



**NATIONAL ELECTRICITY CODE
ADMINISTRATOR LIMITED**

ACN 073 942 775

Level 5, 41 Currie Street

Adelaide SA 5000

Telephone (08) 8213 6322

Facsimile (08) 8213 6300

27 August 2004

Sebastian Roberts
General Manager
Regulatory Affairs - Electricity
Australian Competition and Consumer Commission
360 Elizabeth Street
Melbourne VICTORIA 3000

FILE NO
DATE
TIME

Dear Sebastian,

NSW DEROGATION TRANSITIONAL ARRANGEMENTS FOR CHAPTER 7

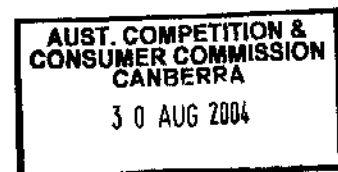
The NSW Department of Energy, Utilities and Sustainability has submitted to NECA an application on behalf of their Minister for replacement of the expired derogation contained in part B of chapter 9 clause 9.17A. The facts and details upon which NSW relies are set out in the attached copies of their letter to NECA and the attachment. NECA holds a signed copy of this letter. I note that the Department seeks interim authorisation for this derogation.

NECA has made arrangements with the Department to invoice NSW for reimbursement of the standard \$10,500 application fee. NECA is processing this payment and will forward the said fee to the ACCC forthwith.

To expedite processing we now forward their application for your attention.

Kind regards,

Paul Dunn
Principal consultant



FORM A

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(1)

EXCLUSIONARY PROVISIONS:

APPLICATIONS FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section:

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act; 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 that Act.

-
1. (a) **Name of applicant** (*See Direction 2*) National Electricity Code Administrator Limited (ACN 073 942 775) ("NECA").
- (b) **Short description of business carried on by applicant** Administration of the National Electricity Code ("the Code").
- (c) **Address in Australia for service of documents on the applicant** Mr Stephen Kelly
Managing Director
National Electricity Code Administrator Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300
2. (a) **Description of contract, arrangement or understanding and, where already made, its date** The contract, arrangement or understanding with respect of which this application is made are those entered into by participants in the National Electricity Market, pursuant to the Code as amended in accordance with the letter dated 25 August 2004 on behalf of the

Minister for Energy of the State of New South Wales, the participating jurisdiction, submitted with this Form A (and the accompanying Forms B & E) ("the jurisdictional letter"). These amendments relate to Chapter 9 of the State of New South Wales derogations.

For the avoidance of doubt, this application relates only to the changes to the jurisdictional derogations and not to the Code as a whole.

**(b) Brief description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions
(See Direction 4)**

See the jurisdictional letter prepared by the jurisdiction in accordance with clause 9.1.1 of the Code submitted with this Form A (and the accompanying Forms B & E).

(c) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

Code Participants, being the National Electricity Market Management Company Limited (ACN 072 010 327) ("NEMMCO") and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form A and any other persons who subsequently register with NEMMCO under the Code as a Code Participant.

3. Names and addresses (where known) of parties and other persons on whose behalf application is made

This application is made on behalf of all Code Participants, being NEMMCO and every person registered with NEMMCO as a Code Participant as of the date of this application and whose names and addresses are listed at Appendix A to this Form A.

In addition, this authorisation application is made on behalf of and in relation to all persons who become parties to the proposed contract or arrangement after it is made, or become a party to the proposed understanding at a time after it is arrived at, within the meaning of section 88(10) of the Act.

4. (a) **Grounds for grant of authorisation**
- Authorisation is sought on grounds set out in the jurisdictional letter, prepared by the participating jurisdiction in accordance with clause 9.1.1 of the Code, submitted with this Form A.
- (b) **Facts and contentions relied upon in support of those grounds (*See Notice 1*)**
- These facts and contentions are set out in the jurisdictional letter.
5. **This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understanding, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.**
- (a) **Is this application to be so expressed?**
- Yes, this application is made with respect to each other similar contract, arrangement or understanding or proposed contract arrangement or understanding for the purposes of sections 88(13), (14) and (15) of the Act.
- (b) **If so, the following information is to be furnished:**
- (i) **the names of the parties to each other contract, arrangement or understanding**
- The applicant and all Code Participants (being NEMMCO and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form A within the meaning of section 88(10) of the Act).
- (ii) **the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application (*See Direction 5 and Notice*)**
- The applicant and all Code Participants (being NEMMCO and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form A within the meaning of section 88(10) of the Act) and any other persons who subsequently register with NEMMCO under the Code as a Code Participant. The names of those persons who

- 2) will register with NEMMCO as a Code Participant are not known at this time.
6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)? No
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture? Not applicable
- (c) If so, by whom or on whose behalf are those other applications being made? Not applicable
7. Name and address of person authorised by the applicant to provide additional information in relation to this application. Mr Stephen Kelly
Managing Director
National Electricity Code Administrator Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300

Date: 27 August 2004

Signed on behalf of NECA

.....
(Signature)  Mr Stephen Kelly

Managing Director
National Electricity Code Administrator Limited

* Note: References in this application to the Act are references to the *Trade Practices Act 1974* and also include the Competition Codes of New South Wales, Victoria and the Australian Capital Territory as defined in the Competition Reform legislation in force in each jurisdiction.

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
 - (a) in so far as the particulars or any of them have been reduced to writing - by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them have not be reduced to writing - by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understanding which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

NOTICES

1. In relation to item 4, your attention is drawn to sub-section 90(8) of the *Trade Practices Act 1974* which provides as follows:

“(8) The Commission shall not:

 - (a) made a determination granting:
 - (i) an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding, that is or may be an exclusionary provision; or
 - (ii) an authorisation under subsection 88(7) in respect of proposed conduct; or

- (iii) an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
- (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- (b) made a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to."

2. If an authorisation is granted in respect of a proposed contract, arrangement or understanding, the names of the parties to which are not known at the date of application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.

