under that reserve contract or an eligible person entitled to receive an amount from NEMMCO pursuant to clause 3.18.1(b)(1) where there has been a change in flow of a directional interconnector, for which the eligible person holds units, as a result of the direction or dispatch of plant under a reserve contract.”

C4.41 For the definition of “Directed Participant”, the comma between the words “*Market, Non-Scheduled Generator*” must be deleted.

C4.42 The definition of “intervention price trading interval” in the glossary must be amended to read:

“A trading interval in which NEMMCO has declared an intervention price dispatch interval in accordance with clause 3.9.3.”

C4.43 The definition of “market customer’s additional claim” must be amended to refer to clause 3.12.11(c1)(4).

5. Determination

The Commission considers that the proposed arrangements to the Code, set out in the application for amendments to the framework of directions in the NEM:

- 1) are likely to result in a benefit to the public which outweighs the detriment from any lessening of competition that would result if the proposed conduct or arrangements were made, or engaged in; and
- 2) are likely to result in such a benefit to the public that the proposed conduct or arrangements should be allowed to take place or be arrived at.

For reasons outlined in chapter 4 of this draft determination, the Commission proposes, subject to any pre-determination conference requested pursuant to s.90A of the TPA, to authorise, subject to the conditions outlined below, the amendments to the Code contained in application numbers A90818, 90819 and 90820.

Conditions:

C4.1 The definition of “scheduled plant” must be amended to read:

“In respect of a Code Participant, a scheduled generating unit, a scheduled network service or a scheduled load classified by or in respect to that Code Participant under Chapter 2.”

C4.2 In Clause 4.8.9(a1)(1), the words “or market non-scheduled generating unit” must be inserted after “...in relation to scheduled plant”.

C4.3 Clause 4.8.9A must be deleted from the proposed Code changes.

C4.4 Clause 3.8.22B(d) must be moved to become clause 4.8.9(c2).

C4.5 Clause 3.15.10C(c) must be amended to cross-reference clause 4.8.9(c2).

C4.6 Clause 3.12.11(c) must be amended to cross-reference that it is “subject to clause 3.12.11(c2)”.

C4.7 NECA must amend 3.15.7A to ensure that if a relevant determination has been made within the last 12 months or is pending, then an independent expert should not be appointed under clause 3.15.7A(b1). Compensation in that case should be based on the existing or pending expert determination.

C4.8 In clause 3.8.1(b)(11)(A), the term referring to “affected participants” should be capitalised.

C4.9 Clause 3.9.1(3C) must be amended to read:

“generating units or loads which operate in accordance with a direction to provide an ancillary service are to be taken into account in the central dispatch process, but the price in a market ancillary service offer which operates in accordance with

a *direction*, will not be used in the calculation of the *ancillary service price* for that *market ancillary service* in the relevant *dispatch interval*;"

- C4.10 In Clause 3.9.3(a), the words "*NEMMCO has issued a direction*" must be replaced by "*a direction is in effect*".
- C4.11 Clause 3.12.11(a1) must be amended to clarify that the \$5,000 threshold applies to a single "*intervention price trading interval*". Clauses 3.12.11(c3) and 3.15.7B(a4) must similarly be amended to ensure consistency.
- C4.12 In Clause 3.12.11(b)(2), the word "of" should be inserted after "each eligible person".
- C4.13 Clause 3.12.11(b)(3) must be amended to read:

"each *Market Customer*, the amount calculated by *NEMMCO* in accordance with clause 3.12.11(a)(2) for that *Market Customer*."
- C4.14 Clause 3.12.11(b1) must be amended to reference "*a billing period* in which one or more *intervention price trading intervals* occurred".
- C4.15 In clause 3.12.11(d)(1)(ii), the words "*scheduled generated unit*" must be amended to "*scheduled generating unit*".
- C4.16 To improve the certainty of the operation of clause 3.12.11(f)(1), it should be redrafted to read:

"refer an *affected participant's adjustment claim* or *market customer's additional claim* to an independent expert to determine such claim in accordance with clause 3.12.11A if the claim is equal to or greater than \$20,000 and the *additional intervention claim* that includes that claim is equal to or greater than \$100, 000; and"
- C4.17 Clause 3.12.11(f)(2) must be amended from "determine....if" to "determine....whether".
- C4.18 Clause 3.12.11A(b1) must be amended to read "*dispatch of reserve plant*" instead of "*dispatch or reserve plant*".
- C4.19 The first word "and" must be deleted from clause 3.13.6A(a)(8).
- C4.20 Clause 3.15.6(b) must be amended to read:

"*NEMMCO* is entitled to the *trading amount* resulting from the *dispatch of plant* under a *reserve contract* pursuant to clause 4.8.6 or a *direction* pursuant to clause 4.8.9(a) and for the purposes of determining *settlement amounts*, any such *trading amount* is not a *trading amount* for the relevant *Market Participant*."
- C4.21 Clause 3.15.6(c) must be amended to read:

"A *Directed Participant* is entitled to the *trading amount* resulting from any service, other than the service the subject of the *direction* or the *dispatch of plant* under a *reserve contract*, rendered as a consequence of the *direction*."

