

9 February 2006

Mr Teo Nan Shing
Dy Director (Market Licensing & Control)
for Deputy Chief Executive
Regulation Division
Energy Market Authority

Dear Mr Teo

Proposed Amendments to the Electricity Act

We refer to your email request for feedback dated 23 Jan 2006. Our feedback on the proposed amendments to section 46 is as follows.

Current Rule Change Governance Regime is well thought-out

The following is extracted from the Introduction to the Singapore New Electricity Market published by the EMA on its website:

“7.3 RULE CHANGES

In the Singapore NEM, rule changes can be initiated by any interested party and are subject to approval by the EMA. Much of the rules change process is led by the rules change panel appointed by the EMC. The composition of the rules change panel, the transparency of the process and the need for final EMA approval are designed to provide assurance that the rule change process will not prejudice the operation of the market or unduly affect the interests of any particular participant or class of participants.

7.3.2 Rules Change Procedure

A request for review of the market rules can come from any interested person, including the EMC Board and the rules change panel itself. They may propose modifications to the market rules or identify a rule where they consider a modification or review may be desirable. (note EMA is also able to propose rule changes.

The general rules change procedure is as follows:

- The rules change panel decides whether consideration of the submission for rule change is warranted.
- Where the panel decides to consider a modification submission, the EMC publishes an invitation to make written submissions to the rules change panel. The panel may hold public meetings.
- At the conclusion of its deliberations, the rules change panel submits a written report to the EMC Board indicating:
 - the recommendations (with reasons) of the rules change panel;
 - a copy of the proposed text of the modification, if any;
 - a summary of any objections to the modification;
 - whether the recommendations have the support of the dispute resolution counsellor or the market surveillance panel, if the modification affects a provision of the market rules that relates to their respective functions; and
 - a record of the vote of each member of the panel on the recommendations and a summary of any objections raised by a member of the panel to the recommendations.
- The EMC publishes the proposed text of the modification, if any. (Note that the market rules now require that the written report of the rules change panel be published)
- The EMC Board then considers the recommendations of the rules change panel. The EMC Board may decide in favour of or against the proposed modification, or may refer the matter back to the rules change panel for reconsideration.
- Where the EMC Board decides against the proposed modification, it publishes the decision, together with an indication of the reasons for the decision. The EMC Board may only reject a proposed modification that has been recommended by the rules change panel on the grounds listed in the market rules.
- Where the EMC Board decides in favour of the adoption of a modification, it must:
 - receive approval for the decision from the EMA
 - publish the decision, together with a copy of the modification, and provide a copy to the PSO; and
 - file a copy of the decision, together with a copy of the modification, a copy of the associated report of the rules change panel and a summary of any objections to the modification brought to the attention of the EMC Board, with the EMA.

The EMC Board may adopt a modification to the market rules that has been rejected by the rules change panel only in the limited circumstances referred to in the market rules.

Finally, the rule change must be approved by the EMA, which may only reject it on specified grounds listed in the market rules. (note: should be grounds listed in the Electricity Act)".

EMC believes that the current Rule Change Governance arrangement has been well thought out. It provides the following

- Industry/Market forces to drive the rule change process
- Independent Market Operator as gatekeeper – 1st check
- Authority as final approving authority – 2nd check

We believe the EMA and the market designers would have carefully considered the level of EMA involvement in the rule change process and have designed the governance balance to ensure the process was robust and that EMA was appropriately empowered in the process.

The existing governance arrangement seems to be designed to deal with concerns of regulatory risk in the old SEP. Please see underline portions of the following extracts reproduced for your easy reference.

The following is extracted from Page 16 of the Review of the NEMS task 1 report by PWC commission by EMA dated 20 January 2006 which quoted from a MTI press release at the time of the enactment of the Electricity Act.

““Since 1995, many more countries have deregulated their electricity industries, resulting in significantly lower electricity prices, greater product innovation, better services and consumer choice. We have now fallen behind due to our more cautious approach.

Meanwhile investors have complained that our market rules lack clarity with PUB as regulator having to intervene in the market too often.”

The following is extracted from Page 17 of the Review of the NEMS task 1 report by PWC commission by EMA dated 20 January 2006.

“The EMA has provided some information regarding the Government’s objectives in instituting electricity market reform. One important piece of information has been a summary of their “philosophy of market rules”. Although not an explicit description of Government objectives in instituting the reform process, it is still relevant:

- Enhance economic efficiency and transparency through market mechanism;
- Provide for active participation by market participants in governance, control and operation of the market;
- Allocate risks to those in the best position to manage them; and”

Current Regime has proven to be robust and effective

We believe the process has work extremely well. Prior to market start and since market start the RCP has considered and support or rejected over 170 of rule changes. To date the EMA has only referred one rule change back for reconsideration. This was in relation to how the formulae to determine Vesting Contract reference price should work.

Stakeholders has also indicated that they had no material concerns with the rule change process. Please refer to extract reproduce below.

The following is extracted from Page 22 of the Review of the NEMS task 1 report by PWC commission by EMA dated 20 January 2006 in discussing the governance arrangement of concluded that

“In our discussions with stakeholders, nothing came to our attention to suggest that there were any material problems or issues with the governance arrangements in the NEMS.”

Concerns with proposed amendment

We believe that the proposed amendments to vary the market rules in compliance with directions issued by the EMA could considerably increase perceived regulatory risk - something the current rule change process was designed to reduce. Particularly among potential new investors in the Singapore electricity industry the regulatory risk would be perceived as greatly increased. This would not only limit the field of investors, but also have a negative impact on value.

It is also worth noting that the above mentioned proposed amendment – more generally – also could adversely impact on overall confidence in the market, because the move could be seen as a step back to preferring regulation over market forces.

Conclusion

EMC believes the current governance regime is as intended in Market Design. It has an impressive track record of success. Changing the regime would require strong justifications because of the possible serious adverse impacts.

If such strong justifications do in fact exist we would encourage the EMA, preferably at the time the proposed amendment takes effect; to also publish a document that clearly outlines the situations were the EMA would invoke their power to bypass the normal rule change process. While such a document would not negate the increase in perceived regulatory risk, it may alleviate some of that effect.

Yours sincerely,

Jomar Eldoy,
Chief Executive Officer