FORM B

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(1)

AGREEMENTS AFFECTING COMPETITION:

APPLICATIONS FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act; and
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

-
- | | |
|--|---|
| 1. (a) Name of applicant (<i>See Direction 2</i>) | National Electricity Code Administrator Limited (ACN 073 942 775) (NECA) |
| (b) Short description of business carried on by applicant | Administration of the National Electricity Code ("the Code"). |
| (c) Address in Australia for service of documents on the applicant | Mr Stephen Kelly
Managing Director
National Electricity Code Administrator Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300 |
-
- | | |
|--|--|
| 2. (a) Description of contract, arrangement or understanding and, where already made, its date | The contract, arrangement or understanding in respect of which the application is made is set out in the letter dated 25 August 2004 on behalf of the Minister for Energy of the State of New South Wales, the participating jurisdiction, |
|--|--|

submitted with this Form B, being amendments to the Code in respect of Chapter 9 of the State of New South Wales derogations ("the jurisdictional letter").

For the avoidance of doubt, this application relates only to the changes to the jurisdictional derogations and not to the Code as a whole.

(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

Code Participants, being the National Electricity Market Management Company Limited (ACN 072 010 327) ("NEMMCO") and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form B and any other persons who subsequently register with NEMMCO under the Code as a Code Participant.

3. Names and addresses (where known) of parties and other persons on whose behalf application is made

This application is made on behalf of all Code Participants, being NEMMCO and every person registered with NEMMCO as a Code Participant as of the date of this application and whose names and addresses are listed at Appendix A to this Form B.

In addition this authorisation application is made on behalf of and in relation to all persons who become parties to the proposed contract or arrangement after it is made, or become a party to the proposed understanding at a time after it is arrived at, within the meaning of section 88(10) of the Act.

4. (a) Grounds for grant of authorisation

Authorisation is sought on the grounds set out in the jurisdictional letter submitted with this Form B and the accompanying Forms A and E.

(b) Facts and contentions relied upon in support of those grounds (*See Notice 1*)

The facts and contentions relied upon are set out in the jurisdictional letter.

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed

contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding.

(a) Is this application to be so expressed?

Yes, this application is made with respect to all similar other contracts, arrangements or understandings, or proposed other contracts arrangements or understandings, for the purposes of sections 88(13), (14) and (15) of the Act. The terms of such other contracts are comprised in the Code as amended by the Code changes.

(b) If so, the following information is to be furnished:

(i) the names of the parties to each other contract, arrangement or understanding

The applicant and all Code Participants (being NEMMCO and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form B within the meaning of section 88(10) of the Act).

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application (*See Direction 5 and Notice 2*)

The applicant and all Code Participants (being NEMMCO and every person registered with NEMMCO as a Code Participant as at the date of this application and whose names and addresses are listed in Appendix A to this Form B within the meaning of section 88(10) of the Act) and any other persons who subsequently register with NEMMCO under the Code as a Code Participant. The names of those persons who will register with NEMMCO as a Code Participant are not known at this time.

6. (a) Does this application deal with a matter relating to a joint venture (*See section 4J of the Trade Practices Act 1974*)?

No.

(b) If so, are any other applications being made simultaneously with this application in relation to

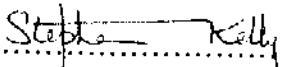
Not applicable.

that joint venture?

- (c) If so, by whom or on whose behalf are those other application being made? Not applicable.
7. Name and address of person authorised by the applicant to provide additional information in relation to this application. The person nominated in item 1(c) of this form.

Date: 27 August 2004

Signed on behalf of NECA

..........
(Signature) ~~Mr Stephen Kelly~~

Managing Director
National Electricity Code Administrator Limited

* **Note:** References in this application to the Act are references to the *Trade Practices Act 1974* and also include the Competition Codes of New South Wales, Victoria and the Australian Capital Territory as defined in the Competition Reform legislation in force in each jurisdiction.

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished:
 - (a) in so far as the particulars or any of them have been reduced to writing - by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them have not be reduced to writing - by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
5. Where the application is made also in respect of other contracts, arrangements or understanding which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

NOTICES

1. In relation to item 4, your attention is drawn to sub-sections 90(6) and (7) of the *Trade Practices Act 1974* which provide as follows:
 - “(6) The Commission shall not make a determination granting an authorisation under sub-section 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or undertaking, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public

constituted by any lessening of competition that would result, or be likely to result, if:

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
 - (b) the proposed covenant were given, and were complied with; or
 - (c) the proposed conduct were engaged in,
- as the case may be.

- (7) The Commission shall not make a determination granting an authorisation under sub-section 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant."

- 2. If an authorisation is granted in respect of a proposed contract, arrangement or understanding, the names of the parties to which are not known at the date of application, the authorisation shall, by sub-section 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.

FORM E

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 88(8)

EXCLUSIVE DEALING:

APPLICATIONS FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

-
- | | |
|--|---|
| 1. (a) Name of applicant (<i>See Direction 2</i>) | National Electricity Code Administrator Limited (ACN 073 942 775) ("NECA"). |
| (b) Short description of business carried on by applicant | Administration of the National Electricity Code ("the Code"). |
| (c) Address in Australia for service of documents on the applicant | Mr Stephen Kelly
Managing Director
National Electricity Code Administrator Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300 |
| 2. (a) Description of the goods or services in relation to the supply or acquisition of which this application relates | The goods or services in relation to the supply or acquisition of which this application relates is electricity sold into the National Electricity market, as affected by the amendments set out in the letter dated 25 August 2004 on behalf of the Minister for Energy of the State of New South Wales, the participating jurisdiction, submitted with this Form E ("the jurisdictional letter"). |

For the avoidance of doubt, this application relates only to changes to the jurisdictional derogations and not to the Code as a whole.

(b) Description of the conduct that would or may constitute the practice of exclusive dealing (See Direction 4)

The supply of electricity or provision of network services on condition that both the acquisition and resale is in accordance with the Code.

The acquisition of electricity or network services on the condition that the supply is in accordance with the Code.

Refusing to supply or acquire electricity or network services because the supplier/acquirer has failed to comply with the Code.

Aiding, abetting, procuring, counselling or inducing any corporation to engage in any of the above-mentioned conduct.

