

Mr John Tamblyn
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Dear Mr Tamblyn

TransGrid Submission: Proposed Last Resort Planning Power Guidelines

TransGrid has reviewed the Proposed Last Resort Planning Power Guidelines issued by the AEMC for the purposes of clause 5.6.4 of the National Electricity Rules (**the Proposed Guidelines**).

TransGrid makes the following submissions on the clauses of the Proposed Guidelines identified below (by reference to the headings used in the Proposed Guidelines).

Purpose and scope of the Proposed Guidelines

In clauses 1.3 and 1.5 of the Proposed Guidelines there are statements to the effect that the Proposed Guidelines "*provide guidance to Registered Participants and other interested stakeholders about the AEMC's processes and obligations in exercising its Last Resort Planning Powers*".

These statements are presumably intended to reflect the AEMC's wish to ensure its processes relating to the exercise of its Last Resort Planning Powers (LRPP) are made open and transparent (a position which TransGrid commends and supports). Nevertheless, under the Rules the LRPP Guidelines (rather than being guidelines for others to follow) are in fact first and foremost guidelines which:

- the AEMC must follow (in exercising its LRPP - see Rules 5.6.4(d)(2) and 5.6.4(o)(1), (2) & (4));
- the Inter-Regional Planning Committee (IRPC) must follow (in providing advice to the AEMC - see Rule 5.6.4(o)(3) &(4)); and
- a directed party must follow (i.e. a Registered Participant given a LRPP direction by the AEMC - see Rules 5.6.4(l)(2)).

TransGrid submits that it is important from the outset to ensure that the LRPP Guidelines are always developed consistently with the requirements of the Rules and, accordingly, requests that the relevant parts of clauses 1.3 and 1.5 be amended to reflect the above. In this way, the AEMC will be ensuring that consistency with the Rules is maintained, and that the risk of the LRPP Guidelines going beyond the scope intended for them (and, in the process, becoming unenforceable) is minimised.

Advice from the IRPC

We submit that the following further changes be made under clause 4 of the Proposed Guidelines to ensure greater transparency, accountability and procedural fairness.

Appointment of additional persons to IRPC for its advice on LRPP

The process in clause 4.2 for the AEMC to request NEMMCO to appoint additional members to the IRPC seems reasonable and sensible.

There should also be inserted, after clause 4.2, a requirement for the AEMC to publish on its website the formal request for appointment once it has been made, following completion of the process set out in clause 4.2.

Requirements for request for advice from IRPC on LRPP

There should be inserted after clause 4.3 an express requirement for the AEMC to publish on its website the AEMC's formal request to the IRPC for advice under Rule 5.6.4(e).

In relation to the proposed content of that request, we make the following submissions in relation to the second and third dot points of clause 4.3:

- (i) The second and third dot points provide that the AEMC's request for the IRPC's advice may include:
 - "the AEMC's assessment, taking into account the factors listed in clause 5.6.4(h) of the Rules";
 - "a request for the IRPC's view as to whether it is appropriate for the AEMC, in all the circumstances, to exercise the LRPP in relation to the (identified) project or problem and the reasons for those views."
- (ii) If the AEMC conducts its own assessment of **what it should do** (taking into account all of the matters required under Rule 5.6.4(h)) **before** obtaining the IRPC's independent advice (which, if obtained, must be taken into account **in deciding** what to do as required under Rule 5.6.4(g)), then there is a real risk that the AEMC could be seen to have prejudged the issue and its decision might then miscarry on procedural grounds.
- (iii) A similar risk arises if the AEMC is seen to only be seeking the approval of its decision by the IRPC after the AEMC has already decided (at least on a preliminary basis) on its course of action.
- (iv) To minimise this risk and to ensure that the IRPC is better placed (and perceived to be better placed) to provide rigorous and independent advice on the AEMC's exercise of its LRPP, we submit that the second and third dot points be deleted and replaced with some dot points along the following lines:
 - "a request for the IRPC's views on the factors listed in clause 5.6.4(h) of the Rules, having regard (among other things) to any information provided to the IRPC by the AEMC;
 - whether there are any other matters which, in all the circumstances, the IRPC would recommend that the AEMC take into account in deciding whether or not to exercise its LRPP; and
 - the IRPC's recommendation on whether or not the AEMC should exercise its LRPP".

Consultation on IRPC advice

Clause 5.2 of the Proposed Guidelines effectively requires the AEMC to notify a person in writing (and invite comment from the person) if the IRPC recommends that the person be nominated as a directed party (ie. someone who should be given an LRPP direction by the AEMC).

We submit that basic procedural fairness (as well as the requirements of Rules 5.6.4(h)(2) & (3)) would also require the AEMC to:

- (i) give that notice to a person (and invite submissions from them) **whenever** the AEMC is itself considering giving the person an LRPP direction;
- (ii) do this at a reasonable time (ie. at least 28 days) before making any decision on whether or not to give that person a direction, and
- (iii) take into account those submissions before it makes any such decision.

This might best be achieved through appropriate amendments to clause 9 of the Proposed Guidelines.

If you wish to discuss any matter raised in this submission further, or require clarification of any of the points raised above, please do not hesitate to contact me.

Yours sincerely

Philip Gall 1/5/2007

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