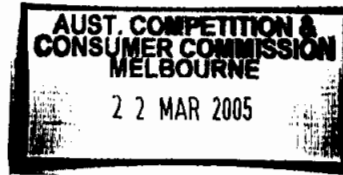




**NATIONAL ELECTRICITY CODE  
ADMINISTRATOR LIMITED**  
ACN 073 942 775

Level 5, 41 Currie Street  
Adelaide SA 5000  
Telephone (08) 8213 6322  
Facsimile (08) 8213 6300

18 March 2005



Mr S Roberts  
General Manager  
Regulatory Affairs – Electricity  
Australian Competition & Consumer Commission  
360 Elizabeth Street  
MELBOURNE VIC 3000

FILE No:	
DOC:	D05/13071
MARS/PRISM:	

Dear Mr Roberts,

**NATIONAL ELECTRICITY CODE: CHAPTER 9 DEROGATIONS**

I enclose proposed amendments to Chapter 9, Part D of the National Electricity Code relating to the metering provisions in South Australia. The facts and details upon which South Australia relies are set out in the copy of its letter to NECA of 16 March 2005 and the attached application.

These amendments, which are similar to those recently authorised in Victoria and New South Wales, extend an existing derogation which expires on 1 July 2005.

The Hon Patrick Conlon MP, Minister of Energy for South Australia, has formally consulted on these proposed derogations with the corresponding designated Ministers of the other participating jurisdictions and no objections have been raised.

Yours faithfully

**John Eastham**  
Director



Hon. Patrick Conlon BA LLB (Hons) MP

Minister for Infrastructure

Minister for Energy

Minister for Emergency Services

---

TF05D00597

Mr John Eastham  
Director  
National Electricity Code Administrator  
Level 5, 41 Currie Street  
ADELAIDE SA 5000

Dear Mr Eastham

Please find attached an application for a derogation under the National Electricity Code relating to metering provision in South Australia.

I have formally consulted on these proposed derogations with the corresponding Designated Ministers of the NEM jurisdictions by way of letters dated 19 January 2005 and no objections have been raised.

I enclose a finalised application which seeks authorisation of this derogation and I request that you formally lodge the application with the ACCC on South Australia's behalf. A cheque for the payment of \$10,500, which I understand to be the cost of the application to the ACCC, will be forwarded by the Department of Treasury and Finance.

Yours sincerely

**HON PATRICK CONLON MP**  
**MINISTER FOR ENERGY**

16 March 2005

**Application to the  
Australian Competition and Consumer Commission**

**Proposed Derogations to the National Electricity  
Code**

**South Australian  
Full Retail Competition Transitional Metering  
Arrangements**

**March 2005**

## SOUTH AUSTRALIAN APPLICATION FOR A DEROGATION UNDER THE NATIONAL ELECTRICITY CODE

### 1. Application for Derogation

This application is submitted by South Australia under Chapter 9 of the National Electricity Code (*the Code*).

This application is made:

- (a) for the approval of the Australian Competition and Consumer Commission (**ACCC**) under clause 9.1.1(e) of the Code; and
- (b) through the National Electricity Code Administrator (**NECA**), for authorisation of those amendments by the ACCC under sections 88(1) and 88(8) of the Trade Practices Act 1974.

South Australia is seeking an interim authorisation of the amendment to its existing derogations.

### 2. Derogations Sought

South Australia submits the following derogations from the Code:

*9.30.1(3) Amendment to Chapter 7 of the Code*

### 3. Background

Electricity full retail competition commenced in South Australia on 1 January 2003 when the remaining 730,000 (approximately) customers with annual electricity consumption of less than 160MWh were free to choose their electricity retailer.

In preparation for full retail competition, the South Australian Government submitted an application to the ACCC pursuant to chapter 9 of the Code, for transitional derogations from the application of certain provisions of chapter 7 of the Code dealing with metering. Specifically, the application sought to amend the following:

- (1) The definition of the Local Network Service Provider (**LNSP**) and Role of the Responsible Person.

