Applications for Authorisation

Amendments to the National Electricity Code
Rebidding, VoLL scaling and settlements statements

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Authorisation nos:
A90730
A90731
A90732

File no:
C2000/479

Commissioners:
Fels
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Contents

Glossary

BCA ERTF	Business Council of Australia Energy Reform Task Force
CCP	Code Change Panel
Code	National Electricity Code
Commission	Australian Competition and Consumer Commission
EMRI	Electricity Markets Research Institute
EST	Eastern Standard Time
MNSP	Market Network Service Provider
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
PASA	Projected Assessment of System Adequacy
TPA	*Trade Practices Act 1974*
VoLL	Value of Lost Load

1. Introduction

On 15 March 2000, the National Electricity Code Administrator (NECA) requested the Australian Competition and Consumer Commission (Commission) to grant authorisation to amendments to the National Electricity Code (Code) — application numbers A90730, A90731 and A90732. The amendments introduce modified rules for rebidding.

As part of the National Electricity Market (NEM) arrangements, participants in the centralised spot market can lodge bids for prices and quantities to be dispatched. While the price bids cannot be altered beyond the bidding deadline for the day of dispatch as contained in the timetable published by the National Electricity Market Management Company (NEMMCO), the quantities can be rebid until the dispatch period. NECA's proposed amendments to the Code introduce modified rules for information disclosure regarding rebids.

On 27 March 2000, NECA amended this application by including Code changes relating to VoLL scaling and the revision of settlements statements. The application, and subsequent amendments, were placed on the Commission's public register for inspection by interested parties.

The VoLL scaling amendments aim to introduce mechanisms to address the inability to simultaneously meet a number of market objectives at times of system stress. The settlements statements arrangements aim to introduce a mechanism to allow NEMMCO to adjust settlements payments when errors in processing are detected or more accurate information becomes available.

1.1 Statutory test

The applications were made under sub-sections 88(1) and 88(8) of the *Trade Practices Act 1974* (TPA). 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.

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 subject arrangements or conduct would result, or be likely to result, in a benefit to the public; and

- benefit would outweigh the detriment to the public constituted by any lessening of competition that would, or would be likely to result from the 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.

In deciding whether it should grant authorisation, the Commission must examine the anti-competitive aspects of the arrangements, the public benefits arising from the arrangements and then weigh the two to determine which is the greater. Should the public benefit or

expected public benefits outweigh the anti-competitive aspects, the Commission may grant authorisation or grant authorisation subject to certain conditions.

Determining just what is a benefit to the public is therefore a key issue to the authorisation process. Public benefits recognised in the past include:

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

If the Commission determines that the public benefits do not outweigh the anti-competitive detriment, the Commission may refuse authorisation or alternatively, in refusing authorisation, indicate to the applicant how the applications could be constructed to change the balance of detriment and public benefit so that authorisation may be granted.

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 provides exemption only for the particular conduct specified. Authorisation does not provide blanket exemption from all provisions of the TPA. Further, authorisation is not available for misuse of market power (section 46).

1.2 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 initial applications for authorisation of the changes to the Code on 15 March 2000, and the applications were amended on 27 March 2000. Notification of the applications and a request for submissions was advertised in *The Australian Financial Review* on 7 April 2000 and posted on the Commission's web page. 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 receive submissions from 10 interested parties (see Appendix A). All submissions have been placed on the Commission's public register.

The Commission decided to re-open the public consultation process because of anomalies in the formatting style of the information provided by NECA in respect of the settlements statements amendments. The Commission wrote to interested parties and placed a request for submissions within the Commission's web page, in respect of the modifications to the presentation of the Code changes. One further submission was received.

On 3 November 2000, the Commission released a draft determination outlining its analysis and views on the proposed Code changes. The applicants and other interested persons were invited to notify the Commission within 14 days whether they wished the Commission to hold a conference in relation to the draft determination.

The Commission received no such notification, consequently the Commission has made this determination. A person dissatisfied with the determination may apply to the Australian Competition Tribunal for its review.

