

29 January 2010

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

By email: [submissions@aemc.gov.au](mailto:submissions@aemc.gov.au)

Dear John,

**Ref: ERC0093: Submission on draft Rule determination: Early Implementation of Market Impact Parameter**

Grid Australia welcomes this opportunity to make this submission in response to the Commission's draft Rule determination and draft Rule to allow the early introduction of the market impact component of the service target performance incentive scheme.

Grid Australia concurs with the Commission's findings that the early introduction of the market impact component will promote the National Electricity Objective. Grid Australia can also confirm that Transend Networks Pty Ltd accepts the Commission's conclusion that it should continue to be excluded from the market impact component of the scheme.

Grid Australia acknowledges that the Commission has exercised its powers under section 99 of the National Electricity Law to propose a more preferable Rule, and is pleased to note that the draft Rule retains important elements of Grid Australia's original proposal. Grid Australia also believes that the Commission has taken a balanced approach to the issues raised during the consultation process, and has correctly excluded matters beyond the scope of the Rule change, such as the changes proposed by the National generators Forum to the existing scheme. Grid Australia therefore substantially supports the Commission's draft Rule and concurs with much of the discussion and analysis in the draft Rule determination.

There are three specific areas where Grid Australia does not accept the Commission's proposed approach, and would like to suggest improvements to the draft Rule. In particular, Grid Australia considers that:

- The Commission's proposed timeframe for the AER's determination is too lengthy and inflexible and could be reduced;

- The draft Rule should accommodate future revisions to the market impact component of the service target performance incentive scheme; and
- The draft Rule appears to exclude unintentionally ElectraNet, SP AusNet and Powerlink because these TNSPs are not currently subject to the March 2008 scheme.

Each of these matters are discussed in turn, and suggested marked –up changes to the draft Rule are provided as an attachment to this submission for the Commission’s further consideration.

### 1. Proposed timetable for the AER’s determination.

The Commission’s draft Rule determination explains<sup>1</sup> that its draft Rule does not specify a number of days within which the AER must make a determination. Instead, the draft Rule provides an overall three month timeframe for the AER’s determination as follows:

- A TNSP would be required to make an application at least four months prior to the requested start date of the market impact component; and
- the AER must make a determination at least one month prior to the start date.

The Commission notes that the draft Rule effectively provides the AER with approximately 60 business days for consulting on and assessing the TNSP’s proposal. In Grid Australia’s view, the timeframe allowed by the draft Rule does not recognise that data collection and outage classification will be undertaken by AEMO and the AER respectively, and therefore few, if any, data-related issues will arise. In addition, the process for setting the parameter values is defined by the Scheme and is substantially mechanistic. In particular, clauses 4.2(d), (e); and (f) of the Service Target Performance Incentive Scheme, March 2008, set out the basis on which market impact parameters must be set:

- (d) Subject to paragraphs (e) and (f) below, the proposed *performance target* must be equal to the TNSP’s average performance history over the most recent five years. The data used to calculate the *performance target* must be consistently recorded based on the *parameter* definition in appendix C.
- (e) The AER may approve a *performance target* based on a different period if it is satisfied that the use of a different period is consistent with the objectives in clause 1.4 of this scheme.
- (f) The proposed *performance target* may be subject to reasonable adjustment to allow for:
  - (1) statistical outliers
  - (2) the expected material effects on the TNSP’s performance from any changes to the age and ratings of the assets comprising the TNSP’s *transmission*

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<sup>1</sup> AEMC, Draft Rule Determination, Early Introduction of Market Impact Parameters, 10 December 2009, page 23.

*system* during the TNSP's next *regulatory control period* (compared to the age and ratings of the TNSP's assets comprising the TNSP's *transmission system* during the period used to calculate *performance targets*), and

- (3) material changes to an applicable *regulatory obligation*.

Clause 4.2(g) states that the AER may reject the proposed values where it forms the opinion that they are inconsistent with the objectives listed in clause 1.4 of the scheme, which are that the scheme:

- (a) contributes to the achievement of the *national electricity objective*
- (b) is consistent with the principles in clause 6A.7.4(b) of the NER
- (c) promotes transparency in:
  - (1) the information provided by a TNSP to the AER, and
  - (2) the decisions made by the AER
- (d) assists in the setting of efficient capital and operating expenditure allowances in its *transmission determinations* by balancing the incentive to reduce actual expenditure with the need to maintain and improve *reliability* for customers and reduce the market impact of transmission congestion.