3. (a) Class or classes or persons to which the conduct relates

The classes of persons are:

- (i) the applicant;
- (ii) Code Participants, being the National Electricity Market Management Company Limited (ACN 072 010 327) ("NEMMCO") and every person registered with NEMMCO as a Code Participant and whose names and addresses are listed in Appendix A to this Form E; and
- (iii) any other subsequent parties to the Code, being all parties who register with NEMMCO under the Code as a Code Participant.

This application is made on behalf of each person identified in Appendix A to this Form E. In addition:

- (a) the authorisation being applied for by this application is, in accordance with section 88(8AA) of the Act, to be expressed so as to apply to the applicant and every person who is registered with NEMMCO as a Code Participant as at the date of this application (being the persons identified in Appendix A to this

Form E), and in relation to each other person who becomes a party to the Code by registering with NEMMCO as a Code Participant; and

- (b) this application is expressed to be made also in relation to other proposed contracts, industry codes of practice, arrangements or understandings that will be in similar terms to the Code within the meaning of sections 88(13), 88(14) and 88(15) of the Act, being each of the proposed contracts, industry codes of practice, arrangements or understandings to be made between a person who registers with NEMMCO under the Code as a Code Participant, the applicant, and each existing participant under the Code at that time.

The names of the parties to each other proposed contract, industry code of practice, arrangement or understanding which are known at the date of this application are the applicant and Code Participants (being NEMMCO and each person who is registered with NEMMCO as a Code Participant as at the date of this application and identified in Appendix A to this Form E). Other than to state that the other parties to each proposed contract, industry code of practice, arrangement or understanding for the purposes of sections 88(13), (14) and (15) of the Act will be persons who register with NEMMCO under the Code as a Code Participant and each existing Participant under the Code at that time, the names of those other parties are not known as at the date of this application.

(b) Number of those persons	(i) At present time	
	NECA and NEMMCO	2
	Generators	52
	Customers	33
	Network Service Providers	24
	Special Participants	17
	Intending Participants	16
	Traders	7
	(ii) Estimated within the next year	
	Unknown	
(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses	Not applicable	
4. (a) Grounds for grant of authorisation	Authorisation is sought on the grounds set out in the jurisdictional letter, a copy of which is submitted with this Form E (and the accompanying Forms A and B).	
(b) Facts and contentions relied upon in support of those grounds (<i>See Notice</i>)	The facts and contentions relied upon in respect of the Code changes are set out in the jurisdictional letter.	
5. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the <i>Trade Practices Act 1974</i>)?	No.	
(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?	Not applicable.	
(c) If so, by whom or on whose behalf are those other applications being made?	Not applicable	

6. Name and address of person authorised by the applicant to provide additional information in relation to this application.
- Mr Stephen Kelly
Managing Director
National Electricity Code Administrator
Limited
Level 5
41 Currie Street
ADELAIDE SA 5000
Phone: (08) 8213 6307
Fax: (08) 8213 6300

Date: 27 August 2004

Signed on behalf of NECA

.....Stephen Kelly.....
(Signature) ~~Mr Stephen Kelly~~

Managing Director
National Electricity Code Administrator Limited

*** Note:** References in this application to the Act are references to the *Trade Practices Act 1974* and also include the Competition Codes of New South Wales, Victoria and the Australian Capital Territory as defined in the Competition Reform legislation in force in each jurisdiction.

Appendix A

to

Form A	Application for Authorisation in respect of Exclusionary Provisions
Form B	Application for Authorisation in respect of Agreements Affecting Competition
Form E	Application for Authorisation in respect of Exclusive Dealing

List of Code Participants



List of Code participants

Company Aliases	Address	City	State	Postcode
AGL Gas Company (ACT) Ltd and ACTEW Distribution Ltd t/a ActewAGL Distribution	GPO Box 366	CANBERRA	ACT	2601
AES Transpower Holding Pty Ltd t/a Ecogen Energy	PO Box 61	NEWPORT	VIC	3015
AGL Electricity Ltd	PO Box 14120, MCMC	MELBOURNE	VIC	8001
AGL South Australia Pty Ltd	GPO Box 77	ADELAIDE	SA	5001
AGL Victoria Pty Ltd	GPO Box 4728UU	MELBOURNE	VIC	3001
Alinta DEBO Pty Ltd	PO Box 7863	BRISBANE	QLD	4001
Alinta EATM Pty Ltd	Level 30, Angel Place 123 Pitt Street	SYDNEY	NSW	2000
Aurora Energy Pty Ltd	GPO Box 191	HOBART	TAS	7001
Australian Inland Energy & Water	PO Box 800	BROKEN HILL	NSW	2880
BIEP Pty Ltd	PO Box 4	PINKENBA	QLD	4008
Callide Power Trading Pty Ltd	PO Box 575, Albert Street	BRISBANE	QLD	4001
Citipower Pty	Locked Bag 14031 MCMC	MELBOURNE	VIC	8001
Red Energy Limited	Level 1 Harbour City Tower 29 Brandon Street	WELLINGTON NEW ZEALAND		
Country Energy	PO Box 718	QUEANBEYAN	NSW	2620
CS Energy Ltd	GPO Box 769	BRISBANE	QLD	4001
CSR Limited	PMB 6, Townsville Mail Centre	TOWNSVILLE	QLD	4816
Cummins Engine Company Pty Ltd	2 Caribbean Drive	SCORESBY	VIC	3179
Delta Electricity	PO Box Q863 Queen Victoria Building	SYDNEY	NSW	1230
EdgeCap Pty Ltd	Level 9, 446 Collins Street	SOUTH BANK	VIC	3006

