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Our Ref:

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H166
Australia Square NSW 1215

By email: submissions@aemc.gov.au

9 February, 2006

Dear Dr Tamblyn

Rule Change Request Advocacy Panel

The Public Interest Advocacy Centre (PIAC) wishes to submit the following comments on the proposal made by the Ministerial Council on Energy (MCE) for a change to the National Electricity Rules concerning the operation of the Advocacy Panel.

PIAC is an independent, non-profit legal centre based in Sydney. PIAC has established the Utility Consumers' Advocacy Program (UCAP) with funding from the NSW Government. The work of UCAP includes developing policy and advocating for the interests of residential consumers, particularly low-income consumers, in the NSW energy and water industries. Broad policy direction for UCAP comes from a community-based Reference Group.

We understand the proposed change to the Rules is intended to provide for transitional arrangements pending the incorporation into the *National Electricity Law* of future requirements for the Advocacy Panel. Nonetheless, we feel there are some key elements of the proposed change to the Rules which require comment at this point.

What clearly is missing from the proposal is an obligation for the Panel to focus on the interests of, and applications concerning, small to medium end-users. This new focus for the Panel was part of the decision made by the MCE for the new arrangements for the Panel and as announced in *Energy Market Reform Bulletin No. 57* released on 15 December 2005.

Such a focus is not a minor matter for the new arrangements. The question of an appropriate balance in support for advocacy between different classes of end-users has been a major point of debate throughout the past 18 months of national consultation over the future of advocacy in

the national market. PIAC recognises the decision of the MCE allows for continued support for advocacy by larger end-users. However, the proposed new arrangements reflect the status quo whereby the interests of small and medium end-users have received far less priority by the Panel. This appears to contradict the decision of the Ministers announced on 15 December.

PIAC supports the decision of the MCE to improve accountability and governance of the Advocacy Panel. In saying this we do not intend any particular comment on present or past members of the Panel. Experience with the current arrangements has shown, however, that important improvements can and should be made.

Our concern with the proposed change to the Rules is that in some respects it has failed to reconcile the desire for improved governance with the role of the Commission as the body responsible for the Panel. The introduction of greater accountability to the AEMC for the Panel and its members is welcomed. In our view the AEMC is more than capable of exercising its proposed new roles in appointing members, overseeing the operations of the Panel and approving its budget.

Yet, the proposed change goes much further than what is necessary to achieve these outcomes. As an example, the proposal to stipulate, in the Rules, a deadline by which successful applicants must publish a final report seems to us to be fine detail of a kind best left to the AEMC to determine with the Chair of the Panel. Likewise, it would be appropriate for requirements as to the content of applications to be determined by the Panel in consultation with the AEMC. There exist numerous examples of grant-making activities from which the Commission and the Panel could draw.

In our view the more important question is not the type of information provided in applications but the quality. Since this is a matter which clearly must be left to the discretion of the Panel and the AEMC it seems to us to serve no real purpose for a change to the Rules to dictate the categories of information which will be required.

We make the observation that proposing to include this level of detail in the Rules is a very interesting approach in the context of ongoing debates about the appropriate level of 'discretion' which should be given to regulators in the national energy market.

Also of concern to us are the proposed new clauses 8.10.3 (f) and (g). It appears the proposed change to the Rules may have the effect of limiting the frequency of meetings of the Panel. We cannot think of a reason why this would be a desirable change from the current arrangements.

The proposed 8.10.3 (g) also raises issues of the role of the AEMC with its requirement for an independent auditor to be appointed to examine the affairs of successful applicants. Again, PIAC supports improved governance and accountability - including of those receiving funding for the Panel. However, we believe it is more appropriate to give to the AEMC the power determine the circumstances under which audits would be required. A reasonable approach in the case of smaller grants of funding to reserve the right to require an audit rather than imposing the obligation in all cases.

More importantly, it should be recognised that many community groups and potential applicants for funding already have established a practice of appointing and paying independent auditors to examine and report on their financial affairs. In many cases this is done at least partly to fulfill the requirements of other funding bodies. For PIAC it would be preferable to have the independent auditor already appointed by our governing Board also tasked with preparing reports on the acquittal of any grants from the Panel. This, too, points to the need for some matters of governance and administration to be left to the discretion of the AEMC rather than being incorporated into the Rules.

Yours sincerely
Public Interest Advocacy Centre Ltd

A handwritten signature in black ink, appearing to be 'JW', with a long horizontal flourish extending to the right.

Jim Wellsmore
Senior Policy Officer