Grid Australia considers that the AER's determination on a TNSP's market impact parameter is comparatively straightforward and does not warrant a 3 month or 60 business day timeframe. Grid Australia previously noted in its submission of 3 November 2009, that 30 business days is the required timeframe for the AER's assessment of a contingent project application, in accordance with clause 6A.8.2 of the Rules. Grid Australia considers that 40 business days is more appropriate than the 60 business days proposed by the Commission, and is more consistent with the timeframe put forward by the AER.

In addition, Grid Australia does not accept that the Rule should mandate a fixed 1 month period between the AER's determination and the commencement of the market impact component. Whilst some TNSPs may prefer a delayed introduction to accommodate changes to operational practices, this requirement will vary between TNSPs. By mandating a fixed 1 month period between the AER's determination and the commencement of the market impact parameter, the Commission is introducing a degree of inflexibility and may be delaying unnecessarily the benefits that the early introduction of the parameter could deliver.

Grid Australia considers that the draft Rule should explicitly state the timeframe in which the AER should make its determination (in Grid Australia's view, 40 business days), and should also provide flexibility for the TNSP to determine the start date of the scheme. These relatively minor changes could enable the market impact parameter to be introduced 2 months earlier than the Commission's draft Rule, with consequential benefits to customers. Grid Australia has proposed drafting changes to the Commission's draft Rule to indicate how Grid Australia's proposal could be accommodated.

## 2. Accommodating future revisions to the scheme

An important aspect of the draft Rule is how it accommodates future changes to the service target performance incentive scheme. In this regard, there are a number of possible approaches:

- (a) Subsequent revisions to the market impact component are not accommodated and would terminate the Rule (as per the draft Rule); or
- (b) Preserve the market impact component of the scheme as set out in the March 2008 version, even if this scheme is subsequently revised (as per Grid Australia's initial proposal); or
- (c) Adopt the latest version of the market impact component (as proposed by the AER in its submission of 29 September 2009, and as per Grid Australia's submission dated 3 November 2009); or
- (d) Introduce as a permanent feature the early implementation of latest version of the service target performance incentive scheme (as raised by the Commission's Consultation Paper 6 August 2009, and supported by the AER in its submission).

As noted above, Grid Australia amended its position on this issue from option (b) to option (c) in response to the AER's submission. In particular, Grid Australia accepted that the proposed Rule should refer to the latest version of the market impact component of the service target performance incentive scheme, rather than preserving the current March 2008 scheme.

In contrast to the position proposed by the AER and accepted by Grid Australia, the Commission has adopted option (a), which does not accommodate any changes to the market impact component of the scheme. The Commission comments as follows<sup>2</sup>:

"The AEMC concludes that the early implementation should apply to the market impact component of the incentive scheme as published by the AER in March 2008 only. The implementation of any future amendments to the scheme would be subject to clause 6A.7.4(f) of the Rules. Should market participants, including the AER, wish to implement a future amendment of the scheme earlier than that provided for under clause 6A.7.4(f), a Rule change request may be raised."

The draft Rule 11.[.]3(b) therefore states:

"If the AER publishes a service target performance incentive scheme after the commencement date which amends the market impact component of the service target performance incentive scheme, a Transmission Network Service Provider may not apply for the earlier application of the market impact component of the service target performance incentive scheme under the Amending Rule."

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<sup>2</sup> AEMC, Draft Rule Determination, Early Introduction of Market Impact Parameters, 10 December 2009, page 26.

Grid Australia considers that either options (b) or (c) are preferable to the Commission's adoption of option (a). In particular, options (b) and (c) ensure that the market impact component is capable of being introduced early.

Grid Australia notes that the Commission's approach would require a further Rule change proposal in the event that the market impact component of the service target performance incentive scheme is amended by the AER. Grid Australia notes that any changes to the market impact component are unlikely to change the Commission's finding that allowing the early introduction of the scheme will promote the achievement of the National Electricity Objective. On the other hand, the costs and time involved in submitting a new Rule change proposal to accommodate any change in the market impact component are not insignificant, and could further delay its timely introduction. On balance, Grid Australia considers that the Commission's draft Rule should adopt option (c), which accommodates revisions to the market impact component.

Alternatively, Grid Australia would be prepared to accept option (b) if it was felt sufficiently important to link the proposed Rule to the present scheme. Under either of these options, the proposed Rule will remain temporary and transitional in nature, and will effectively lapse once all TNSPs have been brought under the market impact component of the scheme, either through early application or at the time of their next revenue proposal.

