



Inter Regional Planning Committee

30 April 2007

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

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

Dear Dr Tamblyn,

**Submission to Consultation on Last Resort Planning Power Guidelines**

The Inter-Regional Planning Committee (IRPC) is pleased to have the opportunity to comment on the Australian Energy Markets Commission's (AEMC) proposed Last Resort Planning Power (LRPP) guidelines published on 15 March 2007.

In the IRPC's opinion, the LRPP guidelines in their current form do not adequately address a number of key issues relating to the role of the advisory panel. Accordingly, it recommends that a number of changes be made to the guidelines to provide further clarification of this role. These recommendations are discussed in greater detail in the attachment to this letter.

The IRPC would be pleased if the AEMC could consider these matters in their assessment of the proposed Rule change to the regulatory test principles. For further details, please do not hesitate to contact David Bones on (07) 3347 3041.

Yours sincerely,

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

**Dr Charlie Macaulay**  
Convener of the Inter-Regional Planning Committee

Att:



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### **Attachment**

#### **Submission to the Proposed Rule Change**

##### **1. Introduction**

The Inter-Regional Planning Committee (IRPC) is pleased to have the opportunity to comment on the Australian Energy Markets Commission's (AEMC) proposed Last Resort Planning Power (LRPP) guidelines published on 15 March 2007.

The IRPC is established under clause 5.6.3 of the National Electricity Rules (Rules) and in accordance with these provisions is required to advise the AEMC on the exercise of its LRPP.

The IRPC notes that on 13 April 2007 the Council of Australian Governments (COAG) announced that it is endorsing a number of the Energy Reform Implementation Group's (ERIG) recommendations including the recommendation that a National Energy Market Operator (NEMO) be established by June 2009 who would take on the role of National Transmission Planner, thereby replacing the IRPC.

Notwithstanding these recently announced changes, the issues surrounding the exercise of the LRPP, the role of an advisory panel and the governance structure should be addressed until any new arrangements take effect.

In the IRPC's opinion, the LRPP guideline in its current form does not adequately address a number of key issues relating to the role of the advisory panel. Accordingly, it recommends that a number of changes be made to the guidelines to provide further clarification of this role. These recommendations are discussed in greater detail below.

##### **2. The appointment of additional members to the IRPC**

Clause 5.6.4(f) of the Rules allows the AEMC to appoint, in consultation with NEMMCO, an additional four persons to assist the IRPC. The proposed LRPP guidelines do not specify the process the AEMC will follow when appointing additional persons other than stating it will have regard to their capability to provide relevant advice.

The IRPC proposes that the guidelines include a provision which requires any party appointed to the panel to disclose any relevant financial interests in a potential project, or any relevant conflicts of interest that may affect them in their potential role. Within this context it is worth noting that COAG agreed that the governance arrangements for NEMO would include market participant representation in planning functions but subject to preserving board independence "from any particular market participant".<sup>1</sup>

Including a similar independence provision within the guidelines and a requirement for a party to disclose any conflict of interests would ensure that the advice provided to the AEMC is objective and independent of direct interests.

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<sup>1</sup>       ibid



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Additionally, the guidelines state that the AEMC must have regard to a nominated person's capability to provide relevant advice but it includes no selection criteria. The IRPC recommends that the AEMC clarifies within the guidelines the capabilities registered participants can expect the AEMC to have regard to when selecting additional persons to assist the panel.

### **3. Scope of advice to be provided**

According to the guidelines, the IRPC is responsible for providing publishable advice to the AEMC that may require some or all of the following (dependent on the request):

- a description of the problem or a potential project that will address it and any advice on the AEMC assessment of the problem and project as identified;
- an examination of whether it would be appropriate for the AEMC to exercise the LRPP; and
- advice regarding which registered participant(s) would be an appropriate directed party.

Each of these three broad categories is discussed in below.

#### **3.1 Description of problem/project**

In accordance with clause 5.6.4(g) of the Rules, the AEMC must take into account the following when deciding whether or not to exercise the LRPP:

1. the two most recent ANTS;
2. annual planning reports published by individual TNSPs;
3. other matters that are relevant in all circumstances; and
4. advice provided by the IRPC.