2. Rebidding

The Code restricts the changes that market participants can make to their inputs to the short-term Projected Assessment of System Adequacy (PASA) and central dispatch processes. The inputs provided by market participants relate to available capacity, daily energy constraints, dispatch inflexibilities and ramp rates of generating units and scheduled loads, and are used to determine the price and quantity of energy traded in each dispatch interval. However, some changes are permitted within specified timeframes – so called 'rebids'. The rebidding provisions of the Code allow participants to vary the amounts of energy in each price band and the total availability of their plant.

The proposed Code changes require participants to provide reasons for any rebid made and allow for these reasons to be published by NEMMCO. The proposed rebidding arrangements specify that:

- the participant must, at the time a rebid is submitted to NEMMCO, also provide to NEMMCO a brief, verifiable and specific reason for the rebid and the time of the event or other occurrences that led to the rebid;
- NEMMCO must publish the time of, and reason for, the rebid;
- NECA can, in accordance with guidelines to be developed, request information from the participant to substantiate the reason for the rebid; and
- Market participants may no longer request NEMMCO to provide them with information gathered to substantiate rebids.

The proposed Code changes also alter the arrangements for market participants to notify NEMMCO of dispatch inflexibilities, and specify that:

- the participant must, at the same time as notifying NEMMCO of a dispatch inflexibility, provide NEMMCO with a "brief, verifiable and specific" reason for the dispatch inflexibility; and
- NECA can, in accordance with guidelines, request information from the participant to substantiate the reason for the dispatch inflexibility; and
- Market participants may no longer request NECA to provide them with any information NECA gathers to substantiate dispatch inflexibilities.

2.1 Issues for the Commission

The Commission must assess whether the efficiency benefits of allowing rebidding in the NEM, and the changes to the information disclosure provisions, are sufficient to outweigh any anti-competitive detriment that may arise from allowing rebidding to take place. In particular the Commission considers that where rebidding facilitates the use of market power in the NEM the public benefits derived from the NEM will be lessened.

2.2 What the applicant says

NECA asserts that the proposed Code changes ensure that the NEM operates with maximum efficiency and that the minimum price is achieved for a given level of trade. NECA states that the proposed changes minimise compliance costs, but make no significant change to the nature of the NEM and may improve confidence in the NEM.

NECA notes that rebidding behaviour by generators has impacted upon market outcomes. NECA states that a number of options for possible Code amendments targeting rebidding behaviour were considered, including imposing restrictions on rebidding. However, NECA goes on to assert that rebidding is required to ensure efficient market outcomes, due to changing market conditions after initial bids have been accepted by NEMMCO. NECA states that by allowing rebidding in the market, then the market will be fully informed of any rebids so as other participants (on the demand or supply side) can respond.

NECA concludes that conditions or restrictions on rebidding are not warranted but NECA will encourage participants to submit a voluntary statement of ethics, regarding the use of rebidding.

NECA asserts that the requirement to disclose a specific and verifiable reason for each rebid should deter the misuse of the rebidding provisions to the extent that the original bid might be viewed as potentially misleading information. NECA adds that the specific alterations also minimise the cost of compliance, and thus the costs to the NEM.

NECA asserts that the proposed alterations to the Code are not anti-competitive.

2.3 What the interested parties say

Hazelwood Power argues some market customers can manipulate the timing and quantity of consumption by end-use customers and hence these market customers should be subject to equivalent information disclosure requirements as generators.

Pacific Power notes that the information disclosure provisions may require a participant to disclose commercial information, and or information that is subject to a confidentiality agreement.

Southern Hydro argues that there might be several ongoing reasons for a rebid, which would make it difficult for them to provide a verifiable reason for a rebid or to specify an event that has triggered a rebid. Delta believes specific and verifiable reasons are a useful tool, yet don't support the requirement for market participants to provide NEMMCO with the reason for the rebid at the time of the rebid. Delta, Pacific Power and Ergon all question the relevance of this as NECA may already ask for the reasons for the rebid, and raised concerns at the burden of compliance costs in terms of both time and money.

Ergon also believes that reasons for rebids should not be included in Code changes as it appears that the reason for the rebid is being assessed and not the accuracy of the rebid. Further, Ergon does not support the removal of the opportunity for market participants to request copies of material substantiating the reason for the rebid.