Clauses 7.2.2 and 7.2.3 of the Code specify that unless otherwise elected by the financially responsible market participant (**FRMP**), the LNSP is the Responsible Person (as defined in the Code) for metering installations in the LNSP's local area. The Derogations sought provided that the LNSP automatically becomes the Responsible Person for metering installation types 5

(manually read interval meters), 6 (accumulation meters) and 7 (unmetered supplies) for a transitional period to 1 July 2005.

#### (2) Arrangements for payment for metering

Clause 7.3.6 of the Code states that the FRMP for a connection point is responsible for the payment of all costs associated with the provision, installation, maintenance, routine testing and inspection of the metering installation for that connection point. The Derogation sought provided that during the two and a half year transitional period, the costs of the LNSP would be covered in accordance with the Electricity Pricing Order (**EPO**), the LNSP's distribution licence and any other applicable South Australian regulatory instrument.

#### (3) Provisions for the metering provider

Clause 7.4.2 of the Code requires a person to be accredited by and registered with NEMMCO to be a metering provider. The Code also specifies that the Responsible Person must engage a metering provider to carry out the metering installation activities, unless that Responsible Person is the LNSP and a registered metering provider.

The Derogation provided that the LNSP would be deemed to be an accredited and registered metering provider for these metering types (5, 6 and 7). This was to be effective from the introduction of the metrology procedure for the relevant type of metering installation with an expiry date of one year after the metrology procedures became effective (1 January 2004).

On 6 November 2002 the ACCC issued its draft determination with a final determination authorising South Australia's application issued on 27 November 2002<sup>1</sup>.

### **4. Proposed Amendment to Derogations**

South Australia proposes to amend clause 9.30.1(3) of the current Derogations from the application of Chapter 7 of the Code. Clause 9.30.1(3)(e) currently refers to an expiration date of 1 July 2005, applicable to clauses 7.2.1, 7.2.2, 7.2.3 and hence 7.3.6. It is proposed the expiration date be changed to 31 December 2006.

This extension is sought to further facilitate the transition to full retail competition by simplifying the metering arrangements as well as for consistency across the jurisdictions and hence with the recommendations contained in the Final Report of the Joint Jurisdictional Regulators' Review of the Metrology Procedures. These will be further discussed later in this application.

---

<sup>1</sup> Application for authorisation nos A90838, A90839 and A90840 of 2002.

## **5. Rationale for Amendment to Derogation**

This proposed expiry date is consistent with the extensions sought by both Victoria and New South Wales for their respective metering derogations.<sup>2</sup>

In collating this application, South Australia has considered the similar applications by New South Wales and Victoria relating to the extension of their metering derogations and the Draft Determinations issued by the ACCC on 1 December 2004.

South Australia is of the view that many of the arguments set out in South Australia's previous application on this matter apply equally in respect of this application. In addition the following arguments are put forward in support of this application:

### **5.1 Joint Jurisdictional Review of Metrology Procedures**

In August 2001, in preparation for electricity FRC in New South Wales and Victoria, the ACCC approved amendments to the Code relating specifically to the metering arrangements.

Whilst these amendments were accepted on a transitional basis, the ACCC considered that, in the longer term, a move towards interval metering and a single NEM-wide Metrology Procedure was required to further develop competition. On this basis one of the Code changes required a review to be conducted jointly by the relevant NEM Jurisdictional Regulators, by 31 December 2003. Jurisdictions participating in the review were the Jurisdictional Regulators of the Australian Capital Territory, New South Wales, Queensland, South Australia, Victoria and Tasmania.

The Final Report of the Joint Jurisdictional Regulators' Review of the Metrology Procedures was released in October 2004.

One of the report's key recommendations is for the Code to be amended such that the distributor is exclusively responsible for metering services for all first and second tier customers with annual consumption less than a level of annual consumption to be set by the jurisdiction.<sup>3</sup>

The jurisdictional regulators recommend that the required changes to Chapter 7 of the Code be progressed by NEMMCO and submitted to NECA by 31 December 2005.

