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4 JUL 2007BP Energy Asia Pte. Limited
ABN 77 549 205 033
1 Harbourfront Avenue
#02-01 Keppel Bay Tower
Singapore 098632

19 June 2007

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

Dear John,

**Resubmission of Request for Amendment to the National Electricity Rules
dated 19 June 2007****Re: BPEA's ability to meet the Trader registration requirements of NEMMCO**

I refer our formal request vide a letter dated 24 March 2007 under section 91(1) of the National Electricity Law by BP Energy Asia Pte. Limited ABN 77 549 205 033 ("BPEA") for an amendment to the National Electricity Rules to be made as a "non-controversial Rule" (as defined in section 87 of the National Electricity Law).

Due to additional information coming to our attention that would support the BPEA proposal, I wish to withdraw our submission letter dated 24 March 2007 and formerly resubmit the request for amendment to the National Electricity Rules.

The rule amendment is intended to give persons not resident in, and without a permanent establishment in, Australia (including BPEA) the ability to meet the Trader-registration requirements of NEMMCO and in turn enable BPEA to participate in the Settlement Residue Auctions as described in clause 3.18 of the National Electricity Rules.

Please contact Matthew Nimmo (BP Australia on 03 9268 3154) if you require any further information.

Yours sincerely,

Gary Rennie
Director
BP Energy Asia Pte. Limited

Request for Amendment to the National Electricity Rules

BP Energy Asia Pte. Limited

ABN 77 549 205 033

Date: 19 June 2007

Request for Amendment to the National Electricity Rules

1. Name and address of persons making the request

[Refer Regulation 8(1)(a)]

This request is made under section 91(1) of the National Electricity Law by BP Energy Asia Pte. Limited ABN 77 549 205 033 ("**BPEA**").

BPEA is a company incorporated in Singapore and is a wholly owned subsidiary of BP Global Investments Limited, which in turn is wholly owned by BP plc.

BPEA's current business activities involve trading financial derivatives relating to the Australian National Electricity Market ("**NEM**").

BPEA's address is:

1 Harbourfront Avenue
#02-01 Keppel Bay Tower
Singapore 098632

2. Description of proposed Rule amendment

[Refer Regulation 8(1)(b)]

The proposed Rule change is to amend clause 2.5A(b)(2) of the National Electricity Rules ("**Rules**"), and it is proposed that the Rule change be made as a "non-controversial Rule". By this Rule change, a person registered by NEMMCO as a Trader will not be required to be resident in, or have a permanent establishment in, Australia whilst participating in the market.

Currently, under clause 2.5A(b)(2) of the Rules a person who is registered by NEMMCO as a Trader is to be treated as a Market Participant for the purposes of, inter alia, clause 3.3.1. Specifically, clause 2.5A(b) states:

"A person who is registered by *NEMMCO* as a *Trader* is:

...(2) to be treated as a *Market Participant* for the purposes of clauses 3.3.1 and clause 3.15 (as applied and modified by clause 3.18.4) provided that a person who is registered by *NEMMCO* as a *Trader* is not to be regarded as a *Market Participant* for the purposes of clause 3.15.1(b); and..."

Under clause 3.3.1(a), each Market Participant whilst participating in the market must be resident in, or have a permanent establishment in, Australia.

To effect the proposed Rule change, clause 2.5A(b) of the Rules could be amended to state:

“A person who is registered by *NEMMCO* as a *Trader* is:

...(2) to be treated as a *Market Participant* for the purposes of clause 3.3.1 and clause 3.15 (as applied and modified by clause 3.18.4) provided that a person who is registered by *NEMMCO* as a *Trader* is not to be regarded as a *Market Participant* for the purposes of clause 3.3.1(a) and clause 3.15.1(b); and...”

In the alternative, that clause could be amended to state:

“A person who is registered by *NEMMCO* as a *Trader* is:

...(2) to be treated as a *Market Participant* for the purposes of clauses 3.3.1(b), 3.3.1(c) and 3.3.1(d) and clause 3.15 (as applied and modified by clause 3.18.4) provided that a person who is registered by *NEMMCO* as a *Trader* is not to be regarded as a *Market Participant* for the purposes of clause 3.15.1(b); and...”

