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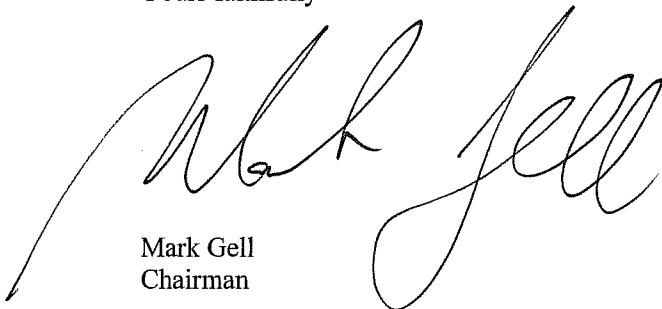
9<sup>th</sup> February 2006

Dr. John Tamblyn  
Chairman  
Australian Energy Market Commission  
P O Box H166 Australia Square  
NSW 1215

Dear Dr. Tamblyn,

Please find attached the submission from MEU Inc. on the National Electricity Rules - Rule Change Request to the National Consumers Electricity Advocacy Panel

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Gell', written in a cursive style.

Mark Gell  
Chairman

Level 9, 92 Pitt Street  
Sydney NSW

**MAJOR ENERGY USERS INC**

**Australian Energy Markets Commission**

**National Electricity Rules**

**Clause 8.10 - ADVOCACY PANEL**

**Comments on the Proposed Rule Change**

**On behalf of**

**EMRF, ECCSA and EUCV**

**February 2006**

**Assistance in preparing this submission by the Major Energy Users Inc was provided by  
Headberry Partners Pty Ltd and Bob Lim & Co Pty Ltd.**

**Preparation of this report has been partly funded by**

**The National Electricity Consumers Advocacy Panel**

**The support of the Advocacy Panel is gratefully acknowledged by the MEU and the authors.**

**The content and conclusions reached are entirely the work of the Major Energy Users Inc and its  
consultants.**

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## Major Energy Users: Advocacy Panel Rule Change

### Executive Summary

The Major Energy Users Inc. strongly supports the proposed Rule change which provides for increased attention to governance and oversight that the AEMC will provide to the Advocacy Panel.

All appointments to the Panel must be strictly independent and not representative of any sectoral interests, directly or indirectly. This is critical if the new Panel is to meet the governance and accountability requirements directed by the MCE.

Certain guiding **principles** for good governance and accountability should be provided to shape the operations of the Panel. These are provided in the submission.

Whilst principles are clearly important, **guidelines on behaviour** are more important and the chairperson should develop and publish these. These guidelines are provided in the submission.

Specific suggestions are provided on the draft Rule in relation to:-

- Chairperson's guidelines on Panel behaviour.
- Appointment of Chairperson to have regard to the views of consumers and their representatives.
- Consumers and their representatives should be consulted on the AEMC guidelines for appointment of Panel members, and on other appointments.
- The Panel should abide by a majority decision, with the Chairperson having a casting vote in the event of a tied vote.
- An onus should be placed on the Chairperson and Panel members to advise the AEMC should independence from AEMC, etc, cease to exist.
- The AEMC should remove any Panel member if the person fails to meet obligations imposed by the Rules as well as the Chairperson's guidelines in respect of members' obligations.
- Funding should specifically include matters coming before the ACT, the NEL or a full court.

- Co-funding guidelines should be appointed by the AEMC.

The MEU considers that its suggestions, together with the proposed Rule change will usher in a new Advocacy Panel with good governance and accountability requirements that will greatly assist consumer advocacy activities in the electricity market

## 1. Introduction

The Major Energy Users Inc. (MEU) welcomes the opportunity to provide its views on the proposed Rule change to implement governance and accountability changes to the National Consumers Electricity Advocacy Panel established under clause 8.10 of the National Electricity Rules.

The MEU represents major electricity users with major industrial operations in New South Wales, Victoria, South Australia, Queensland and Tasmania. Many of these operations are located in regional centres, and members' interests are synonymous with those of their many suppliers and their employees.

MEU members have had extensive experience with the operations of the previous National Consumers Electricity Advocacy Panel, as applicant for grants and in discussion of electricity issues impacting on major users. Our experiences with the Panel under its current constitution has led us to support the increased attention to governance and oversight that the AEMC will provide to the Advocacy Panel as a result of the proposed Rule changes. **In this regard, the MEU is strongly supportive of all appointments to be strictly independent and not representative of any sectoral interests, directly or indirectly. This is critical, if the new Panel is to meet the governance and requirements directed by the MCE.**

All MEU members receive monthly electricity bills which clearly detail that a portion of the payments to their retailer includes for a mandatory contribution to NEMMCo fees expressed in \$/MWh of electricity consumed. This clearly highlights the fact that it is consumers who contribute to the funding of the Advocacy Panel, and therefore appropriate that the funding is hypothecated to consumer advocacy interests in the electricity market.

As these payments to NEMMCo are allocated on the amount of electricity consumed, it should therefore be clear to the AEMC that the bulk of contributions to the Advocacy panel funds are derived from large energy consumers. Thus for the MCE commentary attached to the suggested Rule changes to refer to Public Funds, is somewhat misleading, as the funds are clearly provided by electricity consumers.

## 2. Guiding Principles for the Panel

The MEU (also in earlier submissions to the Ministerial Council on Energy on Consumer Advocacy in the National Electricity Market) strongly supports the need for certain guiding principles that should apply to the Panel, especially in relation to governance and accountability.