While the Rules provide clear guidance on what the AEMC is to take into account it is silent on what the IRPC should consider in its advisory role.

The IRPC proposes that in the event it is asked to provide a description of a problem/project that it have regard to items 1, 2 and 3 in the list above (ie, the two most recent ANTS, annual planning reports published by individual TNSPs and other relevant information). In relation to item 3 it is currently unclear what the phrase 'other matters that are relevant' would include. The IRPC recommends that this term be clarified within the LRPP guidelines and that the definition excludes any requirement for the IRPC to consider extraneous matters or information that would impose unnecessary costs on the IRPC.



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### **3.2 Advising the AEMC on the appropriateness of exercising the LRPP**

To determine whether it would be appropriate for the AEMC to exercise the LRPP the IRPC would, in the first instance, need to consider whether the AEMC's assessment of the problem/project is reasonable. The scope of the consideration required by the IRPC is not defined and thus the IRPC proposes that the consideration be limited to determining if the AEMC has reasonably interpreted the required information (ie ANTS, TNSP annual planning reports, etc).

It is also unclear whether the IRPC is expected be able to express an opinion on:

1. whether a *practicable option*<sup>2</sup> exists to the identified problem; or
2. whether alternative projects would need to be identified; or
3. whether there is a *practicable option*, or alternative project, which is likely to satisfy the regulatory test.

If this were the expectation, then to form such an opinion the IRPC would need to undertake an assessment similar in nature to the regulatory test. While this would enable the IRPC to express a clear opinion on the practicable option the AEMC must be aware that this would be a costly imposition and one which would extend the decision making process. The AEMC should consider this issue further and provide clarification in the LRPP guidelines.

Thus, the IRPC proposes that in providing advice to the AEMC they have regard to the ANTS and transmission planning reports as well as applying their industry specific skill set to the best of their ability in interpreting these documents as well as the information they would be expected to have, as indicated above, to provide advice that will be beneficial and constructive to the AEMC.

### **3.3 Advising the AEMC on the appropriateness of directed participant(s)**

The AEMC should be aware that the ability of the IRPC to identify the party or parties to be a single directed party may be compromised somewhat given that the IRPC is constituted of "likely" candidates to be directed. The very nature of an interconnector upgrade project means that multiple parties will be affected and could take some part in the process. The extent to which the AEMC would seek to direct a number of, or even all affected parties to collaboratively undertake the work and how that would be done has not been set out in the guidelines. In these circumstances the preferable approach to ascertaining the appropriateness of a particular directed party would be to require the IRPC to provide advice on a range of possible parties that could undertake (or be involved in undertaking) the Regulatory Test rather than requiring it to recommend a single party.

## **4. Decision making process within the IRPC**

Neither the Rules nor the guidelines set out the manner by which the IRPC must reach a decision on the advice it should provide to the AEMC in relation to the exercise of the LRPP.

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<sup>2</sup> As defined in the current version of the Regulatory Test.



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Since the panel could possibly be constituted by both existing members and an additional four appointed persons, obtaining unanimous consent on particular issues may be impossible to achieve. It is therefore proposed that the guidelines allow for the IRPC to reach a decision on the basis of a majority vote and that any dissenting opinions be documented within the publishable report or statement.

### **5. Conclusion**

The IRPC is supportive of providing guidelines to assist market participants with the interpretation of the Rules and is of the opinion that the guidelines would benefit from some further clarifications on the following issues

- include a provision that requires additional IRPC members appointed by the AEMC to disclose conflicts of interest;
- specify the capabilities that the additional IRPC members appointed by the AEMC will be required to possess;
- include a provision that requires the IRPC to have regard to the same set of considerations as the AEMC when considering whether the AEMC should exercise the LRPP;
- define the term “all relevant information” within the guidelines and specifically exclude the requirement for the IRPC to have regard to extraneous matters or information that would impose unnecessary costs on the IRPC;
- provide for the IRPC to give advice on the possible parties which could be directed rather than determine the matter; and
- stipulate that advice from the IRPC can be provided on a majority basis with any dissenting views acknowledged in reports/statements.