



**Australian Energy Market Commission**

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Mr Malcolm Roberts  
National Generators Forum  
PO Box 4155  
Kingston  
ACT 2604

20 May 2011

Our ref: 11-8614

Dear Mr Roberts 

**Rule change proposal – Potential Generator Market Power in the NEM**

I refer to your letter dated 11 May 2011 in respect of the rule change proposal submitted by Major Energy Users Inc on potential generator market power in the NEM. The Commission intends to treat your letter as a submission on the Consultation Paper for this rule change proposal which was published on 14 April 2011.

While it is not the standard practice of the Commission to respond individually to submissions it receives in rule change processes, I note the following points by way of response to your letter.

The Commission acknowledges the extract from the parliamentary debates of the South Australian Legislative Council you have included in your letter, and agrees that section 46 of the *Competition and Consumer Act 2010* (CCA) continues to apply to market participants in the NEM. As you have indicated, this is also reflected in clause 3.1.4(b) of the *National Electricity Rules*, which states that chapter 3 of the *Rules* is not intended to regulate anti-competitive behaviour that is subject to the *Competition and Consumer Act*.

Although nothing in the *Rules* could constrain the Commission's rule-making powers and the Commission's ultimate decision will depend on its further analysis, the Commission expects that it would be unlikely to make a rule that has the purpose of regulating anti-competitive behaviour that is subject to the CCA. The AEMC's Consultation Paper explains that the focus of the rule change process will be to determine whether there is evidence of conduct by generators that has a material effect on efficiency in the NEM and the long term interests of consumers but which is not within the scope of the CCA. The Consultation Paper expressly states that if the relevant conduct is within the scope of the CCA, a change to the *Rules* is unlikely to be justified.

The Commission remains of the view that, subject to those matters listed in section 4.3.1 of the Consultation Paper, it has the power to make the rule proposed by the MEU. Whether the Commission will make a rule in response to the MEU's proposal will be determined by its consideration of all relevant matters during the rule change process.

Yours sincerely

  
John Pierce  
Chairman