

6/2/09

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

submissions@aemc.gov.au

Dear Dr Tamblyn

**Draft Rule - Confidentiality Arrangements in respect of Information Required
for Power System Studies
Consultation in relation to proposed Transitional Provisions
Reference ERC0062**

Vestas appreciates the opportunity to provide this further submission to the Commission concerning the proposed Transitional Provisions associated with the draft Rule.

There are three components of the Transitional Provisions in relation to which the Commission has sought further comment:

1. **Obligation to provide a releasable user guide**
 - 1.1 Vestas supports, in principle, the proposal to require *Generators* to provide *NEMMCO* with a *releasable user guide*.
 - 1.2 Vestas considers that the proposed time frame for the provision of a *releasable user guide* is too short. Vestas agrees with the proposal by Pacific Hydro that a period of approximately nine months should be allowed (see Pacific Hydro's submission of 5 February 2009). Vestas suggests that a fixed date (29 November 2009) be set as the date by which *releasable user guides* must be provided.
 - 1.3 Vestas' in principle support for this proposed requirement is subject to the Commission's determination as to the content of the *releasable user guide*. In

this regard we refer the Commission to our second round submission dated 7 November 2008.

2. **Exception 1**

- 2.1 The Commission proposes that there should be two exceptions to the requirement for *Generators* to provide a *releasable user guide*.
 - 2.2 The first proposed exception would be where information of a type required for a *releasable user guide* was provided to NEMMCO before 15 March 2007 and it (i.e. NEMMCO) was specifically permitted to release this information under the *Rules*.
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- 2.3 Vestas does not support this proposed exception, for the following reasons.

3. **Exception 1 - confidentiality obligations prior to 15 March 2007**

- 3.1 We note the comment contained in the Explanatory Statement concerning these Transitional Provisions that:

Currently NEMMCO holds the relevant information some of which was provided to NEMMCO on a confidential basis after 15 March 2007 for another purpose under the National Electricity Rules.

- 3.2 We draw the Commission's attention to clause 5.3.8 of the *Rules* which says (and as far as Vestas is aware, has for some years consistently said) that information provided under clause 5.3 is confidential. Clause 5.3, of course, deals with the *connection* process and therefore covers exactly the types of information that might be included in a *releasable user guide*.
- 3.3 That is to say, information of a type which would be required to be included in a *releasable user guide* has been provided to NEMMCO on a confidential basis ***both before and after*** 15 March 2007.
- 3.4 The key difference, of course, is NEMMCO's ability to disclose that information.
- 3.5 Under clause 8.6 of the *Rules*, a recipient of *confidential information* is obliged:
 - (a) not to disclose that information except as permitted by the *Rules*;

- (b) only to use and reproduce that information for the purpose for which it was disclosed, or for another purpose contemplated by the *Rules*; and
- (c) not permit unauthorised persons to have access to that information.

3.6 The *Rules* provided a specific exception to the confidentiality obligation as regards disclosure of modelling information, in clause 8.6.2(m). Prior to 15 March 2007 clause 8.6.2(m) read:

(modelling): the disclosure, use or reproduction of data held by NEMMCO or a Network Service Provider for the purpose of modelling the operation of the power system, to the extent reasonably necessary to enable a Network User to develop an application to connect.

3.7 Vestas submits that much of the information which is submitted by a *Connection Applicant* under clause 5.3 is not required for the purposes described in clause 8.6.2(m). That is to say, only a subset of the information which has been provided by a *Generator* to NEMMCO was able to be released under clause 8.6.2(m).

3.8 We note the Commission's comments in the Explanatory Statement that prior to 15 March 2007:

"...there were no restrictions on what information NEMMCO was allowed to disclose to Registered Participants for the purpose of modelling the operation of the power system, to the extent reasonably necessary to enable a Network User to develop an application to connect.

3.9 This is a reference to the ability of NEMMCO to disclose information that would otherwise be treated as confidential, because of clause 8.6.2(m) as set out above. However Vestas is concerned with the conclusion drawn from this statement, that:

"Therefore, the suggested drafting of the transitional arrangements has been amended to state that information received by NEMMCO prior to this date can be deemed information of the type to be included in a releasable user guide."

