

11 April 2005

John Eastham
Director
NECA
Level 5, 41 Currie Street
Adelaide SA 5000

Dear John,

Code Change Proposal

The following Code change proposal is made on behalf of transmission network owners ElectraNet Pty Limited, Powerlink Queensland, SPI PowerNet Pty Limited and Transend Networks Pty Ltd, in accordance with clause 8.3.4 of the National Electricity Code.

Background to the Proposal

The ACCC released its Final Decision in relation to the *Statement of Regulatory Principles for the Regulation of Transmission Revenues (SRP)* on 8 December 2004. The SRP sets out the ACCC's general approach to setting revenue caps to apply to transmission network owners under clause 6.2.4 of the Code.

The SRP foreshadows that Code changes will be needed to give full effect to certain provisions of the SRP. Transmission network owners have considered this requirement and are proposing Code changes to give effect to the revenue cap reopening provisions of the SRP and to explicitly provide for cost pass through arrangements included in a revenue cap decision.

Reopening the Revenue Cap

The following extract is taken from Section 7.2 of the SRP.

"To take account of events that could significantly alter the allowed efficient investment level, the ACCC believes there should be provision for the revenue cap to be reopened during the regulatory period. In some circumstances the ACCC would consider passing the cost of the event through without reopening all aspects of the revenue cap.

Only TNSPs would be able to propose that the revenue cap be reopened. There is no proposed limitation as to the nature of the event that could give rise to a reopening of the cap.

However reopening the revenue cap would be conditional on:

- *the TNSP being materially adversely affected by the event*
- *the event being beyond the firm's control*
- *the event not having been contemplated at the time the revenue control decision was made*
- *the benefits of revoking the revenue control outweighing the detriment to the TNSP's customers from revoking the control.*

Finally it should be recognised that at present the revenue cap can only be reopened in limited circumstances. These circumstances do not include those envisaged in this section. Therefore a code change will be needed to give full effect to the reopening provisions specified here."

The proposed Code changes are needed to provide transmission network owners with appropriate protection from the cost impact of unforeseen events and are intended to give full effect to the reopening provisions specified in the SRP.

In making a decision to vary a revenue cap, the Code changes provide for the ACCC to consider whether a cost impact is material enough to vary the revenue cap within the regulatory period (as opposed to taking this into account at the next revenue reset) and to net off from the allowed additional cost recovery any associated cost savings.

Cost Pass Through in Accordance with a Revenue Cap Decision

The ACCC has included cost pass through arrangements in its recent revenue cap decisions and has foreshadowed that such arrangements may continue to be appropriate under certain circumstances in the future. The proposed Code changes are intended to explicitly align the Code with current practice.

While revenue cap reopening is intended to protect transmission network owners from the material cost impact of unforeseen events, cost pass through arrangements provide for the adjustment of the revenue cap for the efficient cost of events the nature of which are foreseen and are identified in a revenue cap decision and for which full allowance has not otherwise been made in the revenue cap (e.g. tax changes, grid support payments or changes in service standards).

We would be pleased if you would have these Code changes considered in accordance with clause 8.3.4 of the National Electricity Code. For further details, please contact me on 08 8404 7983.

Yours sincerely,



RAINER KORTE
NEM DEVELOPMENT AND REGULATION MANAGER

Attachment

STATEMENT OF REGULATORY PRINCIPLES DRAFT CODE CHANGES

Changes to give effect to the revenue cap reopening provisions of the SRP.

Changes to Chapter 6, Part B

After clause 6.2.4(d)(3) insert:

- (e1) Notwithstanding clauses 6.2.4(b) and 6.2.4(d), the revenue cap may be varied during a regulatory control period. The ACCC must only vary a revenue cap during a regulatory control period where:
- (i) a *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate) to which the *revenue cap* applies is, or is reasonably expected to be, materially adversely affected as a result of an event beyond the control of the *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate) the effects of which were not foreseen when the *revenue cap* was set;
 - (ii) the benefits of varying the *revenue cap* outweigh the detriment resulting from varying the revenue cap; and
 - (ii) the *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate) has requested in writing that the revenue cap be varied and the request has not been withdrawn in accordance with clause 6.2.4(e3).

Whether or not a *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate) requests a variation pursuant to this clause does not foreclose that *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate) seeking, and the ACCC making, allowance or further allowance for the effects of the event in a subsequent *revenue cap* decision for that *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate).

- (e2) In varying a revenue cap under clause 6.2.4(e1), the ACCC must vary the revenue cap to enable the *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate) to recover the additional costs (net of any savings to the *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate)) which arise in respect of the regulatory control period from the material adverse effect of the event which has triggered the variation. Such additional costs include, without limitation, additional return on investment, return of investment and operating and maintenance expenses.

After cl 6.2.4(e) insert:

- (e3) A *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate) may by notice in writing to the ACCC withdraw its request to vary a revenue cap made pursuant to clause 6.2.4(e1) at any time prior to the ACCC varying the revenue cap in accordance with clause 6.2.4(e2). If the request is withdrawn, the existing revenue cap continues to apply.

Changes to explicitly provide for cost pass-throughs in accordance with a revenue cap decision.

Insert following clause 6.2.4(f):

- (g) In setting the revenue cap pursuant to clause 6.2.4(a), the ACCC may provide for amounts to be included in the revenue cap to enable the recovery by the *Transmission Network Owner* or *Transmission Network Service Provider* of the actual or efficient costs (net of any savings to the *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate)) of each event or circumstance (a “pass through event”):
- (1) for which full allowance has not been otherwise made in the revenue cap; and
 - (2) which is of a nature identified in the revenue cap decision as being an event to which this clause applies (including without limitation: tax changes, terrorist events or changes in service standards).
- (h) In respect of revenue caps for which the ACCC has provided pursuant to clause 6.2.4(g) for pass-through events, the ACCC may require the *Transmission Network Owner* or the *Transmission Network Service Provider* (as appropriate) to provide information to enable the ACCC to be satisfied that:
- (1) the pass-through event has been triggered; or
 - (2) the *Transmission Network Owner* or the *Transmission Network Service Provider* (as appropriate) has correctly quantified the actual or efficient costs of the pass-through event.
- Once the ACCC is satisfied of these matters, the revenue cap is to be adjusted by the actual or efficient costs of the pass through event (net of any savings to the *Transmission Network Owner* and/or *Transmission Network Service Provider* (as appropriate))
- (i) The pass-through arrangements provided for in revenue cap decisions made prior to [insert the date of the Code change] have full effect notwithstanding that the decisions were made prior to clauses 6.2.4 (g) and (h) taking effect.