Ergon believes that to rectify problems arising in the market an ongoing audit process must be introduced to prevent a lack of communication between NECA and NEMMCO that currently exists. Consequently Ergon states that the Code changes in their current form have reduced the potential effectiveness of the rebidding amendments as a tool against price manipulation.

Ergon also supports specific obligations in relation to record keeping instead of the formulation of guidelines by NECA. Ergon believe that this will not be as effective on the promotion of specific and verifiable reasons for rebids.

Ergon suggests a change to clause 3.8.22(d)(1) should be amended such that NEMMCO can only accept rebids that include a reason and information on the time of events or occurrences that triggered the need to rebid.

EMRI and Ergon suggest that more vigilant surveillance will be required under this proposal in order to assess if market power has been abused. EMRI states that NECA should be required to take immediate action to classify breaches of the rebidding provisions of the Code in the National Electricity Regulations.

Interested parties also made suggestions as to how and why rebidding should take place. EMRI suggests that rebidding should not be allowed three hours prior to dispatch. The BCA ERTF and Ergon state that rebids should only be permitted for bona fide technical reasons. EMRI states that generators should be discouraged from rebidding opportunistically.

Parties also commented on the proposed voluntary statement of ethics that was referred to by NECA in the material provided in support of the Code changes. Ergon notes that the voluntary statement of ethics may not be a valid concept, as other parties may believe this to be the only means available to NECA to deal with market manipulation. Ergon expresses concern about the residual risk of market manipulation and that a voluntary statement of ethics may not prevent such events arising.

Pacific Power states that the current proposals do not appear to increase the efficiency of the market and that the proposals do not comply with the light handed regulation objective of the NEM.

Synergen is strongly opposed to the proposed changes that prohibit any change to the price for any band, once a dispatch offer has been submitted. At present price changes are permitted until 12.30 EST on prior day to the bid. Synergen states that if no adjustment is permitted, then dispatch bids and offers will be withheld until the last minute. Synergen believes that the proposed changes go against the concept of light handed regulation.

2.4 Commission considerations

In its determinations of 10 December 1997 and 22 December 1999 the Commission discusses rebidding and its likely impact on market outcomes. The Commission still recognises that many generators in the NEM hold a degree of market power in certain circumstances, and as such their bidding and rebidding behaviour can directly influence market outcomes.

However, the Commission is also still of the view that restrictions on rebidding may impose significant costs on the NEM and supports NECA's proposal not to introduce any further

rebidding restrictions at this time. Further, the Commission is broadly supportive of NECA's proposed revised rebidding information requirements. Information regarding the underlying reasons for rebidding may be a valuable tool in the market analysis of bidding behaviour and the Commission considers such information is likely to enhance NECA's market monitoring role. Detailed information on rebidding may also inform market development into the future, in particular review and analysis of market outcomes and the effectiveness of the NEM in delivering the potential public benefits.

However, the Commission notes that a number of interested parties have concerns about the exact form of the new rebidding information provisions. These concerns include:

- the ability of market participants to specify a verifiable reason for every rebid;
- the requirement for market participants to submit reason at the same time as submitting rebids;
- the confidentiality of information that may be requested by NECA; and
- the ability of demand side participants to avoid the obligations of supply side participants.

The Commission accepts that many factors influence market participants' decisions to bid and rebid in the NEM, and as such market participants may have difficulty in specifying a reason that is obviously verifiable. Further, the Commission recognises that where rebids are made with urgency, in response to rapidly changing NEM conditions or other factors, the requirement to include a verifiable reason for the rebid at the time the rebid is submitted to NEMMCO, will impose an additional cost on market participants.

However, the Commission considers that these requirements will impose a degree of discipline on market participants and supports the inclusion of these amendments in the proposed Code changes. The Commission considers that the requirements to include information regarding events and occurrences that have influenced a rebid is important and there should also be criteria in determining if NEMMCO may accept a rebid, as per clause 3.8.22(d).

