

07 December 2007

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

Dear John,

Draft National Electricity Amendment (Registration of Foreign Based Persons and Corporations as Trader Class Participants) Rule 2007

I refer to the above AEMC Draft Rule dated 18 October 2007 ("Draft Rule") and more specifically the additional clause 3.18.1(e).

I would like to seek clarification from the AEMC in terms of the wording of clause 3.18.1(e) and its effect on the BP Energy Asia Pte Ltd ("BPEA") appointed Australian agent with regards to its obligations under the Corporations Act 2001 (*Commonwealth*) ("Corporations Act").

1. The Issue

BP Australia Pty Ltd ("BPA") in its capacity as an agent for BPEA as defined under the Draft Rule 2.5A(c)(2) is not licensed to deal derivatives under the Corporations Act.

As such, BPA could be regarded as dealing in derivatives and subsequently in breach of the Corporations Act if, as the agent for BPEA, it is required to be a party to each SRD agreement between NEMMCO and the Trader (ie. BPEA) as required under clause 3.18.1(e)(1) of the Draft Rule.

2. Required Clarification

Under clause 3.18.1(e)(1) of the Draft Rule it states:

"the Trader must ensure that the agent is a party to the auction participation agreement and the SRD agreement between NEMMCO and the Trader"

If the agent is a party to the Auction Participation Agreement ("APA") does this imply that it is automatically a party to each SRD Agreement transacted between NEMMCO and the Trader? ***That is, is the Trader and its agent both required to be classified as an "Auction Participant" as defined within the APA?***

If this is indeed the intention of the Draft Rule, then BPA in its capacity as agent for BPEA as defined under the Draft Rule 2.5A(c)(2) would be in breach of the Corporations Act on the grounds that it is participating in the settlement residue auctions and has entered into a SRD agreement as per clause 4.2 of the APA.

Accordingly, BPEA requests that the AEMC consider an amendment to the Draft Rule that would rectify this issue.

3. The Purpose of Clause 3.18.1(e)

In the AEMC's Draft Rule Determination dated 18 October 2007, it states in the Summary:

"...The draft Rule aims to also give NEMMCO (and other Registered Participants) an avenue for legal recourse in the event of a defaulting foreign based Trader, which the Commission considers to be the main risk to the NEM from allowing foreign based Traders to participate in settlement residue auctions..."

To mitigate this risk the AEMC proposes a solution under section 2.4 of the said Draft Rule Determination:

"...the Commission proposes that the draft Rule require foreign based Traders to have both a registered office in Australia and appoint an agent which is authorised to accept service of process and notices on behalf of the foreign based Trader. Similarly to a local agent appointed for a foreign corporation under the Corporations Act 2001 (Commonwealth), the local agent could also be held liable for the actions of the Trader..."

Accordingly, clause 3.18.1(e) was incorporated into the Draft Rule to balance the exposure of NEMMCO and other participants in the NEM to the increased legal, financial and enforcement risks associated with foreign based Traders participating in settlement residue auctions.

4. BPEA Proposed Amendment to the Draft Rule

BPEA submits to the AEMC a proposed minor amendment to the Draft Rule that would allow BPA to act as agent for BPEA as defined under the Draft Rule 2.5A(c)(2) whilst maintaining the risk mitigation balance required by the AEMC as outlined within point 3 above.

Proposed Draft Rule amendment:

Clause 3.18.1 Settlement residue concepts

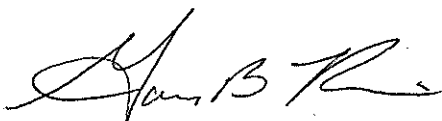
After clause 3.18.1(d), insert:

- (e) Where a person registered as a Trader is required to appoint an agent for the purposes of rule 2.5A(c)(2):
 - (1) the Trader must ensure that the agent is a party to the auction participation agreement between NEMMCO and the Trader but only in the capacity of guarantor, to guarantee the Trader's obligations under the auction participation agreement including the payment obligations associated with any SRD agreement; and
 - (2) NEMMCO and the Trader must ensure that the auction participation agreement provides that the Trader and the agent are liable in relation to the obligations of the Trader under the auction participation agreement in the manner referenced under subparagraph (1).

As the payment obligation in relation to any SRD agreement arises under clauses 4.2 and 5 of the auction participation agreement, we believe this amendment will address your concerns.

If you have any further queries on the above please contact Matthew Nimmo at BP Australia on 03 9268 3154.

Yours sincerely,



Gary Rennie
Director
BP Energy Asia Pte. Limited