

Our ref: ERC0038

15 February 2007

Mr Marco Bogaers  
Managing Director  
Metropolis Metering Assets Pty Ltd  
Level 2/420 Victoria Street  
Brunswick, Vic, 3056

**FILE COPY**

Dear Mr Bogaers,

**Chapter 7 Rule Change Proposal, Responsible Person Contestability**

I refer to your letter of 8 December 2006 requesting that the Commission consider a proposed change to the National Electricity Rules (the Rules). Your proposal is aimed at achieving greater contestability of metering installation services provided by the "Responsible Person" under the Rules, and proposes that accredited Metering Providers be able to provide those services.

The Commission has considered your request and has decided that it is unable to proceed with the Rule change process for this proposal, because Metering Providers are not legally able to assume the full range of roles under the Rules. This position is currently controlled by the National Electricity Law (NEL) and the National Electricity Regulation of South Australia. The Commission would be unable to make the change requested in your proposal, unless a change was first made to that Regulation. More detailed reasons are set out below, as required by section 94(2) of the NEL, and the relevant legal provisions are attached for your assistance.

The Rule proposal put forward by Metropolis would allow all Metering Providers to be able to perform the functions of the "Responsible Person" under the Rules. Metering Providers are made up of both "independent" Metering Providers (who are not currently Registered Participants) and network service providers (who are Registered Participants). The current position is that independent Metering Providers cannot currently offer to act as the Responsible Person under the Rules.

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The Commission considers that the obligations and responsibilities attached to the role of "Responsible Person" under the Rules must be subject to enforcement proceedings where there is any breach of those Rules.

Only if a person is a "relevant participant" under the NEL are they subject to enforcement proceedings (see the definitions in section 2, of the NEL and the section about enforcement in section 61 of the NEL). Metering Providers as a group are not currently within any of the categories of persons that are "relevant participants".

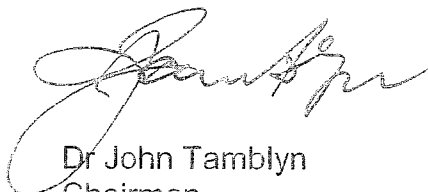
In addition, the NEL Regulations do not "prescribe" Metering Providers" to be relevant participants, in fact currently exclude Registered Participants (when they are acting in their capacity as Metering Providers) from being a "relevant participant" (see clause 5 of the NEL Regulations). In other words, Metering Providers and in particular independent Metering Providers, who currently have been given a limited role under the Rules, would not be capable of enforcement proceedings should breaches of the role of the Responsible Person occur.

At a general level, you are correct in stating that the Commission may make Rules for or with respect to the activities of persons participating in the NEM and for metering services in particular. However, your proposal would require that Metering Providers first be given the status of "relevant participants" and, because this would require amendments to the NEL Regulations, your proposed Rule could not be made.

The Commission notes that the issues flagged in your Rule change proposal involve broader policy issues relating to the role of Metering Providers in the NEM. These are matters for consideration by the Ministerial Council on Energy as part of it's NEM reforms program, and it is the MCE who would have the legal powers to make any necessary changes to the NEL Regulations.

Should you wish to discuss this decision further, please contact myself on 02 8296 7800 or Adrian Kemp, A/Senior Director on 02 8296 7807.

Yours sincerely,



Dr John Tamblyn  
Chairman

Encl.

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## Attachment 1

### Definition of “relevant participant” in the NEL

*relevant participant* means—<sup>1</sup>

- (a) a Registered participant; or
- (b) NEMMCO; or
- (c) a person engaging in an activity in breach of section 11(1), (2), (3) or (4); or
- (d) a person prescribed by the Regulations to be a relevant participant, but does not include a Registered participant that is prescribed by the Regulations not to be a relevant participant;

### Definition of “Prescribed” relevant participants (clause 5 NEL Regulation

#### 5—Relevant participant<sup>2</sup>

- (1) For the purposes of the definition of *relevant participant* in section 2 of the new National Electricity Law—
  - (a) a Registered participant is not a relevant participant to the extent that the Registered participant is acting in the capacity of a Metering Provider under the Rules; and
  - (b) an applicant within the meaning of clause 2.9.3 of the Rules is a relevant participant to the extent that the person would have been a Registered participant if the person had not been exempted under that clause from the requirement to register as a Generator or Network Service Provider; and
  - (c) a connection applicant who is not a Registered participant is a relevant participant but only for the purposes of clause 8.2 of the Rules.
- (2) Terms used in subregulation (1) that are defined in the Rules have the same respective meanings in that subregulation as in the Rules.

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<sup>1</sup> *National Electricity (South Australia) Act 1996*, Schedule-National Electricity Law, section 2.

<sup>2</sup> *National Electricity (South Australia) Regulations*, clause 5.

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Power to enforce breaches of the Rules for “relevant participants”

61—Proceedings for breaches of a provision of this Law, the Regulations or the Rules that are not offences<sup>3</sup>

- (1) The Court may make an order, on application by the AER on behalf of the Commonwealth, declaring that a relevant participant is in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision.

Note—

A Supreme Court of a participating jurisdiction that is a State may hear an application by the AER under subsection (1) by operation of subsection 39(2) of the *Judiciary Act 1903* of the Commonwealth.

- (2) If the order declares the relevant participant to be in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, the order may include one or more of the following—
- (a) an order that the relevant participant pay a civil penalty determined in accordance with this Law, the Regulations and the Rules;
  - (b) an order that the relevant participant cease, within a specified period, the act, activity or practice constituting the breach;
  - (c) an order that the relevant participant take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;
  - (d) an order that the relevant participant implement a specified program for compliance with this Law, the Regulations and the Rules;
  - (e) an order of a kind prescribed by the Regulations.
- (3) If a relevant participant has engaged, is engaging or is proposing to engage in any conduct in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, the Court may, on application by the AER, grant an injunction—
- (a) restraining the relevant participant from engaging in the conduct; and
  - (b) if, in the Court's opinion, it is desirable to do so—requiring the relevant participant to do something.
- (4) The power of the Court under subsection (3) to grant an injunction restraining a relevant participant from engaging in conduct of a particular kind may be exercised—

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<sup>3</sup> *National Electricity (South Australia) Act 1996*, Schedule-National Electricity Law, section 61.

- (a) if the Court is satisfied that the relevant participant has engaged in conduct of that kind—whether or not it appears to the Court that the relevant participant intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the Court that, if an injunction is not granted, it is likely that the relevant participant will engage in conduct of that kind—whether or not the relevant participant has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the relevant participant engages in conduct of that kind.