The Commission notes that NECA is required under clause 3.8.22(c)(3) to develop guidelines regarding information that may be required to substantiate and verify the reasons for rebids. The Commission considers that these guidelines could usefully be extended to address some of the concerns raised by market participants regarding the extent and timing of information in respect of rebids.

Similarly, the Commission considers that the issue of commercial information and confidential information, and its provision to NECA as part of the rebidding monitoring arrangements can also be addressed by NECA through its guidelines.

The Commission strongly supports the ongoing market monitoring, and information gathering as a tool for assessing the impact of rebidding on market outcomes, and as a potential tool for dissuading generators with market power from rebidding to drive spot prices up. The Commission recognises that the information provision and gathering requirements set out in the Code are not without cost, but considers it appropriate that such costs are borne by market participants.

However, the Commission also considers that the effectiveness of market monitoring and information gathering will be greatest where there is the greatest degree of transparency. The Commission considers that transparency will increase the accountability of market participants, and where information is sought by NECA regarding further justification for rebids, that information must be allowed to be provided to other interested parties, in order to test its veracity. The Commission does not support the deletion of clauses that allow market participants access to information gathered regarding rebids.

The Commission recognises that in the absence of NECA's guidelines regarding information on rebids there is likely to be uncertainty on many issues relating to the enhanced rebidding disclosure requirements. This uncertainty may result in higher than necessary compliance costs and revisions of information provided until systems are established to comply with the guidelines. The situation of complying with the enhanced disclosure requirements prior to the publishing of the guidelines may also enable inconsistencies in the treatment of reasons supplied for different rebids to occur, and reduces the accountability and transparency of any discretion that NECA may exercise. For this reason the Commission considers that NECA must publish the guidelines as soon as possible and in any event within 3 months of gazetting the rebidding Code changes.

The Commission also notes the concerns of Hazelwood Power regarding demand side participants' lack of obligation to participate in the PASA and dispatch process, and the impact that market customers can have on market outcomes. The Commission notes the Code changes refer to market participants, not market generators or market customers and as such do not differentiate in their application. However, the Commission considers that Hazelwood Power is effectively advocating compulsory participation in the PASA and dispatch process for large market customers, similar to the compulsory participation of large generators. This issue is somewhat broader than the rebidding code changes, and the Commission is aware that NECA has commenced a consultation process that will touch on this issue. The Code Change Panel (CCP) has issued a consultation paper entitled *Demand side participation*, (available on NECA's web page), that considers the issue of improving the accuracy of demand forecasts through demand side bidding arrangements. The Commission considers it appropriate for NECA's consultation and Code change processes to consider how best to address this issue.

The Commission notes Synergen's concerns regarding the restriction on altering price bands, as set out in amended clause 3.8.22(a). However, the Commission is of the view that the proposed amendment does not alter the effective operation of bidding in the NEM, as it currently stands. Rather the amendment clarifies that price bands submitted in dispatch bids and offers are firm, and removes any ambiguity that could arise if NEMMCO's timetable was modified. Under the proposed arrangements price bands can be amended up until 12.30pm of the day prior to the relevant trading day, and this arrangement is exactly the same as the current market operation.

As part of the draft determination, the Commission proposed a number of conditions to address the above issues. Following the release of the draft determination it was brought to the Commission's attention that the draft conditions C2.2, C2.3 and C2.4 contained a typographical error in that they referred to a non-existent clause 3.8.22(3) and not to clause 3.8.22(c)(3). This typographical error has been corrected in this determination.

Conditions of authorisation

C2.1 Clause 3.8.22(d) must be amended to require market participants to comply with clauses 3.8.22(c)(1), 3.8.22(c)(2)(i) and (ii).

C2.2 Clause 3.8.22(c)(3) must be amended to provide that the guidelines to be developed by NECA, subject to the Code consultation procedures include:

- **Guidelines on the acceptable amount of detail to be included in the information provided to NEMMCO at the time a rebid is made; and**
- **processes for dealing with claims of commercial sensitive information contained in information provided to NECA under Clauses 3.8.22(c)(3) and 3.8.19(b)(2);**

C2.3 Clause 3.8.22(c)(3) must be amended such that the guidelines to be developed by NECA must be finalised within three months of these Code changes being gazetted.