3. Issue concerning existing Rule and how proposed Rule will address this issue

[Refer Regulation 8(1)(c)]

3.1 Summary of Issue

BPEA is a company incorporated and resident in Singapore.

BPEA currently trades electricity financial derivatives relating to the NEM. It facilitates this activity through both Over-the-Counter Contracts with NEM Participants (under ISDA Master Agreements) and Futures Contracts through the Sydney Futures Exchange.

To remain competitive in this derivatives market and to provide a commercial basis for its continued participation in that market, BPEA needs to be capable of dealing with all products available to its competitors. As such, BPEA wishes to participate in NEMMCO's Settlement Residue Auctions as described in clause 3.18 of the Rules.

To participate in these Auctions, BPEA must be able to enter into an auction participation agreement and settlement residue distribution agreements ("**SRD agreements**") with NEMMCO.

- Under clause 3.18.2(b) of the Rules, NEMMCO may only enter into SRD agreements with (relevantly) a Market Customer, a Generator or a Trader.
- Under clause 3.2 of the auction rules, NEMMCO will only enter into an auction participation agreement with a person (relevantly) registered under the Rules as a Generator, Market Customer or Trader.

Clearly BPEA, not carrying on the relevant activities, would not seek registration as a Market Customer or Generator under the Rules. BPEA would therefore seek to register as a Trader.

As set out above in section 2, for a person to be registered by NEMMCO as a Trader, they must whilst participating in the market (with "market" here being taken to mean the Settlement Residue Auctions) be resident in, or have a permanent establishment in, Australia.

BPEA is not resident in, and does not have a permanent establishment in, Australia. BPEA is therefore unable to participate in Settlement Residue Auctions. In all other respects, BPEA would be in a position to register as a Trader and to participate in Settlement Residue Auctions.

As described above, BPEA is otherwise an active participant in the electricity financial derivatives market, contributing to the liquidity and depth of that market.

It is submitted that this exclusion of BPEA, and any other person not resident in, or with a permanent establishment in, Australia, is unnecessary and inappropriate, for the reasons set out in sections 3.4 and 4 below.

3.2 How the issue can be addressed

BPEA propose a Rule change that will exclude clause 3.3.1(a) from the clauses for which a Trader will be treated as a Market Participant under clause 2.5A(b)(2) of the Rules. The proposed Rule change is set out in section 2 above. This will enable a person not resident in, or without a permanent establishment in, Australia to register under the Rules as a Trader and to participate in Settlement Residue Auctions.

3.3 Non-controversial Rule change

BPEA recommend this request for a Rule change as a "non-controversial Rule", which is defined in section 87 of the National Electricity Law to mean a Rule that is unlikely to have a significant effect on the NEM. The proposed Rule change is unlikely to have a significant effect on the NEM because the Settlement Residue Auctions are not a core aspect of the

NEM as a whole and increasing the number of potential participants in those auctions will not have any material effect on power system security or administration of the wholesale exchange.

3.4 Function of clause 3.3.1(a)

It is understood that the prudential requirements set out in clause 3.3 of the Rules are intended to assist NEMMCO to manage the financial risks inherent in administering the NEM.¹ In this respect, it is submitted that the requirements of paragraphs (b), (c) and (d) of clause 3.3.1 are indeed essential to the prudent management of those risks.

It is further submitted that:

- paragraphs (b), (c) and (d) of clause 3.3.1;
- the other clauses with which a Trader must comply, in particular clauses 3.15 and 3.18; and
- the provisions of the auction participation agreement (the standard version of which is set out in the auction rules), and in particular clause 6.2 of that agreement by which NEMMCO ought not to have a financial exposure to an Auction Participant,

serve adequately to manage the financial risks associated with the participation of Traders in the Auctions, thereby promoting efficient investment in electricity services.