In relation to option (d), Grid Australia concurs with the Commission's view in its draft Rule determination that the principle of introducing changes to the service target performance incentive scheme should not be a permanent feature of the Rules.

### **3. Unintended consequence from the proposed draft Rule**

The AEMC's draft Rules sets out the purpose of the Rule as follows:

"The purpose of this rule 11.[ ] is to allow a *Transmission Network Service Provider* to seek the earlier application of the *market impact component of the service target performance incentive scheme* from the AER than permitted under clause 6A.7.4(f)."

Rule 11.[.].3(a)(1) states that the amending Rule only applies:

"to a *Transmission Network Service Provider* which is subject to the *market impact component of the service target performance incentive scheme* (as set out in the AER's final decision on the *service target performance incentive scheme* dated March 2008)."

A possible unintended consequence of these provisions is that the draft Rule may not apply to ElectraNet or SP AusNet because these TNSPs are not currently subject to the service target performance incentive scheme, dated March 2008. The transitional provisions in clause 11.6.18 have the effect of applying to these TNSPs the AER's first proposed guidelines for the service target performance incentive scheme, dated 1 January 2007. Clause 11.6.18(c) states that the first proposed guidelines continue to apply unless revoked prior to the end of the current regulatory control period:

"Unless sooner revoked, a proposed guideline ceases to have effect in relation to a relevant provider at the end of the regulatory control period covered by a 2008 determination applying to the provider. For the avoidance doubt, a proposed guideline does not apply to or in respect of the making of a subsequent transmission determination."

A similar issue arises for Powerlink, as the transitional provisions in clause 11.6.12 have the effect of applying the Statement of Regulatory Principles and the service guidelines that applied at that time. As a consequence, the draft Rule may also not apply to Powerlink. Grid Australia notes that whilst the intention of the draft Rule determination is clear, it would be especially unfortunate if the drafting inadvertently excluded those TNSPs that are most likely to seek early implementation of the market impact component.

As noted in section 1 of this submission, Grid Australia has included some suggested drafting changes to the Commission's draft Rule to address the matters raised in this submission. We look forward to further opportunities to engage with the AEMC and stakeholders in the finalisation of this Rule change. If you require any further information from Grid Australia, please do not hesitate to contact me on 08 8404 7983.

Yours sincerely,



Rainer Korte  
**Chairman**  
**Grid Australia Regulatory Managers Group**

## Grid Australia's proposed marked-up changes to the Commission's draft Rule

### Part [ ] Earlier Application of Market Impact Parameters

#### 11.[ ] Rules consequent on the making of the National Electricity Amendment (Early Implementation of Market Impact Parameters) Rule 2010

##### 11.[ ].1 Definitions

For the purposes of this rule 11.[ ]:

**Amending Rule** means the National Electricity Amendment (Early Implementation of Market Impact Parameters) Rule 2010.

**cap** has the meaning given in the *service target performance incentive scheme* dated March 2008 or as subsequently amended by the AER.

**commencement date** means the day on which the Amending Rule commences operation.

**market impact component of the service target performance incentive scheme** means the market impact component described in the *service target performance incentive scheme* dated March 2008 or as subsequently amended by the AER.

**performance target** has the meaning given in the *service target performance incentive scheme* dated March 2008 or as subsequently amended by the AER.

**Powerlink** means the Queensland Electricity Transmission Corporation Limited (ACN 078 849 233), trading as Powerlink Queensland.

**proposal** means the proposal described in clause 11.[ ].3(c).

**transitional regulatory control period** means, in respect of Powerlink, the regulatory control period commencing on 1 July 2007 and ending on 30 June 2012.

##### 11.[ ].2 Purpose

The purpose of this rule 11.[ ] is to allow a *Transmission Network Service Provider* to seek the earlier application of the *market impact component of the service target performance incentive scheme* from the AER than permitted under clause 6A.7.4(f).

##### 11.[ ].3 Earlier application of the market impact component of the service target performance incentive scheme

(a) The Amending Rule only applies:

- (1) to a *Transmission Network Service Provider* which ~~will be~~ is subject to the *market impact component of the service target performance incentive scheme* at its next regulatory control period ~~(as set out in the AER's final decision on the service target performance incentive scheme dated March 2008)~~; and

- (2) for a *regulatory control period* which commenced before the commencement date and as at the commencement date, has not ended; or

in respect of Powerlink, for the transitional regulatory control period.

- (b) If the *AER publishes a service target performance incentive scheme* after the commencement date which amends the *market impact component of the service target performance incentive scheme*, a *Transmission Network Service Provider* may not apply for the earlier application of the amended market impact component of the service target performance incentive scheme under the Amending Rule.