C2.4 Clauses 3.8.22(c)(3) and 3.8.19(b)(2) must be amended to such that NECA must provide the information gathered by NECA under Clauses 3.8.22(c)(3) and 3.8.19(b)(2) to any market participant that requests such information, except where such information can be reasonably claimed to be confidential.

3. VoLL Scaling

The Code stipulates the situations in which VoLL is to be applied to the NEM. The Code allows for inter-regional scaling of both the VoLL price cap and the price caps that apply during administered price periods. Presently price scaling provisions within the Code allow compensation to be paid for the impact of inter-regional settlements due to the application of price caps in the electricity market. However the application of a price cap tends to remove inter-regional price differences and can have the effect of causing inter-regional settlements residues to become negative. Scaling is introduced to compensate for this impact as well as reducing the price paid to upstream generators to a value less than the price cap.

The proposed Code changes:

- provide for scaling based on capping to scaled prices in all circumstances when the VoLL price cap applies in one or more regions;
- base scaled prices on the average loss equations for regulated interconnectors (rather than marginal losses); and
- allow entrepreneurial interconnectors access to the compensation provisions under parallel provisions to those that already exist for administered prices.

3.1 Issues for the Commission

VoLL is effectively a price cap in the market, and the existence of the price cap (and the price floor) may constitute a form a price fixing under s45 of the TPA. The VoLL scaling provisions, which adjust the price cap in certain regions, and also apply in times of administered price periods and to the price floor, may also constitute a form of price fixing under s45 of the TPA. These arrangements may also detract from the overall public benefit in that they may distort market signals.

3.2 What the applicant says

The CCP report provided by NECA states that the ideal solution from a theoretical perspective would be to abandon all price scaling which would lead to perfect spot market signals. However, this would lead to demands for compensation and therefore expose participants to an unknown expense that would need to be recovered through mechanisms outside both the physical and financial hedge markets.

In its public benefit statement, NECA claims that when the system is at high levels of stress (tight demand and supply balance), it is impossible not to distort the market during a VoLL event whilst concurrently:

- applying a cap at VoLL in all regions;
- ensuring prices between regional reference nodes reflect marginal losses and constraints across the relevant interconnector; and

- ensuring that involuntary load shedding does not occur until all supply options are exhausted.

NECA states that VoLL scaling addresses some of the market distortions by allowing for market clearing and the maintenance of regional price relationships, whilst still establishing a cap of VoLL in the most expensive of the price regions. However, NECA notes that in achieving this, prices in various regions are scaled back from those derived from bids and offers.

NECA believes that VoLL scaling allows entrepreneurial interconnectors to participate in inter-regional trade without fearing negative returns.

The new scaling requirements are intended to prevent barriers to entry to inter-regional trade. As the application of a fixed price cap in the market removes inter-regional price differences, inter-regional settlements residues often become negative. Scaling reduces the regional reference price in upstream region(s), thus restoring the settlements residues. NECA argues that the proposed Code changes are an improvement on the existing arrangements as they are more transparent, more consistent, and the least distortionary of a range of options considered.

3.3 What the interested parties say

Ergon supports the proposed Code changes on the issue of VoLL scaling as a reasonable compromise. Hazelwood Power also believes that the proposals contribute a significant advancement from the present position.

TransEnergie states that the proposed Code changes are not adequate in that they do not treat generators and Market Network Service Providers (MNSPs) in an equivalent manner. TransEnergie argues that in most scaling amendments it is unlikely that a generator would face a substantial charge as their payments will reflect a modified dispatch price, whereas MNSPs for the purposes of the Code, are assumed to bid zero. In some circumstances this may result in significant detriment to MNSPs as their bids will be effectively excluded from the calculations of the regional reference price and therefore can impact on inter-regional pool price differences. Hence, TransEnergie believes that some sort of compensation under clause 3.14.6 (which allows compensation to be paid due to the application of an administered price cap) is necessary.

Synergen agrees with the proposal to allow for the use of average loss factors to determine upstream prices during load shedding in adjoining regions of the NEM.