Company Aliases	Address	City	State	Postcode
Edison Mission Energy Australia Ltd	Level 20, HWT Tower 40 City Road	SOUTH MELBOURNE	VIC	3205
EDL Group Operations Pty Ltd	PO Box 535	RICHLANDS	QLD	4077
Electranet Pty Ltd	PO Box 7096, Hutt Street	ADELAIDE	SA	5001
Electricity Supply Industry Planning Council (ESIPC)	GPO BOX 2010	ADELAIDE	SA	5001
EMMLINK Pty Ltd	Level 24, AMP Place 10 Eagle Street	BRISBANE	QLD	4000
ENERGEX Ltd	GPO Box 1461	BRISBANE	QLD	4001
Energex Retail Pty Ltd (formerly <i>Southern Electricity Retail Corporation Pty Ltd</i>)	GPO Box 1461	BRISBANE	QLD	4001
Energy Australia	GPO Box 4009	SYDNEY	NSW	2001
Energy Brix Australia Corporation Pty Ltd	Level 1 677 Springvale Road	MULGRAVE	VIC	3170
Energy Pacific (Victoria) Pty Ltd	Level 8 474 Flinders Street	MELBOURNE	VIC	3000
Eraring Energy (formerly <i>Pacific Power</i>)	GPO Box A2238	SYDNEY SOUTH	NSW	1235
Ergon Energy Corporation Ltd (Distribution)	PO Box 1090	TOWNSVILLE	QLD	4810
Ergon Energy Pty Ltd (Retail)	PO Box 107 Albert Street	BRISBANE	QLD	4001
Ergon Energy Utility Services Pty Ltd (Retail)	PO Box 107 Albert Street	BRISBANE	QLD	4001
Ergon Energy (Victoria) Pty Ltd	PO Box 107 Albert Street	BRISBANE	QLD	4001
CKI Utilities Development Ltd, HEI Utilities Development Ltd, CKI Utilities Holdings Ltd, HEI Utilities Holdings Ltd and CKI/HEI Utilities Distribution Ltd t/a ETSA Utilities	GPO Box 77	ADELAIDE	SA	5001
Ferrier Hodgson Electricity Pty Ltd	GPO Box 4114	SYDNEY	NSW	2001

Company Aliases	Address	City	State	Postcode
National Power Australia Investments Ltd, Hazelwood Pacific Pty Ltd, Australian Power Partners BV, CISL (Hazelwood) Pty Ltd, Hazelwood Investment Company Pty Ltd t/a Hazelwood Power	Brodribb Road	MORWELL	VIC	3840
HQI Australia Limited Partnership	Level 24, AMP Place 10 Eagle Street	BRISBANE	QLD	4000
Hydro-Electric Corporation	GPO Box 335	HOBART	TAS	7001
Integral Energy Australia	PO Box 6366	BLACKTOWN	NSW	2148
International Power (Retail) Pty Ltd	Level 37, Rialto North Tower, 525 Collins Street	MELBOURNE	VIC	3000
Jackgreen (International) Pty Ltd	PO Box 7186	BAULKHAM HILLS BUSINESS CENTRE	NSW	2156
Loy Yang Power Management Ltd	Bartons Lane	TRARALGON SOUTH	VIC	3844
Macquarie Bank Ltd	GPO Box 4294	SYDNEY	NSW	1164
Macquarie Generation	34 Griffiths Road	LAMBTON	NSW	2299
Meridian Energy Australia Pty Ltd	PO Box 79	PALMERSTON	NT	0830
Millmerran Energy Trader	PO Box 5743, Central Plaza	BRISBANE	QLD	4001
Morgan Stanley Dean Witter Australia Ltd Attention: Commodities Electricity Group	1585 Broadway Fourth Floor	NEW YORK	NY	10036-8293 USA
Murraylink Transmission Company Pty Ltd	GPO Box 7077 Riverside Centre	BRISBANE	QLD	4001
Narrabri Power Ltd	GPO Box 4526	SYDNEY	NSW	2000
NRG Flinders Operating Services Pty Ltd	GPO Box 2535	ADELAIDE	SA	5001
Origin Energy Electricity Ltd	GPO Box 910	SYDNEY	NSW	1041
Pacific Hydro Chalice Hills Pty Ltd	Level 10, 474 Flinders Street	MELBOURNE	VIC	3000
Pelican Point Power Pty Ltd	PO Box 1276	NORTH HAVEN	SA	5018
Powercor Australia Ltd	Locked Bag 14090	MELBOURNE	VIC	8001

Company Aliases	Address	City	State	Postcode
Powerdirect Pty Ltd	PO Box 868	MT WAVERLEY	VIC	3149
Queensland Electricity Transmission Corporation Ltd (Powerlink Queensland)	PO Box 1193	VIRGINIA	QLD	4016
Queensland Power Trading Corporation t/a Enertrade	GPO Box 10	BRISBANE	QLD	4001
Redbank Project Pty Ltd	PO Box 311	SINGLETON	NSW	2330
RMB Australia Ltd	GPO Box 202	SYDNEY	NSW	2001
Sithe Australia Power Services Pty Ltd	PO Box 2097	SMITHFIELD	NSW	2164
Societe Generale	Level 21 400 George Street	SYDNEY	NSW	2000
Snowy Hydro Ltd	GPO Box 4351	SYDNEY	NSW	4351
SHP1 Pty Ltd, SHP2 Pty Ltd, SHP3 Pty Ltd t/a Southern Hydro Partnership	Level 13 500 Collins Street	MELBOURNE	VIC	3000
SPI PowerNet Pty Ltd	PO Box 222 Collins Street West	MELBOURNE	VIC	8007
Stanwell Corporation Ltd	GPO Box 773	BRISBANE	QLD	4001
State Electricity Commission of Victoria (SECV) t/a Vicpower	GPO Box 2765Y	MELBOURNE	VIC	3001
Synergen Power Pty Ltd	PO Box 3286 Rundle Mall	ADELAIDE	SA	5001
Tarong Energy Corporation Ltd	GPO Box 800	BRISBANE	QLD	4001
Tomago Aluminium Company Pty Ltd	PO Box 405	RAYMOND TERRACE	NSW	2324
TransGrid (NSW Electricity Transmission Authority)	GPO Box A1000	SYDNEY SOUTH	NSW	2001
Transmission Lessor Corporation	ETSA, 1 Anzac Highway	KESWICK	SA	5035
TXU Electricity Ltd	Locked Bag 14060, MCMC	MELBOURNE	VIC	8001
TXU (South Australia) Pty Ltd	PO Box 195	PORT ADELAIDE	SA	5015
United Energy Distribution Pty Ltd	Locked Bag 13	MT WAVERLEY	VIC	3149