In recognition of the time required for such Code changes to be implemented, particularly in view of the current regulatory reform program and the establishment of the Australian Energy Market Commission (AEMC) and the Australian Energy Regulator (AER), the jurisdictional regulators have also

---

<sup>2</sup> Victoria's application for authorisation Nos A90915, A90916 and A90917. New South Wales' application for authorisation Nos A90928, A90929 and A9030.

<sup>3</sup> Recommendation 4.3, Jurisdictional Regulators, Joint Jurisdictional Review of Metrology Procedures Final Report, p. 11.

recommended extensions to the current jurisdictional derogations in the shorter term.<sup>4</sup>

Consistent with the recommendations of the Jurisdictional Regulators, South Australia seeks an extension to 31 December 2006.

South Australia is of the view that such an extension will provide sufficient time for the Code changes recommended by the jurisdictional regulators to be pursued through the usual Code consultation process. South Australia further notes that, in the event the Code changes recommended by the jurisdictional regulators are implemented, the derogations may be removed.

## **5.2 Jurisdictional Consistency**

As highlighted in the submissions to the Jurisdictional Regulators' Review of the Metrology Procedures, the industry is seeking to minimise the regulatory differences across jurisdictions in the long term. To this end, it is noted that both Queensland and the Australian Capital Territory have derogations in place to:

- remove the right of a market participant to choose to be the Responsible Person for the provision of metering services for metering installation types 5, 6 and 7; and
- make the LNSP the exclusive Responsible Person for these metering installation types.

The Queensland and ACT derogations expire on 31 December 2005 and 28 February 2006, respectively.

On 1 December 2004 the ACCC issued its Draft Determination authorising the extensions for both New South Wales and Victoria on the condition that any interval meter that incorporates remote reading capabilities, irrespective of how frequently the meter is remotely read, will not be subject to the derogation. That is, the provision, installation and maintenance of remotely read type 5 meters will remain competitive.

The extension sought by South Australia is consistent with the Draft Determinations, including these conditions.

## **6. Competition Analysis**

This application is made under sub-sections 88(1) and 88(8) of the Trade Practices Act 1974 (**TPA**) as it is understood that the derogations proposed in this application could have the effect of lessening competition within the meaning of section 45 of the TPA. However, South Australia is of the opinion that this application meets the requirements of sub-section 90(6) which allows the Commission to approve applications that would result, or be likely to result, in a

---

<sup>4</sup> Recommendation 4.4, Jurisdictional Regulators, *ibid*, Final Report, p. 11.

benefit to the public and outweigh the detriment to the public from the lessening in competition.

The Commission has listed the public benefits recognised in the past as:

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

South Australia is firmly of the view that the level of transfer activity in the small customer market since the commencement of FRC has been assisted by the simple transfer process, including the ability for small customers to retain their existing metering arrangements. It is recognised that forcing small customers to purchase their own meters may prove a costly barrier to entry to a customer taking advantage of competition. Further, the economies of scale which are created by having one party own and service meters will be considerably diminished if competition in metering is required at this early stage of market development.

Allowing ETSA Utilities to have temporary exclusivity in meter provision for manually read type 5 and types 6 and 7 metering installations will continue this ease of transition thereby maximising the benefit available to the public as they are able to freely select a retailer or market contract that best meets their individual needs without the potential cost burden of purchasing a meter. This in turn would outweigh any detriment to competition in metering caused by the temporary exclusivity arrangements.

Whilst the proposed derogation delays competitive metering provision in the small customer market, the provision of metering services for customers with annual consumption of greater than 160MWh (metering types 1 to 4) has been and will remain competitive.

## **7. Access Arrangements**

There is no impact on access arrangements.

## **8. Duration of the Derogation**

This Derogation ceases to apply on 31 December 2006.



## ANNEXURE 1

### **Proposed Derogation: Amendments to Chapter 7 of the Code**

The following amendments should be made in Part D of Chapter 9 of the National Electricity Code:

#### **9.30.1 Chapter 7 of the Code**

- (1) The transitional metering provisions set out in schedule 9F1 apply to South Australia in respect of Chapter 7.

