

PUBLIC FEEDBACK ON AMENDMENTS TO THE ELECTRICITY ACT

1. A public feedback exercise was held from 20 January to 10 February 2006 to obtain feedback on the proposed amendments to the Electricity Act.
2. The proposed amendments put up for feedback were aimed at enhancing EMA's regulatory oversight of the electricity market.
3. Feedback was received from nine respondents, viz SPPA, Tuas Power, Power Seraya, Island Power Company, Temasek Holdings, SembCorp Utilities, Energy Market Company, SP Services, and Senoko Power. Common concerns raised were on provisions governing the licensing regime for transmission licensee or such person acting on its behalf; provisions pertaining to control over the ownership and appointment of key personnel with respect to the transmission licensee or such person acting on its behalf; EMA's powers to direct changes to market rules, and powers of electricity licensees to enter land and perform works on equipment owned by other licensees. A summary of the key concerns, and EMA's responses are tabulated in the Appendix. Feedback from five of the respondents are also published for general information. Four respondents have requested for their feedback to be kept confidential.
4. EMA thanks all of the respondents for their comments.

Feedback on the Proposed Amendments to the Electricity Act (the “Act”)

(Unless otherwise noted, references to “sections” in this table are to sections of the Act)

Industry’s Feedback:	EMA’s Assessment:
<p>Licensing Regime</p> <p>Concerns were raised that the proposed amendments to Sections 6 and 9 as drafted are too wide and will inadvertently cause unintended parties such as the MSSL, as well as numerous subcontractors engaged by the transmission licensee to be required to be licensed as an agent or contractor to the transmission licensee. One suggestion for addressing this issue was for the word “contractor” to be removed.</p>	<p>This feedback that no unintended parties are covered under the provisions for the licensing of the transmission agent licensee is accepted. The draft will be checked and amended as is necessary.</p>
<p>Security Safeguards</p> <p>It was felt that the terminologies used in the proposed control provisions under Section 30A are unclear and it was suggested that where possible, the amendments should utilise terms defined in the Companies Act. Feedback indicated sentiments that the proposed control regime was overly restrictive and that the regime under the Telecommunications Act be adopted instead. It was further suggested that to avoid over-regulation, <i>pro forma</i> transactions should be excluded. It was requested that the legislation make clear on what grounds ownership changes can be disallowed. Some felt that EMA has sufficient controls over the designated licensees and that there is no need to have additional controls over the appointment of key personnel. There was on the other hand, a suggestion for the controls provision under Part IV to be also extended to other entities who might own equipment or infrastructure critical to system security.</p> <p>Feedback also indicated that the drafting is not clear on whether existing shareholders will require approval upon the enactment of the proposed amendments.</p>	<p>This feedback on need for clarity is accepted. The draft of Part IVA will be revised in a way as to allow subsidiary legislation to be introduced to provide details need to give clarity. Feedback received will be taken into consideration where appropriate in the drafting of the subsidiary legislation and operationalisation of the controls.</p> <p>The feedback that the controls to be introduced are too restrictive is not accepted. These controls are similar to existing ones in the Telecommunications Act and the Broadcasting Act. Stringent controls are necessary as the electricity grid is an important national infrastructure whose failure can have disproportionately large impact on the nation. This rationale applies to appointment of key personnel as well as control of ownership (direct and indirect). EMA clarifies that these controls are not intended to be retrospective.</p>

