



Our Ref: C2002/333
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5 February 2003

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Dear Stephen

National Electricity Code: Minor variation – Review of directions in the NEM

On 3 October 2002, the Australian Competition and Consumer Commission (Commission) made a determination on the applications for authorisation (Nos A90818, A90819 and A90820) of amendments to the National Electricity Code (Code). The Code changes were submitted by the National Electricity Code Administrator (NECA) and implement the recommendations of a joint NECA/NEMMCO review of directions in the National Electricity Market (NEM).

In that determination, the Commission considered that the proposed arrangements to the Code set out in the application for amendments to the framework of directions in the NEM:

- 1) were 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) were 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.

Consequently, subject to a number of conditions, the Commission authorised the amendments to the Code.

On 20 December 2002, NECA lodged a request for a minor variation to the Commission's condition of authorisation C4.40 to clarify the meaning of the defined term 'Affected Participant' in chapter 10 of the Code.

The purpose of the variation is to make clear that a scheduled generating unit or scheduled network service provider that is the subject of a direction or whose generating units or network services are dispatched under a reserve contract may nonetheless be an 'Affected Participant',

where its dispatched quantity for other generating units or services are affected by the direction or dispatch under a reserve contract, in respect of those other generating units or services. NECA states that this was always the intention of the proposed arrangements.

Statutory provisions

Section 91A of the *Trade Practices Act 1974* (Act) provides that, on receipt of an application for minor variation of an authorisation, the Commission must, if it is satisfied that the variation sought is a minor variation, invite submissions from interested parties. A minor variation is defined in section 87D as a single variation that does not involve a material change in the effect of the authorisation.

After consideration of the application and any submissions received, the Commission may make a determination varying the authorisation or dismissing the application. The tests for granting an application for a minor variation of an authorisation are set out in sub-sections 91A(4) and (5) of the Act.

Minor variation

The Commission has determined that the variation sought in NECA's application does not involve a material change in the effect of authorisations A90818, A90819 and A90820 granted on 3 October 2002.

Interested parties

The Commission invited interested parties to lodge submissions in respect of NECA's application. No submissions were received.

Determination

In accordance with section 91A of the Act, the Commission is satisfied that the minor variation sought by NECA to condition C4.40 of its 3 October 2002 determination would not result, or would be likely not to result, in:

- a reduction in the extent to which the benefit to the public of the authorisation of the amendments to the Code for the review of directions in the NEM outweighs any detriment to the public caused by that authorisation; or
- a reduction in the benefit to the public that arose from the original authorisation of those amendments to the Code.

Accordingly, the Commission varies authorisations A90818, A90819 and A90820 dated 3 October 2002 by amending condition C4.40 to provide that the definition of 'Affected Participant' in chapter 10 of the Code be varied to read as follows:

Affected Participant

In respect of a particular *direction* or *dispatch* under a *reserve contract*, as the case may be, in an *intervention price trading interval*:

1. a *Scheduled Generator* or *Schedule Network Service Provider*, which was not the subject of the *direction* or whose *plant* was not *dispatched* under the *reserve contract*, that had its *dispatched* quantity affected by that *direction* or *dispatch* of *plant* under that *reserve contract*; or
2. a *Scheduled Generator* or *Scheduled Network Service Provider*, which was the subject of the *direction* or whose *plant* was *dispatched* under the *reserve contract*, that had its *dispatched* quantity for other *generating units* or other services which were not the subject of that *direction* or which were not *dispatched* under that *reserve contract* affected by that *direction* or *dispatch* of *plant* under that *reserve contract*, however, the *Scheduled Generating Unit* or *Scheduled Network Service Provider* is only an *Affected Participant* in respect of those *generating units* and services which were not the subject of that *direction* or were not *dispatched* under that *reserve contract*; or
3. 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 for the *intervention price trading interval*, as a result of the *direction* or the *dispatch* of *plant* under the *reserve contract*.

This minor variation comes into force:

- (a) if no application is made to the Australian Competition Tribunal for review of this determination – on 6 March 2003;
- (b) if an application for review of this determination is made to the Tribunal and is not withdrawn – on the day the Tribunal makes its determination on the application for review; or
- (c) if an application for review of this determination is made to the Tribunal and is withdrawn – on the day the application is withdrawn.

If you have any queries regarding this matter, please contact Kenny Yap on (02) 6243 1224.

Yours sincerely

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