Company Aliases	Address	City	State	Postcode
Utilities Management Pty Ltd	Level 6 1 Anzac Highway	KESWICK	SA	5035
Valley Power Pty Ltd	Level 20, HWT Tower 40 City Road	SOUTH MELBOURNE	VIC	3205
Victoria Electricity Pty Ltd	PO Box 1242	BRISBANE	QLD	4001
Victorian Energy Networks Corporation (VENCorp)	PO Box 413, World Trade Centre	MELBOURNE	VIC	8005
Westpac Banking Corporation	Level 5 Dealing Floor 255 Elizabeth Street	SYDNEY	NSW	2000
Yallourn Energy Pty Ltd	Box 444	MOE	VIC	3825
Yamasa Australia Pty Ltd	20 Gilbertson Road	LAVERTON NORTH	VIC	3026

Known intending participants

Company Aliases	Address	City	State	Postcode
ACTEW Retail Ltd and AGL (ACT) Retail Investments Pty Ltd t/a ActewAGL Retail	GPO Box 366	CANBERRA	ACT	2601
Auspine Green Energy Pty Ltd	PO Box 79	MOUNT GAMBIER	SA	5290
Canunda Power Pty Ltd	Level 37, Rialto North Tower 525 Collins Street	MELBOURNE	VIC	3000
CEPA (Kogan Creek) Holding Pty Ltd	GPO Box 2256	BRISBANE	QLD	4001
Crookwell Developments (Pty Ltd)				
Independent Electricity Retail Solutions Pty Ltd	38 Riverview Road	PLEASURE POINT	NSW	2717
National Grid International Ltd (Basslink Pty Ltd)	PO Box 4606SS	MELBOURNE	VIC	3001
N.P. Power Pty Ltd				
Sleiman Trading Pty Ltd	PO Box 334	POTTS POINT	NSW	2001
Snowylink 1 Pty Ltd	GPO Box 7077 Riverside Centre	BRISBANE	QLD	4001

Company Aliases	Address	City	State	Postcode
Southernlink Transmission Company Pty Ltd	GPO Box 7077 Riverside Centre	BRISBANE	QLD	4001
Transend Networks Pty Ltd	PO Box 606	MOONAH	TAS	7009
Wambo Power Ventures Pty Ltd	Level 1 Princeton Court Three 13 Princeton Street	KENMORE	QLD	4069

National Electricity Code Administrator
27 August 2004

Reference No: M02-3476-6

Mr Stephen Kelly
Managing Director
National Electricity Code Administrator Limited
Level 5, 41 Currie St
Adelaide SA 5000

Dear Mr Kelly

New South Wales is seeking to extend the duration of its jurisdictional derogations in Chapter 9 of the National Electricity Code (**Code**) relating to metering arrangements for the wholesale market to 31 December 2006. The previous derogations expired on 1 July 2004.

The extension of the derogations until 31 December 2006 will enable the continued successful functioning of full retail competition in New South Wales and give participants the time necessary to develop procedures to allow metering competition at a future time.

A detailed case for continuation of the derogations is provided in the Attachment. New South Wales submits that the public benefits resulting from the proposed amendments to its chapter 9 derogations, which would allow additional time to establish business systems, outweigh any detriment to the public that may result from those amendments.

Application is made:

- (a) for the approval of the amendments set out in Schedule 1 of the Attachment by the Australian Competition and Consumer Commission (**Commission**) under clause 9.1.1(e) of the Code; and
- (b) through **NECA**, for authorisation of those amendments by the Commission under sections 88(1) and 88(8) of the Trade Practices Act 1974 (Commonwealth) (**TPA**); and
- (c) through NECA, for interim authorisation of those amendments by the Commission under Section 91(2) of the TPA.

NSW is making a request for interim authorisation, as the previous derogations have now lapsed and there is a need to provide stability ahead of the final arrangements developed as a result of the full ACCC authorisation process.

Pursuant to clause 9.1.1(g) of the Code, prior to forwarding this application, Minister Sartor consulted with corresponding Ministers in participating jurisdictions by letter dated 30 June 2004 and has received no objections.

You have advised the ACCC requires payment of a \$10,500 application fee to support his application. A cheque for this amount will be forwarded to your office within the next seven days.

If you have any questions on this issue, please contact Libby Stephens - telephone (02) 8281 7413 or email elizabeth.stephens@deus.nsw.gov.au.

Yours sincerely

David Nemtzow
Director-General

**Application to the
Australian Competition and Consumer Commission
Proposed Derogations to the National Electricity Code
Metering Competition**

**August 2004
New South Wales Department of Energy, Utilities and
Sustainability**

1. Introduction

1.1 Application for Authorisation

The amendments set out in Schedule 1 of this application modify the application of certain provisions of chapter 7 of the National Electricity Code (Metering) so that the Local Network Service Provider (**LNSP**) continues to be the Responsible Person for metering installation types 5 (manually read interval meters), 6 (basic, or 'accumulation' meters) and 7 (unmetered supply) for small retail customers¹, except for customers with type 5 metering installations who consume greater than 100 MWh per annum.

New South Wales is seeking to extend the duration of its jurisdictional derogations in Chapter 9 of the National Electricity Code (**Code**) relating to metering arrangements for the wholesale market to 31 December 2006. The previous derogations expired on 1 July 2004.

The extension of the derogations until 31 December 2006 will enable the continued successful functioning of full retail competition in New South Wales and give participants the time necessary to develop procedures to allow metering competition at a future time.

Application is made:

- (a) for the approval of the amendments set out in Schedule 1 by the Australian Competition and Consumer Commission (**Commission**) under clause 9.1.1(e) of the Code; and
- (b) through the National Electricity Code Administrator Limited (**NECA**), for authorisation of those amendments by the Commission under sections 88(1) and 88(8) of the Trade Practices Act 1974 (Commonwealth) (**TPA**); and
- (c) through NECA, for interim authorisation of those amendments by the Commission under Section 91(2) of the TPA.

NSW is making a request for **interim authorisation**, as the previous derogations have now lapsed and there is a need to provide stability ahead of the final arrangements developed as a result of the full ACCC authorisation process.

This submission is in support of those applications.

2. Derogations and Current Regulation

2.1 Amendments to chapter 7 of the Code and jurisdictional derogations in Chapter 9

NECA sought authorisation of amendments to chapter 7 of the Code by the Commission through applications A90739, A90740 and A90741. Interim authorisation of these amendments, relating to the implementation of full retail competition was granted subject to conditions on 21 September 2000. Final authorisation of these amendments was granted on 1 August 2001.