### **Submission of proposal**

- (c) If a *Transmission Network Service Provider* seeks the earlier application of the *market impact component of the service target performance incentive scheme* than permitted under clause 6A.7.4(f), it must submit a proposal to the *AER*, at least 4 3 months prior to the proposed start date for the earlier application of the *market impact component of the service target performance incentive scheme*, setting out:
  - (1) a proposed start date for the earlier application of the *market impact component of the service target performance incentive scheme*; and
  - (2) the proposed values for a *performance target* and a *cap* for the purpose of determining the *market impact component of the service target performance incentive scheme* in accordance with the *service target performance incentive scheme* ~~dated March 2008~~.

### **Preliminary examination and determination of non-compliance with relevant information requirements**

- (d) If the *AER* receives a proposal, it must:
  - (1) make a determination on whether the proposal complies with the relevant information requirements of the *submission guidelines* in respect of the *service target performance incentive scheme* ~~dated March 2008~~; and
  - (2) notify the *Transmission Network Service Provider* of its determination within 10 *business days* of receiving the proposal.
- (e) A determination referred to in paragraph (d) must be accompanied by written reasons that set out the respects in which the proposal does not comply with the relevant information requirements of the *submission guidelines* in respect of the *service target performance incentive scheme* ~~dated March 2008~~ and the requirements that have not been complied with.



### **Resubmission of proposal**

- (f) If the *AER* notifies a *Transmission Network Service Provider* of a determination under paragraph (d), the *Transmission Network Service Provider*:
- (1) must, within 10 *business days* of that notice, resubmit its proposal in a form that complies with the relevant information requirements identified in that determination; and
- may only make changes to its proposal to address the matters raised in the determination under paragraph (d).
- (g) The *AER* must, as soon as practicable, publish on the *AER*'s website and make available for public inspection at the *AER*'s public office:
- (1) the proposal, submitted or resubmitted to it by the *Transmission Network Service Provider* under paragraphs (c) and (f), except to the extent that the *submission guidelines* provide that it will not be publicly disclosed (and, in that case, the relevant *Transmission Network Service Provider* has not otherwise consented); and
  - (2) an invitation for written submissions from any person on the proposal. The closing date for submissions must be not earlier than 10 *business days* after the invitation for submissions is published under this paragraph.
- (h) Any person may make a written submission to the *AER* on the *Transmission Network Service Provider*'s proposal within the time specified in the invitation referred to in paragraph (g).
- (i) The *AER* may publish, on the *AER*'s website and make available for public inspection at the *AER*'s public office, an issues paper examining the issues raised in connection with the proposal, at the same time as, or subsequent to, publication of the invitation to make submissions referred to in paragraph (g).

### **Making of final decision**

- (j) Subject to rule 6A.16(a), the *AER* must consider any submissions made on the proposal, or on any revised proposal, and must make a final decision in relation to the proposal in accordance with paragraphs (k) – (n).

### **Requirements relating to final decision**

- (k) A final decision made under paragraph (j) is a decision by the *AER* on whether it approves or refuses to approve the proposed values for a *performance target* or a *cap* for the *market impact component of the service target performance incentive scheme*, setting out reasons for the decision.

- (l) The AER must approve the proposed values for a *performance target* or a *cap* for the *market impact component of the service target performance incentive scheme* if it is satisfied that those values comply with the requirements of the *service target performance incentive scheme* ~~dated March 2008~~.
- (m) If the AER's final decision is to refuse to approve the proposed values for a *performance target* or a *cap* for the *market impact component of the service target performance incentive scheme*, the AER must include in its final decision a substitute value which it reasonably considers will comply with the relevant requirements of the *service target performance incentive scheme* ~~dated March 2008~~.
- (n) The *market impact component of the service target performance incentive scheme* will apply to the *Transmission Network Service Provider* who submitted the proposal from the proposed start date for the earlier application of the *market impact component of the service target performance incentive scheme* set out in the proposal, unless the proposed start date is amended by agreement between the AER and the *Transmission Network Service Provider*.

#### **Notice of final decision**

- (o) The AER must, as soon as practicable, but not later than 40 business days after receiving a compliant proposal ~~1 month before the proposed start date~~ for the earlier application of the *market impact component of the service target performance incentive scheme* set out in the proposal, *publish*:
- (1) notice of the making of the final decision; ~~and~~
  - (2) the final decision, including its reasons; and
  - (3) the start date.