These principles should comprise:

- independence and objectivity, in terms of decision making by Panel members;
- accountability, in that grants approved must meet the guidelines and criteria approved for funding;
- achieving outcomes, in that advocacy activities are performed within the allowed time constraints, and that clearly identified outcomes of the advocacy are achieved;
- transparency and communication with stakeholders, in terms of decision making by the panel, deliberations by the Panel and interactions of Panel members with wider constituencies; and
- consistency , in terms of applying criteria and guidelines, to avoid, inter alia, ad hoc decision making

Whilst principles are clearly important, more important is the effect of **behaviour**. In this regard, clear guidelines (and these may be left to the Chairperson to develop and publish) are required on the need:

- by the panel to avoid any perception of conflicts of interest e.g. no Panel member should obtain any direct or indirect financial benefit from grants or a Panel member should be required to stand aside from decision making on an application should there be any issue involving pecuniary interests, or, be involved in any way with shaping applications;
- for Panel member obligations for good governance and accountability; and
- for outcomes to be established as a result of the funding provided

### **3. The Draft Rule Changes**

The MEU strongly supports the continuation of the National Consumers Electricity Advocacy Panel and the proposed changes to improve the governance and accountability arrangements. With respect to the specific draft rule changes, the MEU makes the following comments:

#### **8.10.1 Establishment of the Advocacy Panel**

The MEU supports the prescribed role and functions of the Advocacy Panel. In addition to the items specified in 8.10.1 (a)(1) to (5), we consider that the chairman of the Panel should develop and publish guidelines for Panel members, consistent with good governance and accountability principles. All Panel members should be required to uphold certain modes of behaviour akin to those pertaining to directors' obligations under corporations' legislation. The MEU expects that Panel funds should be protected as best as possible, and be directed to fostering consumer advocacy activities that contribute to improving economic efficiency in the electricity market, sustaining efficient investments, and sustaining the competitiveness of downstream industries.

#### **8.10.2 Constitution of the Advocacy Panel**

It is noted that changes require the AEMC to appoint the Advocacy Panel Chairperson, but that it must have regard for the person recommended by the MCE. Whilst this principle is supported, previous experience regarding the appointment of the Advocacy Panel Chairperson would indicate that the appointment of this person should also have regard to the views of consumers and their representatives. This will assist in ensuring consumers are comfortable with the capacity of the chair to deliver and meet the governance and accountability requirements that all participants appear keen to introduce to the Panel. Moreover it is consumers who provide the funding for the Advocacy Panel.

The new wording requires the AEMC to prepare guidelines for the appointment of the Advocacy Panel members. This would presumably result in the Chairperson being required to appoint the Panel members, which is appropriate.

As the funding is provided to ensure that consumer views are provided regarding issues in the NEM, it is essential that the



Panel members understand the issues which confront consumers. The achievement of this goal can be provided by:-

- Consumers being consulted regarding the establishment of the AEMC guidelines for appointment of Panel members.
- Consumers being consulted regarding the appointment of the Panel members by the Chairperson.
- The Panel Chairperson gaining approval from the AEMC Chairperson for each Panel member to be appointed.
- A requirement that the Advocacy Panel should meet regularly with consumer representatives to identify those issues which consumers see as important. It is essential that the Advocacy Panel understands what consumers see as the issues, rather than follow its own views as to what it considers important.

Accepting the qualifications made above, the items under 8.10.2 are supported. Comments are also provided to improve the modus operandi of the Panel, viz.:

- The Panel should abide by a majority decision, with the Chairperson having a casting vote in the event of a tied vote (8.10.2.(a)).
- Whilst it is important that the AEMC must, to the extent that is reasonably practicable, ensure the persons approved to the Panel are independent of the AEMC, NEMMCo, etc and must remove persons who cease to be independent (8.10.2(b)), it would be useful to also place an onus on the Chairperson and Panel Members to advise the AEMC should such independence cease to exist, or because of any other extenuating circumstances that may provide any, or even a perception of, conflicts of interest.
- With respect to 8.10.2(d), the AEMC should remove any Panel member if the person fails to discharge the obligations imposed by the Rules or in terms of 8.10.2(e), as well as the Chairperson's guidelines in respect of members' obligations as indicated above.
- With respect to 2.10.2(e), we suggest the AEMC should empower the Chairperson to develop and publish guidelines regarding Panel members' obligations.

### **8.10.3 Functions of the Advocacy Panel**

The proposed clause is supported. However, whilst funding for projects relating to the market, Rules, AEMC, NEMMCo, AER, etc is supported, clause 8.10.3.(d)(2) must be extended to permit funding over a wider base of activities.

The Rule changes relate only to activities by AER, AEMC and NEMMCo. However, there are those activities of the ACCC which also impinge on the NEM. Such activities might include anti-competitive behaviour by electricity Participants, as well as merger (market concentration) issues to which electricity consumers may be exposed.

Additionally there will be instances where an issue access arrangement goes to appeal, to either the Australian Competition Tribunal, the National Electricity Tribunal, or to a full court (such as the appeal by Murraylink against the decision relating to SNI (the SA-NSW interconnector). Such matters are of intense interest to consumers, so that the right to provide funding for such activities should be permitted to the Advocacy Panel. This will help redress the current imbalance whereby consumers are overwhelmingly absent from appeals by network providers (and therefore unable to protect their interests) because of funding issues.

With respect to timing of applications (8.10.3(f)) there must be provision for emergency applications to be considered outside the quarterly schedule, as from time to time major issues do crop up that require funding but which time would have passed waiting for the next quarterly meeting of the Panel. A recent example of this concerns the review of revenue and pricing by the Expert Panel established by the MCE.

The proposed Rules retain the requirement for co-funding (clause 8.10.3(d)(4)) although an application for a waiver of this requirement is to be considered by the Panel. To reflect the extent of co-funding and the basis for any grant of full or partial waiver, the Advocacy Panel must develop guidelines for the application of co-funding and any waiver. Such guidelines should be approved by the AEMC.

09/02/2006