Synergen states that it is highly supportive of entrepreneurial interconnectors and believes that by allowing them into the market, supply issues can be rectified. In order to encourage entrepreneurial interconnectors to enter the market, Synergen supports any proposed Code changes that will allow MNSPs to be able to claim compensation for services within the regular NEMMCO settlements timetable. Synergen argues that the proposed Code changes produce public benefits and should be authorised.

NEMMCO states for the scaling provisions to ensure that settlements residues do not become negative, they need to apply not only when the dispatch price is “reduced to VoLL”, but also

when the dispatch price is set to VoLL under clause 3.9.2(e). Consequently NEMMCO argues that Clause 3.9.5(c) as proposed by NECA needs to be amended as follows:

> if the dispatch price at any regional reference node is ~~reduced~~ set to VoLL under clause 3.9.2 or clause 3.9.5, then dispatch prices at all other regional reference nodes connected by a regulated interconnector or regulated interconnectors that have an energy…

NEMMCO also suggests that the VoLL scaling changes being made to clause 3.9.5 should be extended to clause 3.9.6A to ensure consistency in application in different situations. Further, NEMMCO argues the reasons for making the changes to VoLL scaling must also be applicable to scaling of the Market Price Floor, as the Code provisions are currently nearly identical. NEMMCO believes that the proposed Code change should also apply to the administered price cap and price floor and that the provisions of clauses 3.14.2(e)(3) and 3.14.5(h) should be revised in line with the changes to clause 3.9.5.

NEMMCO also believes there should be symmetric treatment of compensation payments for both a market price floor and for VoLL and suggests the words "or market price floor" should be added after the word "VoLL", and in clause 3.15.10.

3.4 Commission Considerations

The Commission recognises that any price scaling, including VoLL scaling will distort spot market signals. However, the Commission accepts NECA's statements that conflicting market priorities will lead to market distortions during VoLL events, which may trigger demands for compensation by market participants. The Commission recognises that the VoLL scaling amendments provide a practical solution to pricing during times of system stress.

The Commission notes that without VoLL scaling provisions VoLL events will usually lead to the removal of inter-regional price differences, and hence act to restrict inter-regional trade. Hence the Commission considers the proposed VoLL scaling arrangements as effective in the prevention of barriers to inter-regional trade. The Commission also considers that the application of the VoLL scaling provisions will ensure some level of settlements residues will exist, again by facilitating a continuation of inter-regional trade during VoLL events.

The Commission supports NEMMCO's claims for equivalent treatment of the price cap (VoLL), the price floor, and administered prices, in respect of the scaling provisions and compensation arrangements. Similarly, for reasons of consistency, the Commission supports NEMMCO's contention that the scaling provisions should apply both when prices are set to VoLL and when prices are reduced to VoLL.

The Commission notes Transenergie's claims that the proposed Code changes do not treat MNSPs and generators equally. After consideration of the Code, the Commission does not believe that the compensation clause favours generators over MNSPs. The Commission does not consider that the proposed Code changes in any way alter the parties standing from the present situation, and hence does not propose to amend these provisions.

Conditions of authorisation

C3.1 Clause 3.9.6A must be amended so that the scaling provisions applying to price caps in clause 3.9.5 also apply to price floors.

C3.2 Provisions of clauses 3.14.2(e)(3) and 3.14.5(h) must be made consistent with the changes made to clause 3.9.5.

C3.3 Clause 3.14.6(a1) must be altered by adding the words 'or market floor' after the word VoLL, and clause 3.15.10 must be altered accordingly to ensure compensation payments can be funded.

4. Revision of Settlements Statements

Settlements statements provide all market participants with a bill or credit note in respect of their spot market transactions and other market interactions. The Code requires NEMMCO to issue settlements statements in respect of each trading period, to all market participants.

The proposed changes to the Code:

- introduce a requirement on NEMMCO to issue routine revised settlements statements on a weekly basis 20 weeks after the billing period;
- allow NEMMCO or an affected party to seek to join the affected party to a dispute;
- allow a correction to the settlements residues applied to the reduction of network charges where a settlements statement revision affect the total settlements residue;
- require NEMMCO to recalculate settlements for all market participants following the resolution of a dispute and, depending on a materiality threshold, issue either a special or a routine revised statement for the relevant billing period; and
- extend coverage of the settlement provisions to network service providers in view of the potential for settlements revisions to impact on settlement residues.

