

Victorian Energy Networks Corporation

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Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H166
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By Email: submissions@aemc.gov.au

24 February 2006

Dear John

Submission on the Dispute Resolution Process for the *Regulatory Test*

VENCorp welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) rule change consultation on the Dispute Resolution Process for the *Regulatory Test*.

VENCorp supports the principles of streamlining the dispute resolution process for the *Regulatory Test*. In considering the proposed Rule changes, a number of improvements and clarifications have been identified and are explained below. We have also identified a number of drafting issues.

The redrafting of the dispute process doesn't provide the guiding principles that provided a framework managing a dispute, previously covered by clauses 5.6.6(i) and 8.2.1. The new Rules simply establish timeframes under which the process must be completed. To ensure an open and transparent process, VENCorp suggests that a similar framework needs to be established within the Rules to guide the AER in managing disputes.

The clauses for raising and hearing disputes and for managing applications are now pieced together in the new drafting, making the process and obligations under clause 5.6.6 unclear. Given the proposed changes to clause 5.6.6, sub-sections could be created and would substantially improve the clarity and processes of this section of the rules. These sub-sections could cover:


- ❖ Establishment of a new large transmission network asset,
- ❖ Disputes raised in relation to an application notice for a large transmission network asset, and
- ❖ Application for determination by the AER for a new large transmission network asset.

In the drafting of the new clauses, additional parties (the AEMC, Connection Applicants and Intending Participants) have been included as parties who can raise a dispute regarding a final report to establish a new large transmission network asset. It seems logical that these parties should also be given the opportunity to comment on an application notice to establish a new large transmission network asset. Therefore, VENCorp believes that the Rules regarding the development of such a proposal (eg clause 5.6.6 (b)) should be amended to include these parties.

Finally, the proposed Rules seem to contain a number of drafting errors. Comments on these and other minor matters have been included in the attachment to this letter. VENCORP believes that the proposed Rules need to be considered and re-drafted for presentation back to the industry for due consideration.

Should you have any questions please do not hesitate to contact Mr Mark Riley on ☎(03) 8664 6602.

Yours sincerely

A handwritten signature in black ink, appearing to read "M. Zema". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Matt Zema
Chief Executive Officer

Att.

Attachment – Detailed Comments on Dispute Resolution process for the *Regulatory Test*

Proposed Rules - Drafting Errors

Defined terms (eg connection and network) have not been shown as defined (ie italicised) and sections of existing rules have been deleted without reference, eg 5.6.6(h), 5.6.6(l), 5.6.6(q).

While some of these deletions are references to clause 8.2, others have been deleted for no apparent reason. VENCORP believes that a review of the changes should be conducted and additional explanation provided on the proposed Rule changes prior to the next round of consultation.

For example, clauses 5.6.6(j) and 5.6.6(k), which relate to the publication of a final report following a dispute process, have been deleted in their entirety. VENCORP believes that these clauses should be retained, but amended to remove reference to the *DRP*.

Item 10 Glossary – Interested Party

Item 1 – the definition of interested party has been amended to remove the reference to parties in a determination of plant standards.

A new item 1A has been included to define interested parties for clause 5.6.6. VENCORP suggests that the *AEMC*, *Connection Applicants* and *Intending Participants*, could also be included in this amendment to the definition, to simplify the drafting throughout clause 5.6.6.

A new item 2 has been added for no apparent reason:

2. Deleted in the conversion of the Code into Rules.

Item 5 (previously item 4) has been modified by changing '...structure of *Participant Fees*' to structure and *Participant Fees*.

Reference to Clause 5.6.5B – Planner of Last Resort

Throughout the new draft rules reference has been made to clause 5.6.5B(h). There is a consultation concurrently underway on the new clause 5.6.5B - Planner of Last Resort. VENCORP has made a number of comments on the proposed drafting of these Rules and this specific reference may not be correct following the completion of the consultation on clause 5.6.5B. In particular, the proposed drafting of clause 5.6.6 allows the AEMC to issue an invoice for assessing the report and providing a Determination, including those reports prepared under clause 5.6.5B - Planner of Last Resort.

As a report prepared under clause 5.6.5B has been undertaken at the direction, and with the involvement, of the AEMC to help eliminate a constraint, VENCORP does not believe that it is appropriate for the *applicant* to be charged for the assessment. Therefore reports prepared under clause 5.6.5B should be specifically excluded.

Exclusions – Clause 5.6.6(h)

The discussion paper raises the issue of excluding persons from initiating a dispute for reasons of personal detriment or personal property rights. The amended clause 5.6.6 (h) only refers to property rights, not personal property rights, as was considered in page 4 of the discussion paper.

VENCORP believes that these terms need to be clarified within the Rules to ensure correct legal application.