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<p>It was felt that the provisions on control of disposal of transmission system assets (Sections 30F and 30G) are excessive and unduly restrictive.</p>	<p>National security will be the main consideration when evaluating applications for ownership changes or appointment of key personnel.</p> <p>There is however no need at this time to extend such controls to other classes of licensees.</p> <p>The feedback that there is no need for the provisions in the proposed sections 30F and 30G at this time is accepted. The proposed sections 30F and 30G will be removed.</p>
<p>Power to Obtain Information</p> <p>Some respondents proposed that EMA reveals the purpose for which the information will be used for when requesting for information, and that such requests should only fall within the functions and duties of EMA.</p> <p>Often, information to be provided may be commercially sensitive. It was suggested therefore that such information should be strictly held as confidential, and in addition EMA officers should enter into enforceable confidentiality agreements not to divulge such information to any other third parties, whether or not they are still under the employ of EMA.</p> <p>Other suggestions include EMA compensating parties the cost of providing such information, and that EMA should keep only copies of such information requested for, rather than originals.</p>	<p>It is agreed that EMA's request for information should be kept to purposes relevant to its duties and functions under the Act. For the purposes of the Act, EMA will need to be empowered to pass on such information as needed to the Minister or persons acting under the direction of the Minister for fulfilling obligations under the Act. In practice EMA will inform the provider of the information on the intent of the request for such information.</p> <p>The feedback that additional provisions in the Act are needed to further bind EMA officers to confidentiality requirements is not accepted. Existing provisions already provide that EMA shall give notice to the provider of the information should it wish to disclose the information. EMA officers are already subject to the Official Secrets Act.</p> <p>The feedback that persons required by the law to provide such information should be reimbursed is not</p>

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	<p>accepted. EMA applies the Act to safeguard the interests of the market which in turn serves all market participants. EMA should not be reimbursing market participants for doing this work for them. This is also in line with existing provisions in the Telecommunications Act.</p>
<p>Improvement to Penalty Structure</p> <p>There were comments that generally, the penalties proposed under the amendments to the Act are too high.</p> <p>There were also concerns that directions issued by EMA have the potential of increasing arbitrary regulation for individual licensees, and will result in lack of transparency and public scrutiny. It was felt that while EMA has the right to issue directions in the event that licences, codes and standards of performance have been or may be breached, there should not be inclusion of any other directions under Section 14 as that had the potential of reducing transparency.</p>	<p>The feedback that the penalties are too high is not accepted. EMA is of the view that penalties must be sufficiently heavy to deter breaches of licences, codes and standards of performance considering, inter alia, the potential gains from such breaches. EMA will reduce the proposed maximum fines under the new Part IV appropriately in line with the above principle.</p> <p>EMA's power to issue directions is necessary for the performance of its functions and duties under the Act. This is an existing provision.</p>
<p>Ambit of Market Rules</p> <p>There were general sentiments that the current process for market rule changes is preferred over the new proposals which will allow EMA to direct changes to the rules. Feedback received on this area highlighted views that changes to the market rules should not be done independently by the Market Company, and that any changes ought to be in accordance to the intent and purposes of the Act. There were concerns that changes made to the rules on EMA's directions might not be transparent. It was suggested that market participants be informed of such changes in advance, and be given right of appeal over EMA-imposed changes to the rules.</p> <p>There was also a call for the scope of "government policy", for which rules may be modified, to be clearly defined.</p>	<p>The feedback that the current process for market rules change should continue to operate is accepted.</p> <p>This Amendment does not change the current Rules Change process. It empowers EMA to effect changes to market rules only when this is needed to ensure the rules are consistent with public policies.</p> <p>EMA recognizes that undue intervention in the market rules could result in increased regulatory risks and is</p>

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<p>There was a proposal that penalties imposed under Market Rules on MSSLs and the Market Company should not be passed on to consumers or gencos.</p> <p>There was also a proposal that since MSSL will now be bound by the market rules, the Act must also include entrenched protection for the MSSL in relation to the content of the market rules, and that at a minimum, section 46(4) be expanded to disallow modifications that would unjustly discriminate in favour of or against a MSSL or a class of MSSL. There was similarly a proposal that rule changes should not favour unjustly the Market Company, and that the Act be amended to provide that EMA shall reject such proposed changes to the rules.</p>	<p>mindful to keep any such intervention to a minimum. EMA would seek feedback from the industry prior to directing any rule change. The amendments in addition provide that any changes made to the rules under this section shall be made public and in such manner as to secure adequate publicity. Persons aggrieved by EMA's decisions under this section may appeal to the Minister.</p> <p>The feedback that price-regulated licensees should not be allowed to pass on fines and penalties to their customers is accepted and is the current policy.</p> <p>The feedback that the proposed amendments which brings the MSSL and the Market Company under the governance of the market rules, are given fair treatment is accepted.</p>
<p>Revised Appeal Process</p> <p>Feedback on the revised appeal process suggested that the Appeal Panel should comprise of at least 2 experts, of whom one (or more) should be nominated by the appellant to ensure fairness. Another feedback suggested that the Appeal Panel be made a permanent body.</p> <p>It was further suggested that the right of appeal to the Appeal Panel should be extended to most, if not all, EMA decisions.</p>	<p>The Electricity Act allows companies to appeal against EMA's decisions.</p> <p>The feedback that the Appeal Panel comprises of at least two experts, of whom one should be nominated by the parties to the appeal, is not accepted. The objective of the Electricity Act is to serve the best interest of the market and in pursuing this objective to give companies fair treatment. Likewise in hearing an appeal, the objective would be to determine what is in the best interests of the market and in pursuing this objective, whether companies had been given fair</p>