4.1 Issues for the Commission

The Commission considers that, in order to attain the public benefits of the NEM, the billing and settlements procedures must be efficient and that any changes to these procedures must be an enhancement.

4.2 What the applicant says

NECA believes that the revision of settlements statements is necessary to ensure proper charging for the NEM. As NEMMCO must pay suppliers from the receipts from users and has no reserve of funds to balance overpayments and underpayments, the market requires a means to adjust payments when errors occur or new data emerges. These Code changes clarify the settlements statements revision arrangements for market participants, and minimise NEMMCO's costs by allowing NEMMCO to operate without a settlement reserve.

NECA also claims the Code changes accommodate situations in which disputes regarding settlements statements arise, as well as ensure that charges in the settlements statements are correct. The proposed changes create a mechanism for parties who may potentially be materially affected by the resolution of a dispute to be notified and to seek an opportunity to represent their interest prior to the dispute being resolved and a revised settlement statement issued. This is in an effort to limit the scope of disputes cascading.

4.3 What the interested parties say

Synergen notes that all available and accurate data should be used when revising settlement statements.

Ergon supports a single 20 week routine settlement revision (as opposed to having both a twenty and thirty week routine settlement revision, as included in the original proposal presented to the CCP). It believes that this will encourage market participants to capture and provide accurate data on the first routine revision.

NEMMCO raise a number of issues in their submission. Firstly, NEMMCO prefer both 20 and 30 week routine revised settlements statements to be issued, stating this will provide a routine mechanism for adjusting settlements in response to corrections, which are discovered after the 20 week revision has been issued but before the 6 month limitation on raising disputes. NEMMCO cites the impact changes to retail arrangements and metering cycles may have on data revisions as underpinning the need to issue 30 week routine settlements statements.

NEMMCO also notes that the current proposals do not allow NEMMCO to raise disputes argues that NEMMCO itself should be able to raise a dispute, in order to correct errors on settlements statements. NEMMCO views this as a more effective outcome than having to 'encourage' an affected market participant to raise a dispute to alter the settlements statements outcome.

NEMMCO also requested clause 3.15.19(d) be clarified, so that the net amount of adjustment is independent of the type of revised statement and further suggest that the definition of routine settlement statement should refer to 3.15.19 (b), not clause 3.15.19 (a) (2).

4.4 Commission Considerations

The Commission considers that accurate and prompt settlements statements will greatly contribute to the effective operation of the NEM, and enhance confidence in the spot market trading arrangements. The Commission also accepts that some revision of settlements statements will be required as new data becomes available and errors are corrected. Therefore, if a dispute is raised, which is likely to alter end calculations, then NEMMCO must be able to recalculate settlements and issue a revised statement. The Commission considers that this will lead to a more transparent and efficient process.

Further, the Commission agrees that where settlements statement revisions impact upon the settlements residues accruing between regions, that it is appropriate to extend the coverage of the settlements provisions to network service providers.

The Commission also considers it appropriate for affected parties to be able to join a dispute, and put forward their views prior to a dispute being resolved. The Commission agrees with NECA that such an arrangement may reduce the likelihood of disputes cascading. Further the Commission considers that in order to ensure the greatest degree of accuracy in final settlements it is appropriate for NEMMCO to both be able to join a dispute, and to raise a dispute.

After consideration of the timing of routine revised statements, the Commission considers that it would be beneficial for the market to have two rounds of routine revised statements, at 20 weeks and 30 weeks respectively. The Commission considers this to be in the best interests of all market participants as it allows for the capture of any inaccuracies due to data or processing errors. The 30 week round would allow for the adjustment of settlements in response to any corrections which were discovered after the 20 week revision period (yet before the 6 month limitation on raising disputes). The Commission considers that this will be useful in the forthcoming implementation of full retail contestability in which interval meters without communication facilities will be used which are read quarterly. If a reading was missed, then the 30 week round would allow for this situation. The Commission therefore places a condition on this authorisation that will require NEMMCO to routinely recalculate settlements at periods of both 20 and 30 weeks.