¹ Clause 7.2.5 of the Code.

New South Wales sought authorisation of amendments to chapter 9 of the Code by the Commission through applications A90801, A90802 and A90803. Final authorisation of these amendments, relating to metering competition was granted on 23 January 2002.

2.2 Code Provisions relating to Metering Services

Chapter 7 of the Code regulates the provision of metering services to second tier customer sites. "Metering services" generally refers to the following:

- the provision of metering installations, which includes the provision, installation and maintenance of an electricity meter and / or associated data logger; and
- metering data services, which include the collection of energy data such as meter readings and the processing, storage and forwarding of energy data.

Chapter 7 of the Code regulates the provision of metering services as follows:

- The Code participant who has responsibility for the provision of a metering installation is referred to as the Responsible Person²;
- A Financially Responsible Market Participant (usually a Retailer) may elect to be the Responsible Person in respect of the provision, installation and maintenance of metering installations;³
- If the Retailer does not elect to be the Responsible Person, the LNSP is responsible for the installation and maintenance of metering installations connected to the LNSP's network in its local area;⁴
- Regardless of who is the Responsible Person, installation and maintenance of metering installations must be carried out by a Metering Provider registered with NEMMCO to perform these services;⁵
- The Retailer is responsible for payment of all costs associated with the provision, installation, maintenance, routine testing and inspection of the metering installation;⁶
- Meter reading/data collection services are carried out by meter data agents registered with NEMMCO to perform these services.

New South Wales has had transitional derogations from the application of some of the clauses of the Code outlined above. New South Wales' derogations deemed the LNSP to be the Responsible Person for metering installation types 5 (manually read interval meters), 6 (basic, or 'accumulation' meters) and 7 (unmetered supply) for small retail customers, except for customers with type 5 metering installations who consume greater than 100 MWh per annum⁷.

² Clause 7.2.1 of the Code

³ Clause 7.2.3(a)(1A) of the Code.

⁴ Clause 7.2.2 of the Code.

⁵ Clause 7.4.1(a) of the Code.

⁶ Clause 7.3.6(a) of the Code.

⁷ Clause 9.17.A.3 of the Code.

These derogations effectively removed the ability of a retailer to elect to be a Responsible Person in relation to the provision of metering in respect of the provision, installation and maintenance of metering installations in New South Wales.

2.3 New South Wales Metrology Procedures

The Code also provides for jurisdictionally based metrology procedures for metering installation types 5, 6 & 7 which are generally applicable to small consumers. The New South Wales Electricity Supply Industry Metrology Procedure (**NSW Metrology Procedure**) for Type 5, 6 and 7 Metering Installations sets out:

- a summary of the obligations of the Responsible Person, in relation to type 5, 6 and 7 metering installations for second tier loads, that are contained in the Code, for ease of reference;
- the additional obligations of the Responsible Person in relation to the provision, installation and maintenance of type 5, 6 and 7 metering installations for second tier loads, including the measurement of electrical energy and the provision of data to facilitate the efficient operation of the market; and
- the obligations of NEMMCO in relation to the conversion of consumption energy data into trading interval data to facilitate the efficient operation of the market.

The NSW Metrology Procedure states that although the Responsible Person is responsible for provision, installation and maintenance of metering installations, the Responsible Person must engage Metering Provider(s) to undertake these tasks, unless:

- the Responsible Person is a LNSP and is also a Metering Provider; or
- another person elects to engage a Metering Provider for the purposes of installing the meter and/or data logger (that is, to engage a Metering Provider under the NSW Accredited Service Provider Scheme).

2.4 The NSW Accredited Service Provider Scheme

In New South Wales, a category of metering services is already provided on a competitive basis through the Accredited Service Provider Scheme (**Scheme**). The Scheme allows first tier customers to contract directly with an Accredited Service Provider (**ASP**) for the installation of types 5 and 6 meters and for the connection of the customer site to the network. Customers who contract with ASPs pay ASPs directly for provision of these contestable services.

The Scheme also allows LNSPs to engage Metering Providers on a competitive basis for all metering services.

In conformity with the New South Wales Metrology Procedure, the Code allows for the continued operation of the Scheme in relation to second tier customer sites by providing that:

- if an LNSP is the Responsible Person, that LNSP “has responsibility for the provision, installation and maintenance of the Market Participant’s metering installation, in accordance with Chapter 7 and *the applicable metrology procedure*”⁸; and
- where the Market Participant has elected to be the Responsible Person, the Market Participant must, if “required to do so in accordance with *a relevant metrology procedure*, allow another person to engage a Metering Provider registered with NEMMCO to install the relevant metering installation.”⁹ (In this case, the Market Participant is not responsible for the payment of the costs of installation of the relevant metering installation.¹⁰)

3. Reasons for Extending Derogations

3.1 Introduction

From the New South Wales Government’s perspective, competition between retailers for electricity supply is an area where substantial benefits from electricity sector reform have occurred.

The ability for customers to choose their retailer and switch / convert simply and cheaply is crucial to the success of full retail competition. The Government believes that the introduction of customer choice in the provision of all metering services for small retail customers will create complexity and confusion that could endanger the success of the core FRC reforms.

The New South Wales Government submits that:

- the substantial public benefits provided by the derogations;
- the jurisdictional consistency provided by extending the derogations;
- the public detriments that would result from the introduction of metering services competition without resolving technical co-ordination issues; and
- the need for unbundling pricing methodology before the introduction of metering services competition,

mean that the public benefits resulting from the proposed extension of the Chapter 9 derogations would outweigh any detriment to the public that may result from those amendments. These points are discussed in more detail below.

Nevertheless, the New South Wales Government supports the extension of customer choice in the provision of retail metering services where there is a net benefit to customers. In this context, it should be noted that installation of types 5 and 6 metering installations is already a contestable activity in New South Wales, under the Scheme.

⁸ Clause 7.2.2(b)(1) of the Code.

⁹ Clause 7.2.3(1) of the Code.

¹⁰ Clause 7.3.6(aa) of the Code.

