

12 September 2007

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
Level 16  
1 Margaret Street  
Sydney NSW 2000

Dear John,

**Registration of Foreign Based Persons and Corporations as Trader Class Participants**

I refer to our request dated 19 June 2007 and to NEMMCO's submission dated 20 August 2007.

I would like to take this opportunity to address and clarify some of the concerns raised by NEMMCO in its submission and also to propose that the AEMC consider BPEA's alternative request for a Participant Derogation. I would add that this paper has been provided to NEMMCO prior to submission.

**1. Compliance Monitoring and Enforcement**

This point appears minor and is no more than an inconvenience as there are few Rules obligations imposed on Traders.

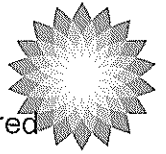
Further, compliance with the Rules does not require the Trader to have an operational presence in the participating jurisdictions.

In the event that there are any alterations to the Rules in future, BPEA submits that this issue would be more appropriately considered at that stage.

**2. Recovery of Outstanding Fees and Charges**

As a blanket Rule change that permits all foreign based persons and corporations the ability to meet the Trader registration requirements, NEMMCO raises a good point.

BPEA proposes to address this issue by means of the following:



- Recommending that the BPEA submission to the AEMC be considered by way of a Participant Derogation rather than a Rule change (please refer Point 6 below); and
- If required under a Participant Derogation, BPEA's participation in any Settlement Residue Auctions could be supported by a Corporate Guarantee in favour of NEMMCO by BP Finance Plc, which is a UK based company that holds external long term credit ratings by S&P and Moody's of AA and Aa respectively, or any other BP Group entity of similar credit rating

### **3. Jurisdiction**

This issue is easily resolved.

A foreign-based Trader would most certainly have to submit to the jurisdiction of an Australian state, as would any other Trader participant. Such submission to jurisdiction may be express or implied, but would nevertheless not detract the validity of such submission.

There would therefore be no confusion as to the applicable forum or legislation. Clearly, the Australian National Electricity Law would apply to all Trader participants (whether or not they are foreign-based).

In addition, for BPEA to participate in the Settlement Residue Auctions it is required to enter into an Auction Participation Agreement with NEMMCO, which is governed by the laws of Victoria.

### **4. Service of Process**

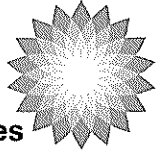
NEMMCO raises a good point.

BPEA agrees that an irrevocable appointment of a process agent in Australia for foreign-based Traders would be beneficial for all involved.

To this end, BPEA irrevocably appoints BP Australia Pty Ltd as its process agent.

### **5. Propriety of Rule Change vs Derogation**

In consideration of NEMMCO's concerns with a Rule change and in the interests of resolving a satisfactory solution to BPEA's current inability to meet the Trader registration requirements, BPEA would respectfully request that the AEMC consider BPEA eligible for derogation of this Rule. BPEA is a wholly owned subsidiary of a multinational company and is a suitable candidate for such derogation to apply.



## 6. Request for Participant Derogation to the National Electricity Rules

It is proposed that BPEA's submission dated 19 June 2007 be amended to alternatively request a Participant Derogation. More specifically, the Participant Derogation will provide as follows:

**That BPEA be excluded from clause 3.3.1(a) for the purpose of clauses for which a Trader will be treated as a Market Participant under clause 2.5A(b)(2) of the Rules.**

The Participant Derogation will apply from the Effective Date to the Participation Derogation Expiry Date (inclusive).

The **Effective Date** is the date on which the Participation Derogation comes into effect.

The **Participation Derogation Expiry Date** shall be the earlier of the following dates:

- (a) 31 December 2011; or
- (b) The date from which a BP entity is successful in both registering / incorporating as a foreign / local company in Australia and registering with NEMMCO as a Trader under the current Rules

We are happy to meet with you to discuss this submission at your convenience. Please contact Matthew Nimmo at BP Australia on 03 9268 3154.

Yours sincerely,

A handwritten signature in black ink that reads "Gary Rennie".

**Gary Rennie**  
Director  
BP Energy Asia Pte. Limited