The Commission also notes that an error in the draft Code changes was determined in relation to the reference of routine settlement statements and supports correcting this clause to improve the Code's accuracy. The Commission also notes NEMMCO's concerns regarding clause 3.15.19(d) and supports changing the Code to improve its clarity and accuracy. NEMMCO's concerns are set out in their submission to the Commission dated 8 September 2000.

Conditions of authorisation

C4.1 Clause 3.15.19(b) must be amended to allow for NEMMCO to routinely recalculate settlements at periods of both 20 weeks and 30 weeks

C4.2 Clause 3.15.18(c)(1) must be amended so both market participants and NEMMCO can raise a dispute.

C4.3 The definition for routine revised statement should refer to clause 3.15.19(b) rather than 3.15.19(a)(2).

C4.4 NECA must amend clause 3.15.19(d) to address the concerns raised by NEMMCO regarding the clarity and accuracy of the clause.

5 Determination

For the reasons outlined in sections 2, 3 and 4 of this determination and after consideration of the issues raised in the application and submissions, the Commission concludes that, subject to the conditions below, in all circumstances the proposed amendments to the Code:

- are likely to result in a benefit to the public which outweighs the detriment from any lessening of competition that would be likely to result from the arrangements; and

- are likely to result in such benefit to the public that the arrangements should be allowed to be given effect to.

Consequently, the Commission authorises the amendments to the Code as specified in the applications Nos. A90730, A90731 and A90732. This authorisation is subject to any application to the Australian Competition Tribunal for its review. The authorisation is granted subject to the conditions below.

Conditions of authorisation

C2.1 Clause 3.8.22(d) must be amended to require market participants to comply with clauses 3.8.22(c)(1), 3.8.22(c)(2)(i) and (ii).

C2.2 Clause 3.8.22(c)(3) must be amended to provide that the guidelines to be developed by NECA, subject to the Code consultation procedures include:

- **Guidelines on the acceptable amount of detail to be included in the information provided to NEMMCO at the time a rebid is made; and**

- **processes for dealing with claims of commercial sensitive information contained in information provided to NECA under Clauses 3.8.22(c)(3) and 3.8.19(b)(2);**

C2.3 Clause 3.8.22(c)(3) must be amended such that the guidelines to be developed by NECA must be finalised within three months of these Code changes being gazetted.

C2.4 Clauses 3.8.22(c)(3) and 3.8.19(b)(2) must be amended to such that NECA must provide the information gathered by NECA under Clauses 3.8.22(c)(3) and 3.8.19(b)(2) to any market participant that requests such information, except where such information can be reasonably claimed to be confidential.

C3.1 Clause 3.9.6A must be amended so that the scaling provisions applying to price caps in clause 3.9.5 also apply to price floors.

C3.2 Provisions of clauses 3.14.2(e)(3) and 3.14.5(h) must be made consistent with the changes made to clause 3.9.5.

C3.3 Clause 3.14.6(a1) must be altered by adding the words 'or market floor' after the word VoLL, and clause 3.15.10 must be altered accordingly to ensure compensation payments can be funded.

C4.1 Clause 3.15.19(b) must be amended to allow for NEMMCO to routinely recalculate settlements at periods of both 20 weeks and 30 weeks

C4.2 Clause 3.15.18(c)(1) must be amended so both market participants and NEMMCO can raise a dispute.

C4.3 The definition for routine revised statement should refer to clause 3.15.19(b) rather than 3.15.19(a)(2).

C4.4 NECA must amend clause 3.15.19(d) to address the concerns raised by NEMMCO regarding the clarity and accuracy of the clause.

This determination is made on 6 December 2000. The authorisations will expire on 31 December 2010.

Appendix A – Submissions

Business Council of Australia

Delta Electricity

Electricity Markets Research Institute

Ergon Energy

Hazelwood Power

NEMMCO

Pacific Power

Southern Hydro

Synergen Pty Ltd

TransEnergie Australia Pty Ltd