- C4.22** Clause 3.15.7(a) must be amended so the words “in order to comply with the *direction*” are added to the end of the clause.
- C4.23** Clause 3.15.7A(a) must be amended to read:
- “Subject to clause 3.15.7(d) and clause 3.15.7B, *NEMMCO* must compensate each *Directed Participant* for the provision of services pursuant to a *direction* other than *energy* and *market ancillary services*, at the fair payment price of the services determined in accordance with this clause 3.15.7A.”
- C4.24** The reference to “*directions intervention settlement timetable*” in clause 3.15.7A(c)(2) must be amended and reference to “*intervention settlement timetable*”.
- C4.25** Clause 3.15.7B(a) must be amended to read:
- “Subject to clause 3.15.7B(a1) and 3.15.7B(a4), a *Directed Participant* entitled to compensation pursuant to clause 3.15.7 or clause 3.15.7A may....”-
- C4.26** Within clause 3.15.7B(a3), the sub-clauses (i) to (vii) must be renumbered (1) to (7) respectively
- C4.27** Clause 3.15.7B(c)(1) must be similarly amended in accordance with the change made to clause 3.12.11(f)(1) in C4.16.
- C4.28** In clause 3.15.8(e), the first sub-clause (2) must be renumbered to (1).
- C4.29** Within clause 3.15.8(e)(2), the sub-clauses (iv) to (vi) must be renumbered (i) to (iii) respectively.
- C4.30** The double occurrence of “the” in clause 3.15.8(f)(2) must be deleted.
- C4.31** Within clause 3.15.10C(b)(7), the sub-clauses (A) to (B) must be renumbered (i) to (ii) respectively.
- C4.32** Clause 4.3.1(r1) must be deleted and clause 4.3.1(r) be amended to read:
- “To issue a *direction* or *clause 4.8.9 instruction* (as necessary) to any *Code Participant*.”
- C4.33** Clause 4.8.6(a) must be amended so the word “elapsed” is replaced with the word “arrived”.
- C4.34** In clause 4.8.9(a2), the words “, and must” are to be deleted.
- C4.35** Clause 4.8.9(b1) must be amended to require NEMMCO to publish the initial procedures for the issuance of directions.
- C4.36** The words “Subject to clause 4.8.9(c),” must be inserted into the beginning of clause 4.8.9(c1).
- C4.37** In clause 5.2.5(b)(6), the words “clause 4.8.9 instruction” must be italicised.

- C4.38** In the glossary, “additional direction claims” must be amended to “additional intervention claim” and should refer to clause 3.12.11(e).
- C4.39** In the glossary, “affected participant’s additional claim” must be amended to “affected participant’s adjustment claim” and should refer to clause 3.12.11(c1)(3).
- C4.40** The definition of “Affected Participant” must be amended to read:
- “A Scheduled Generator or Scheduled Network Service Provider, which was not the subject of the direction or were not dispatched under the reserve contract, that had its dispatched quantity affected by that direction or dispatch of plant under that reserve contract or an eligible person entitled to receive an amount from NEMMCO pursuant to clause 3.18.1(b)(1) where there has been a change in flow of a directional interconnector, for which the eligible person holds units, as a result of the direction or dispatch of plant under a reserve contract.”*
- C4.41** For the definition of “Directed Participant”, the comma between the words “Market, Non-Scheduled Generator” must be deleted.
- C4.42** The definition of “intervention price trading interval” in the glossary must be amended to read:
- “A trading interval in which NEMMCO has declared an intervention price dispatch interval in accordance with clause 3.9.3.”*
- C4.43** The definition of “market customer’s additional claim” must be amended to refer to clause 3.12.11(c1)(4).

Appendix A – Submissions to the Commission

The Commission received submissions from the following parties:

- NEMMCO;
- Macquarie Generation;
- Snowy Hydro Trading Pty Ltd; and
- Ergon Energy.



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