#### **(2) Definitions and Application**

- (a) This clause 9.30.1 applies to *metering installations* for *connections points* located in South Australia connected to the distribution network operated by ETSA Utilities.
- (b) For the purposes of clause 9.30.1(3) and 9.30.1(4) of this *derogation*, a reference to a “*type 5 metering installation*” is a reference to a *type 5 metering installation* that includes an *interval meter* that is manually read.
- (c) Despite anything in the preceding paragraph, clauses 9.30.1(3) and 9.30.1(4) of this *derogation* do not regulate the provision, installation and maintenance of a *type 5 metering installation* that includes an *interval meter* that is remotely read, regardless of the frequency with which the *interval meter* is read.
- (d) In the previous paragraph, “an interval meter that is remotely read” means an interval meter that:
- (i) It is designed to transmit metering data to a remote locality for data collection;
  - (ii) does not, at any time, require the presence at, or near, the meter for the purposes of data collection or data verification (whether this occurs manually as a walk by reading or through the use of a vehicle as a close proximity drive-by reading);

and includes but is not limited to an interval meter that transmits metering data via:

- (1) direct dial up;
- (2) satellite;
- (3) the Internet;
- (4) GPRS;
- (5) power line carrier; or
- (6) any other equivalent technology.

### **(3) Responsible Person (Clauses 7.2.1, 7.2.2 and 7.2.3)**

- (a) The *Local Network Service Provider* is the *Responsible Person* for all type 5, type 6 and type 7 *metering installations*.
- (b) Clause 7.2.3 does not apply in respect of type 5, type 6 or type 7 *metering installations* and the *financially responsible Market Participant* for any market *connection point* which has or is proposed to have a type 5, type 6 or type 7 *metering installation* 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 9.30.1(3)(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 7.2.1 in respect of a type 5, type 6 or type 7 *metering installation* must:
  - (i) be fair and reasonable and consistent with the South Australian regulatory instruments referred to in clause 9.30.1(4)(a); and
  - (ii) not unreasonably discriminate, or have the effect of creating unreasonable discrimination, between *Market Participants* or between customers of any *Market Participant*.
- (d) Any question as to the fairness and reasonableness of the terms of an offer referred to in clause 9.30.1(3)(c) or whether the terms of such an offer unreasonably discriminate shall be decided by the *Jurisdictional Regulator* on the basis of the *Jurisdictional Regulator's* opinion on the matter.
- (e) This clause 9.30.1(3) expires on 31 December 2006

### **(4) Payment for Metering (Clause 7.3.6)**

- (a) Clause 7.3.6(a) does not apply in respect of the payment to a *Local Network Service Provider* of its costs associated with the provision, installation, maintenance, routine testing and inspection of a type 5, type 6 or type 7 *metering installation* in accordance with the requirements of the relevant *metrology procedure*, which costs may only be recovered by the *Local Network Service Provider* in accordance with the Electricity Price Order, the *Local Network Service Provider's* distribution licence or any other applicable South Australian regulatory instrument.

- (b) This clause 9.30.1(4) ceases to apply on the date on which clause 9.30.1(3) ceases to apply.

# **Appendix A**

**to**

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

**List of Code Participants**

## 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** National Electricity Code Administrator  
(*See Direction 2*) 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 John Eastham  
Executive Director  
National Electricity Code Administrator  
Limited  
Level 5  
41 Currie Street  
ADELAIDE SA 5000  
Phone: (08) 8213 6311  
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 16 March 2005 from the Minister for

Energy of the State of South Australia, 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 South Australia 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 above-mentioned 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 section 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 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 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 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 John Eastham  
Executive Director  
National Electricity Code Administrator Limited  
Level 5  
41 Currie Street  
ADELAIDE SA 5000  
Phone: (08) 8213 6311  
Fax: (08) 8213 6300

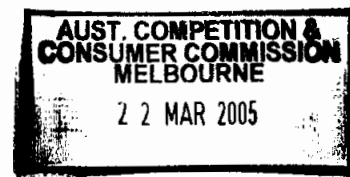
Date: 18 March 2005

Signed on behalf of NECA

.....  .....

(Signature) Mr John Eastham

Executive 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.