3.2 Public benefits of derogations

Significant customer choice in the installation of metering installations has already been introduced in New South Wales through the Scheme. The Scheme has been highly successful. All New South Wales LNSPs engage Metering Providers for metering services on a competitive tender basis through the Scheme. This process of competitive tendering maintains downward pressure on Metering Provider costs.

The New South Wales Government proposes to continue the current arrangements through the proposed derogation. Existing levels of competition and the Code provisions relating to chapter 7 metering competition for Type 5 customers that consume greater than 100MWh per annum¹¹ will be preserved.

It also should be noted that to date, very few Type 5 customers that consume greater than 100MWh per annum and are eligible to choose their own Metering Provider have elected to do so. The New South Wales Government submits that this fact demonstrates the limited benefit customers perceive from metering competition.

As such, the New South Wales Government submits that many of the competitive benefits for the provision of these services have already been captured and therefore any potential public benefit available through the implementation of the Code's chapter 7 provisions for metering are substantially reduced.

3.3 Consistency provided by extending derogations

Extending New South Wales derogations will also have the effect of promoting consistency across jurisdictions in relation to regulation of the provision of metering services.

Queensland¹² and the ACT¹³ currently have derogations in place that:

- remove the right of a Market Participant to choose to be the Responsible Person in respect of these metering installation types, and
- make the LNSP the Responsible Person in respect of types 5¹⁴, 6 and 7 metering installations.

Victoria has applied to extend its derogations, which expired on 1 July 2004, to 31 December 2006. In the meantime, it has been granted an interim authorisation by the ACCC.

The derogations sought by the New South Wales Government in this application are consistent with the derogations in place in these States.

¹¹ Clause 9.17A.0 of the proposed amendments

¹² Clause 9.39.2 of the Code (expiring on 31 December 2005)

¹³ Clause 9.24A.2 of the Code (expiring on 28 February 2006)

¹⁴ except for customers consuming over 100MWh

3.4 Technical Coordination Issues of transition to meter competition

There are significant technical coordination issues that need to be resolved between Market Participants and NEMMCO before competition for the provision of metering services is introduced for meter types 5, 6 and 7 for small retail customers.

The risks associated with introducing new systems specific to New South Wales over a short lead period are likely to have a negative impact on the overall success of metering competition. Ineffective transfer and concerns regarding supply failure would have the effect of undermining customer confidence in electricity contestability.

Delaying the introduction of full metering competition for small customers will allow time to enable resolution of these issues. Details of these technical coordination issues have already been highlighted in the Victorian derogation application.

The key areas of concern to the New South Wales Government in this regard are as follows:

- load control and demand management activities;
- meter churn; and
- fault management and customer service standards.

The New South Wales Government believes that these coordination difficulties justify extending the derogations.

(a) Load Control

If a retailer can elect to be a Responsible Person, Metering Providers other than LNSPs or those directly engaged by LNSPs, will be able to provide meters for installation. Processes will need to be put in place to ensure metering installations installed by Metering Providers not engaged by LNSPs comply with the requirements for LNSP "frequency injection" (FI) systems.

LNSPs utilise load control equipment that allow them to remotely switch off certain customers at peak demand times as an alternative to network augmentation. Customers subject to LNSP remote switch off are typically in the sub-40 MWh pa consumption category and are offered a lower tariff as compensation for their willingness to accept interruptions (In most cases, customers on these tariffs use off-peak electricity for hot water). Larger customers (above 160 MWh per annum) with types 1 to 4 metering installations usually face peak/shoulder/off-peak tariffs and prefer to manage their own consumption decisions rather than cede control to the LNSP via load control systems.

In order for the load control systems described above to work properly, it is necessary for the 'relay' contained in the customer's meter (or installed separate to the meter) to conform to the LNSP's network specifications especially in relation to the FI systems. LNSPs need the ability to control relay specifications in order to maintain load control systems. If a customer's relay does not conform, then the LNSP will not be able to switch the load. There are many different frequencies and channels that need to be programmed to ensure that off-peak load control can occur smoothly without sudden disruptions to the network caused by, for example, *all* off-peak loads being switched off simultaneously. Standards need to be established to ensure compatibility between FI systems and relays, with responsibility allocated to various parties for the satisfaction of these standards.

At present, customers on load control tariffs use meters that were provided and are owned by the LNSP or its Metering Provider. As such, LNSPs are able to ensure that meters conform to load control requirements. If retailers elect to be the Responsible Person in relation to a metering installation, they will be responsible for meter provision. However, under the current regulatory arrangements, they would not be obliged to ensure that their meters conform to LNSPs' load control requirements.

One of the key issues involved in managing the need for relay conformity is the range of meters that a retailer's Metering Provider may choose to use. The LNSP has typically used a single type of meter with specifications that are well known to the LNSP and which have been proven to conform to their FI systems. However, if a retailer chooses to use a different type of meter, the LNSP would need evidence that the meter conforms to their FI systems. This is not something that is done as a matter of course by meter manufacturers and there are differences between FI systems, some of which are proprietary. Hence, some form of testing with the LNSPs' FI systems is likely to be necessary, in accordance with the prescribed standards discussed above.

(b) Meter Churn

If meter provision is opened to competition, 'meter churn' may occur.

Meter churn occurs when a customer changes retailer and the previous retailer's Metering Provider removes the installed meter and installs a new meter prior to supplying that customer. This could result in delays in the transfer process and inconvenience to the customer and lower customer service standards.

For most 'smaller' customers (ie. those with below 100 amps, or 'non-CT' meters, which can be either type 5 or type 6 meters), it is not possible to change meters without interrupting supply in the interim and, given that two different Metering Providers could be involved in the meter replacement process, the customer may be left without power for long periods of times.

Further, as meters tend to have relatively long useful lives (over 20 years) meter churn could be regarded as a costly and wasteful by-product of the introduction of competition for the provision of metering services effectively stranding meter assets.

While tailored meter solutions for customers in a competitive environment may result in some public benefit, the barrier to switching retailers created by increased transition costs resulting from meter churn would create an overriding public detriment.

(c) Fault Management

Where a meter stops functioning, management of the reinstatement of customer supply becomes a problematic issue in the context of a competitive meter provision market. It is unclear whether the LNSP, who would probably be the party responding to a distress call from a customer, could immediately install a new meter.