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<p>Feedback also suggested that the period for the lodging of appeals to be extended as it was felt that 14 days is too short for persons to adequately prepare for an appeal over complicated issues.</p> <p>Other feedback received suggested that as it might be difficult to reverse actions or decisions once taken, the person appealing against EMA's decision be allowed to apply to the Appeal Panel for a stay of the decision or direction. It was also suggested that appeals can eventually be brought to the High Courts for determination.</p>	<p>treatment. The provision on appeals should serve this objective. As many members will be appointed to the Appeal Panel as will be required depending on the complexity of the case. The members should be independent and represent the interests of the market, not particular companies. EMA does not envisage that appeals will be of such frequency, nor of such similar nature, as to warrant the setting up of a permanent Appeal Panel.</p> <p>The feedback that 14 days is insufficient time to lodge an appeal is not accepted. The period of 14 days is also stipulated in the appeal process of the Telecommunications Act.</p> <p>The feedback that EMA's decisions be stayed until the appeal process is concluded is not accepted. The implementation of government policies to have an open and competitive market may be hindered by narrow commercial interests with such a rule.</p> <p>This follows similar provisions in the Competition Act that do not allow for a stay of the relevant decision/direction unless the appeal is against the imposition of a financial penalty or quantum, so as not to subject the appellant to financial burden.</p> <p>The feedback that appeals be made to the courts is also not accepted since it is already possible to apply to the courts for judicial review.</p>
<p>Terms for Generation Companies to Supply Electricity</p> <p>Concerns were expressed over the proposed Section 31A, which a number of generation companies felt is excessive. It was thought</p>	<p>The feedback that Section 31A is excessive is not</p>

Industry's Feedback:	EMA's Assessment:
<p>that the provisions will expose gencos to potential security breaches since the proposed amendments grant the transmission licensee wide powers to enter upon genco's premises and execute works on equipment, including generation facilities, owned by the gencos. Some felt that the transmission licensee should be required to compensate or indemnify the genco for any damages it has to pay to third parties as a result of such breaches. Gencos found the amendments very worrying because they might lose control over who will have access to their equipment. It was, in addition, requested that the amendments be redrafted to be more explicit on the access rights of the transmission licensee or its agent.</p> <p>It was also suggested that generation licensee should be given more than 14 days' written notice by the licensee from the execution date so that they can have sufficient time to lodge a written objection with the Authority if necessary. Prior to EMA's decision, the transmission licensee or its agent should not be allowed to carry out its work stated in the written order.</p>	<p>accepted. There are parts of the transmission system which because of history are located within the generation plants. Work on the transmission system may have to be done to enable the system to be optimised for the benefit of the market. This provision prevents any generation company from preventing such works.</p> <p>The feedback that the transmission licensee has to take reasonable precautions to ensure physical and operational security of the power stations is accepted. The amendments require licensees to seek EMA's approval before issuing such notices. Persons receiving such notices may also appeal to EMA.</p> <p>As a general policy, government legislation does not provide for compensation or indemnification for third party damages, and this section of the Act should be no exception.</p> <p>The feedback that 14 days is insufficient notice for aggrieved persons to raise objections to EMA is not accepted. Such a timeframe is consistent with provisions in existing legislation such as the Telecommunications Act.</p>