## 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) <b>Name of applicant</b> ( <i>See Direction 2</i> )  | National Electricity Code Administrator Limited (ACN 073 942 775) (NECA)  |
| (b) <b>Short description of business carried on by applicant</b>                                      | Administration of the National Electricity Code.  |
| (c) <b>Address in Australia for service of documents on the applicant</b>                             | Mr John Eastham<br>Executive Director<br>National Electricity Code Administrator Limited<br>Level 5<br>41 Currie Street<br>ADELAIDE SA 5000<br>Phone: (08) 8213 6311<br>Fax: (08) 8213 6300                                       |
| 2. (a) <b>Description of contract, arrangement or understanding and, where already made, its date</b> | The contract, arrangement or understanding in respect of which the application is made is set out in the letter dated 16 March 2005 from the Minister for Energy of the State of South Australia, the participating jurisdiction, |

submitted with this Form B, being amendments to the Code in respect of Chapter 9 of the South Australia 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 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 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 that joint venture?

Not applicable.

(c) If so, by whom or on whose behalf are those other applications being made?

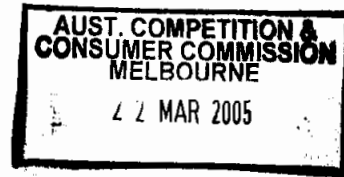
Not applicable.

7. Name and address of person authorised by the applicant to provide additional information in relation to this application.

The person nominated in item 1(c) of this form.

Date: 18 March 2005

Signed on behalf of NECA



.....  
(Signature) Mr John Eastham

Executive 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.

## 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) <b>Name of applicant</b> ( <i>See Direction 2</i> )  | National Electricity Code Administrator Limited (ACN 073 942 775) (NECA)  |
| (b) <b>Short description of business carried on by applicant</b>  | Administration of the National Electricity Code.  |
| (c) <b>Address in Australia for service of documents on the applicant</b>   | Mr John Eastham<br>Executive Director<br>National Electricity Code Administrator Limited<br>Level 5<br>41 Currie Street<br>ADELAIDE SA 5000<br>Phone: (08) 8213 6311<br>Fax: (08) 8213 6300   |
| 2. (a) <b>Description of the goods or services in relation to the supply or acquisition of which this application relates</b> | 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 16 March 2005 from the Minister for Energy of the State of South Australia, the participating jurisdiction, submitted with this Form E, the "jurisdictional letter".<br><br>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 of 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 section 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>(b) Number of those persons</b>  | <b>(i) At present time</b>   |    |
|   | NECA and NEMMCO  | 2  |
|   | Generators   | 54 |
|   | Customers  | 35 |
|   | Network Service Providers  | 25 |
|   | Special Participants   | 17 |
|   | Intending Participants   | 18 |
|   | Traders  | 7  |
|   | <b>(ii) Estimated within the next year</b>   |    |
|   | Unknown  |    |
| <b>(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses</b>  | Not applicable   |    |
| <b>4. (a) Grounds for grant of authorisation</b>  | 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>(b) Facts and contentions relied upon in support of those grounds (See Notice)</b>   | The facts and contentions relied upon in respect of the Code changes are set out in the jurisdictional letter.   |    |
| <b>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>)?</b> | No.  |    |
| <b>(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?</b>             | Not applicable.  |    |
| <b>(c) If so, by whom or on whose behalf are those other applications being made?</b>   | Not applicable   |    |




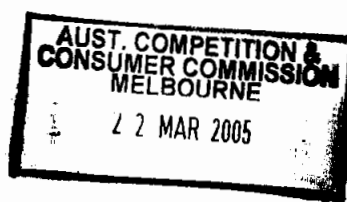
6. Name and address of person authorised by the applicant to provide additional information in relation to this application.

Mr John Eastham  
Executive Director  
National Electricity Code Administrator  
Limited  
Level 5  
41 Currie Street  
ADELAIDE SA 5000  
Phone: (08) 8213 6311  
Fax: (08) 8213 6300

Date: 18 March 2005

Signed on behalf of NECA

.....   
(Signature) Mr John Eastham



Executive 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.