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Manager - Energy Market Reform Team
National Energy Market Branch
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601

By e-mail to MCEMarketReform@industry.gov.au

Dear Sir or Madam

Re: National Electricity Rules Response to Exposure Draft

The Australian Gas Light Company (AGL) supports the decision to convert the National Electricity Code (the Code) into a set of mandatory rules and welcomes the opportunity to comment on the Exposure Draft of the National Electricity Rules.

The matters being consulted are important in terms of setting the framework for the new regulatory arrangements and include a number of complex matters that fundamentally affect the risks facing our businesses and the outcomes for our customers. We also believe that these matters are critical to delivering the objectives of the energy market reform program.

It is therefore important that there is thorough and considered consultation to ensure that the new regulatory arrangements are efficient and effective and that unintended consequences do not result. The consultation on the changes to the National Electricity Rules has been difficult with its short timeframe and with some key related documents (the transitional provisions and regulations) not being available.

We believe that we, and other members of industry, have a valuable contribution to make in the reform process. We therefore urge the SCO to develop work programs that include meaningful consultation with affected groups as an integral part of the reform process.

In the time available to us, we have identified the following issues

1. Several substantive changes to participants rights;
2. Inclusion of changes that, in some instances, appear unnecessary and make it more difficult to identify the significant changes and risk introducing unintended changes; and
3. Several instances where we consider that there has been an inappropriate allocation of functions.

We expand on these points below. As AGL has been involved in a more detailed submission being prepared by the ERAA, we will not duplicate that material in this submission.

If you have any queries, please do not hesitate to contact my office.

Kind regards,

Dr Robert Wiles
General Manager Regulation and Policy

Examples of Issues identified by AGL

1. Changes to substantive rights

AGL notes that the statement in the Information Paper issued in December 2004 indicated:

“the changes proposed in the new NEL and Rules are not aimed at changing the regulatory obligations that are currently placed on participants in the national electricity market. Rather the changes provide for a more appropriate governance framework for the market and facilitate the conversion of the Code into statutory Rules. Accordingly, the substantive rights and obligations on participants in the market under the current NEL and current Code will remain the same in the new NEL and Rules.¹”

However, AGL has concerns that, in several cases, the Exposure Draft in fact goes further than this, and that as a result, the substantive rights of participants have been or may have been changed. For example:

- Proposed amendments to clause 6.4.3C(b) and (c) represent a substantial change to the current operation of those provisions in the Code. These clauses adjust the Annual Aggregate Revenue Requirements of TNSPs and the erroneous changes could allow TNSPs to recover amounts to which they were not entitled.
- Clause 8.5.4 of the Code lays down a process for National Electricity Code Administrator (NECA) to investigate breaches of the Code. The removal of this clause removes the limitations on the AER’s investigation processes, reducing the rights of participants. The reason given for the change is that the Law now covers this matter but no similar provision has been included in the Law; and
- Clause 8.8.4, which has been deleted on the basis that the Rule change process allows the Reliability Panel to submit Rule changes to the AEMC, also provided for participants to be given 6 months notice of proposed changes to technical standards that impacted technical access standards.

2. Unnecessary changes

We believe that a number of changes are being proposed that are not strictly necessary to achieve the objective of changing the National Electricity Code into a set of mandatory rules.

We acknowledge that a number of changes have been made in an effort to “tidy up” the Code. While we applaud this intention, we are concerned that the time for considering these changes has been very short. In the time available, it has been difficult to identify the significant changes from the insignificant, particularly as in some instances, changes that have been characterised as drafting changes have in fact been more significant. For example, there is an ostensibly minor drafting change to 3.12A.2 to provide consistency with terms defined in Chapter 10 and to reflect the fact that the relevant schedule is given in anticipation of a proposed mandatory restriction period. However, we are concerned that this change has serious settlement implications because it changes the calculation period for mandatory restriction payments.

During our review of the Exposure Draft, we have identified a number of instances where a proposed change appears unnecessary. In some instances, there are no apparent consequences flowing from the change, but in other instances, we consider that there are errors or unintended consequences such as changing rights and obligations. For example:

- A number of reviews that were to be undertaken by NECA have been removed rather than transferred to the Australian Energy Market Commission (AEMC). These reviews were either to complete Code changes or to verify that their outcomes were as predicted during the Code change process. We consider that these reviews should be reinstated.
- The change to Clause 3.11.8(c) appears to be an incorrect change – “must” has been changed to “may” making the clause permissive not mandatory. This appears to be due to an apparent misunderstanding that the 4 week causer pays mechanism was transitional only;

¹ Refer page 8 of the Information Paper

- The change to clause 3.12A.2 appears to be an error. Mandatory Restrictions are calculated daily not for the entire period;
- The proposed change to clause 3.12A.7(b1) is described as a drafting change. The change in fact represents a fundamental change to the Mandatory Restrictions capping arrangements; and
- Proposed amendments to clause 6.4.3C(b) and (c) represent a substantial change to the current operation of those provisions in the Code. These clauses adjust the Annual Aggregate Revenue Requirements of TNSPs and the erroneous changes could allow TNSPs to recover amounts to which they were not entitled.

Accordingly, AGL considers it essential that all changes that are not strictly necessary to turn the Code into a set of mandatory rules or to allocate a function of NECA to the AER or AEMC go through the full Rule change procedure to allow appropriate assessment of their impact.

This could be simply achieved by removing non-essential changes and putting them to one side for review by a committee made up of industry and government. This committee could expeditiously recommend the changes to the AEMC. Simple changes could be rapidly processed through the abbreviated process. Those requiring participant debate would then proceed through the full Rule change process.

As for the essential changes, we consider that it would be prudent for a committee of participants to work quickly through the list of these changes to verify that no unintended changes have occurred. This could be done in a matter of weeks with some notice.

3. Allocation of functions

AGL is a strong advocate of the principle that the functions of the rule maker should be separated from those of enforcer/regulator. In general, AGL supports the proposed allocation of functions set out in the Exposure Draft. In several instances, however, AGL has concerns with the allocation of functions of NECA between the Australian Energy Regulator (AER) and the AEMC and does not believe that this reflects the policy intent that AER should be regulator/enforcer and AEMC should be rule maker. For example:

- clause 8.7.2(a) provides that it is the AER who will establish reporting requirements for registered participants and NEMMCO in matters relevant to the Rules. AGL queries whether it is appropriate for the AER to have this power;
- clauses 2.5.1(d) and (e) relate to defining the criteria for exemptions from the requirement to register as a Network Service Provider. This could be viewed as an extension of the AEMC rule making function;
- disputes, which mainly relate to interpretation and application of the Rules, has been put in the purview of the AER. It may be that this should be a function of the AEMC; and
- Clause 7.2.8(a) gives NEMMCO the power to make rules or policy. AGL wonders if this function should properly lie with the MCE or the AEMC.