It is submitted that the only benefit to NEMMCO of paragraph (a) of clause 3.3.1 is to enable it to serve notices on a Market Participant in person and on a timely basis without leaving Australia. It is further submitted that to the extent that NEMMCO does derive a benefit from this paragraph, such benefit is not material, and in particular has no material impact on managing the financial risks associated with administering the NEM or in otherwise promoting efficient investment in electricity services.

Indeed, BPEA notes that to date its status as a foreign-domiciled corporation has presented no obstacle to it entering into ISDA Master Agreements with a number of NEM participants in order to participate in the Over-the-Counter financial derivatives market.

4. How the proposed Rule change will contribute to the NEM objective

[Refer Regulation 8(1)(d)]

4.1 The objective of the National Electricity Market

¹ See for example NEMMCO, 'Australia's National Electricity Market: Trading Arrangements in the NEM', 2004.

Clause 7 of the National Electricity Law states:

The national electricity market objective is to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.

4.2 Contribution to the objective of the National Electricity Market

BPEA submits that allowing a person not resident in, and without a permanent establishment in, Australia (for the purposes of this section, referred to as a “**foreign-domiciled corporation**”) to register as a Trader and to participate in Settlement Residue Auctions would contribute to the national electricity market objective (“**NEM objective**”)

Market depth and liquidity

It is submitted that the liquidity and depth of the Australian electricity financial market have been declining recently due to a number of factors, including:

- limited participation of intermediaries and proprietary traders such as BPEA;
- recent merger and acquisition activity, on the back of foreign companies exiting their Australian investments and State Governments selling off their electricity assets, resulting in a decrease in the number of NEM Participants trading in the financial market; and
- a trend for electricity retailers and generators to vertically integrate their businesses and therefore reduce their hedge requirement volumes within the financial markets.

In contrast, the principal benefits of permitting foreign-domiciled corporations to participate in Settlement Residue Auctions include:

- increasing the number of potential counterparties participating in these Auctions, enabling prices bid for settlement residue units, and therefore the proceeds received by the Network Service Providers, to reflect more accurately their real value to the market;
- increasing the liquidity and depth of the Australian electricity financial market, reducing the cost of trading and more accurately reflecting the true value of wholesale electricity in the NEM; and
- enabling foreign-domiciled corporations to gain access to the full range of potential hedging transactions, reducing the significant financial risks borne by counterparties trading in the NEM,

all of which would promote efficient investment in electricity services and ultimately would serve to reduce prices for consumers of electricity.

In further support of the above, BPEA refers to the following:

- **Request for Participation Derogation to the National Electricity Rules regarding EnergyAustralia's participation in Settlement Residue Auctions, dated 13 April 2006**

Under section 4.2 of this rule proposal, EnergyAustralia and NEMMCO submit a similar market depth and liquidity argument, to that of the above, for the contribution to the NEM objective.

- **Australian Energy Market Commission ("AEMC") Rule Determination, dated 16 June 2006**

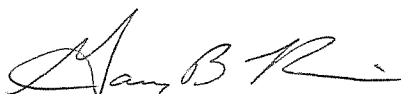
The final rule determination by the AEMC for the National Electricity Amendment (EnergyAustralia Participation Derogation (Settlement Residue Auctions)) Rule 2006 specifically states under the heading "Assessment of the Rule: the Rule making test and the national electricity market objective":

"...The Commission is of the view that EnergyAustralia's participation in the SRA market will increase the number of contract counterparties available to EnergyAustralia, and will also increase the level of competition for SRA units in general. The increased competition will improve the potential for efficient price outcomes from the SRA market, and ultimately supports greater efficiency in the overall market for financial hedge instruments. This leads to benefits for end users in the NEM through more efficient energy market prices.

End users are also likely to benefit from more efficient auction outcomes where auction proceeds are passed through to end users as an offset to network use of system charges.

... The Commission is therefore satisfied that it is in the long term interest of electricity consumers, and that it will contribute to the achievement of the national electricity market objective, for this participant derogation to be approved, allowing EnergyAustralia to participate in the SRA process."

Signed for and on behalf of BP Energy Asia Pte. Limited by:



Gary Rennie

Director

Date: 24 April 2007