- 3.10 Vestas reiterates that only a portion of the information that would have been submitted to NEMMCO before 15 March 2007 would fall within the description contained in clause 8.6.2(m) and would therefore have been able to be disclosed. Any suggestion that the whole of the information submitted to NEMMCO prior to that date can be 'deemed information of the type to be included in a releasable user guide' is strongly resisted.
- 3.11 We do note that the words of the proposed Transitional Provision limit the 'deeming' to "*information provided to NEMMCO before 15 March 2007 that NEMMCO holds at the commencement date of the Amending Rule of a type required in a releasable user guide*".
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- 3.12 However, we refer again to the provisions of clause 8.6. Where clause 8.6 says that *confidential information* can only be used for the purpose for which it is disclosed, or for another purpose contemplated by the *Rules*, Vestas submits that this must mean 'another purpose contemplated by the Rules at the time the information was disclosed'.
- 3.13 It could be argued that the effect of the first exception to the Transitional Provisions is to change the purpose for which *confidential information* could be used, after that information was disclosed.
- 3.14 In terms of the content of the *releasable user guide*, Vestas again refers the Commission to its second round submission. We reiterate that the contents of the *releasable user guide* must be limited to the purpose of '*modelling the operation of the power system*' and only '*to the extent reasonably necessary to enable a Network User to develop an application to connect*'.
- 3.15 Vestas submits that should the first exception be included in the Transitional Provision, NEMMCO would be faced with a difficult task of determining:
- (a) what information it received prior to 15 March 2007; and
 - (b) what portion of that information is of a type that is required to be included in a *releasable user guide*.

4. Exception 1 – consistency of information for Intending Participants

- 4.1 Vestas respects the position taken by the Commission in its draft Rule Determination, as referred to in the Explanatory Statement, that it would not

make the requirement to provide a *releasable user guide* apply retrospectively. However Vestas considers that there are, in fact, a number of significant advantages in requiring all *Generators* to provide a *releasable user guide*.

- 4.2 The first exception to the proposed Transitional Provisions would also lead to the situation where *Intending Participants* are provided with different packages of information in relation to different *Generating Systems*, depending on whether the *Generator* which operates a particular *Generating System* provided information to NEMMCO before or after 15 March 2007, or before or after the date of commencement of the Draft Rule.
- 4.3 In Vestas' view, it is far preferable for all *Generators* to be required to provide a *releasable user guide* in accordance with the *Rules*, to ensure consistency of information to *Intending Participants* whilst still protecting the legitimate interests of *Generators* and their suppliers. This would also, of course, ease the administrative burden on NEMMCO.

5. Exception 2

- 5.1 The second exception to the proposed Transitional Provisions would be in relation to information provided to NEMMCO after 15 March 2007, where the relevant *Generator* provides its written consent to NEMMCO to provide to *Registered Participants* (in response to a request under the *Rules*) information of a type required for a *releasable user guide* which NEMMCO already holds at the date of the commencement of the proposed *Rule*.
- 5.2 Vestas would again prefer that this exception not be included. Vestas submits that the best outcome from a regulatory perspective would be for all *Generators* to provide a *releasable user guide* for their *Generating Systems*, regardless of whether information may already have provided to NEMMCO before or after 15 March 2007.

6. Summary

- 6.1 Vestas supports the requirements for *releasable user guides* to be provided in respect of all *Generating Systems*, subject to:
- (a) the time within which those *releasable user guides* must be provided; and



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- (b) the Commission's determination as to the content of the *releasable user guide*.

6.2 Vestas does not support either of the proposed exceptions to the proposed Transitional Provisions.

Please feel free to contact the writer if you would like to discuss any aspect of this submission.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Serge Forza".

Serge Forza
Head of Technical Support
Vestas – Australian Wind Technology Pty Ltd
Level 4
312 St Kilda Road
Melbourne Vic 3004

Tel + 61 3 8698 7353
e-mail sfo@vestas.com