This obviously has significant implications for customer service standards.

3.5 Need for Unbundling and Pricing Methodology

In addition to meter provision, installation and maintenance, the Responsible Person under the Code is also responsible for the provision of metering data services in respect of metering installations. Such services include meter reading, data validation and substitution, estimation, data storage and forwarding. Whilst the opening up, over time, of customer choice to most metering data services would not raise significant co-ordination problems for the market, effective competition would require the unbundling of these services from distribution use of system charges (**DUoS**) and consequently, the resolution of pricing issues.

Successful unbundling of meter data services would require considerable work to determine how meter reading should be unbundled from overall DUoS charges. Obviously, LNSPs should not be able to charge for meter reading via DUoS charges if this service is performed by another party in a competitive market. Under these circumstances, the LNSP's charges should be reduced by an amount representing the cost of meter reading. The question is whether the reduction should be based on the incremental or average cost savings of the relevant meter read. In a static sense, it would be more efficient for the incremental cost of meter reads to be deducted from DUoS charges. Therefore, rebating only the incremental meter reading costs to retailers who choose to take responsibility for this function may not promote effective competition, nor would the benefits to customers outweigh the costs ultimately imposed upon customers to establish 2nd tier metering competition.

4 Conclusion

The proposed amendments seek to extend the New South Wales derogations for a limited period.

New South Wales submits that the public benefits resulting from the proposed amendments to its chapter 9 derogations, which would allow additional time to establish business systems, outweigh any detriment to the public that may result from those amendments.

Schedule 1 - New South Wales Derogations

The following clause 9.17A is to remain inserted immediately following clause 9.17 in Part B of Chapter 9 of the Code:

9.17 Transitional arrangements for Chapter 7 – Metering Code

9.17A.0 Definitions - Type 5 Metering Installation

- (a) For the purposes of clause 9.17A.1 and 9.17A.2 of this derogation a reference to a "type 5 *metering installation*" is a reference to a type 5 *metering installation* where the electricity flowing through the *connection point* is less than 100MWh per annum.
- (b) For the avoidance of doubt, clauses 9.17A.1 and 9.17A.2 of this derogation do not regulate the provision, installation and maintenance of a type 5 *metering installation* where the electricity flowing through the *connection point* is between 100MWh and 160MWh per annum and the provisions of chapter 7 of the Code continue to apply to these *metering installations* as if this derogation were not in force.
- (c) This clause 9.17A.0 ceases to apply on the earlier of:
 - (i) the date on which the Minister declares that this clause ceases to apply; and
 - (ii) ~~1 July 2004.~~ 31 December 2006

9.17A.1 Responsible Person (Clauses 7.2.1 and 7.2.2)

- (a) The *Local Network Service Provider* will be the *Responsible Person* for type 5, 6 and 7 *metering installations*.
- (b) Clause 7.2.3 does not apply in respect of type 5, 6 or 7 *metering installations* and the *financially responsible Market Participant* for any *market connection point* which has or is proposed to have a type 5, 6 or 7 *metering installations* must:
 - (i) request an offer from the *Local Network Service Provider* under clause 7.2.2 in relation to the *metering installation*; and
 - (ii) subject to the resolution of any dispute in accordance with clause 9.9A2(d), accept an offer made by the *Local Network Service Provider* under clause 7.2.2,for the provision, installation and maintenance of the metering installation.
- (c) The terms of an offer made by the *Local Network Service Provider* under clause 7.2.2 in respect of a type 5, 6 or type 7 *metering installation* must:
 - (i) be consistent with the Independent Pricing and Regulatory Tribunal determination under the Code dated December 1999 and any other applicable regulatory instrument of New South Wales; and
 - (ii) not unreasonably discriminate, or have the effect of creating unreasonable discrimination, between *Market Participants* or between customers of any *Market Participant*.
- (d) This clause 9.17A.1 ceases to apply on the earlier of:

- (i) the date on which the Minister declares that this clause ceases to apply; and
- (ii) ~~1 July 2004.~~ 31 December 2006.

9.17A.2 Payment for Metering (Clause 7.3.6)

- (a) Clause 7.3.6(a) does not apply in respect of the recovery by a *Local Network Service Provider* of its costs associated with the provision, installation, maintenance, routine testing and inspection of type 5, 6 or type 7 *metering installations*, to the extent that these costs can be recovered by the *Local Network Service Provider* in accordance with the Independent Pricing and Regulatory Tribunal determination under the Code dated December 1999 or any other applicable regulatory instrument of New South Wales.
- (b) This clause 9.17A.2 ceases to apply on the date on which clause 9.17A.1 ceases to apply.

~~9.17A.3 — Metering Providers (Clause 7.4.2)~~

- ~~(a) — Immediately prior to the date on which the initial metrology procedure for type 5, 6 or type 7 *metering installations* for New South Wales becomes effective, each *Local Network Service Provider* is deemed to be accredited by and registered with NEMMCO as a *Metering Provider* for type 5 and 6 *metering installations* for the purposes of:~~
 - ~~(i) — provision, installation and maintenance; and~~
 - ~~(ii) — collection, processing and transfer of *energy data*.~~
- ~~(b) — Immediately prior to the date on which the initial metrology procedure for type 5, 6 or type 7 *metering installations* for New South Wales becomes effective, each *Accredited Service Provider* is deemed to be accredited by and registered with NEMMCO as a *Metering Provider* for type 5 and 6 *metering installations* for the purpose of installation only.~~
- ~~(c) — This clause 9.17A.3 does not affect the rights of NEMMCO set out in clause 7.4.3, which apply in respect of each person deemed to be accredited and registered under clause 9.17A.3(a) or (b) as if the person was registered as a *Metering Provider*.~~
- ~~(d) — For the purposes of this clause 9.17A.3, “*Accredited Service Provider*” means a person accredited in accordance with Part 10 of the *Electricity Supply (General) Regulation 2001*.~~
- ~~(e) — This clause 9.17A.3 ceases to apply on the earlier of:~~
 - ~~(i) — the date on which the Minister declares that this clause ceases to apply; and~~
 - ~~(ii) — 31 December 2002.~~