

National Electricity Law (Schedule to the *National Electricity (South Australia) Act 1996*) and the National Electricity Rules applied as the law of Queensland by the *Electricity - National Scheme (Queensland) Act 1997*

BETWEEN

**Millmerran Energy Trader Pty Ltd (ACN 084 923 973)**

Applicant

AND

**National Electricity Market Management Company Limited (ACN 072 010 327)**

Respondent

AND

Registered Participants listed in Annexure A of the Direction of the DRP of 6 December 2006

Joined Parties

**DATE:** 21 December 2006

**SUBJECT: Interim Determination**

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This is an Interim Determination only in the sense that it is not accompanied by reasons. In substance it records the final decision in the form of a Direction and the final formal Determination will contain both reasons supporting this Determination and the Direction which is published in this Determination.

This course has been taken with the consent of **National Electricity Market Management Company Limited ('NEMMCO')** and **Millmerran Energy Trader Pty Ltd ('Millmerran')** due to the urgent need to publish the Direction to the market.

On 20 November 2006 the NEM Dispute Resolution Adviser (the "Adviser") referred the dispute between NEMMCO and Millmerran to a Dispute Resolution Panel constituted by me. On 21 November 2000 the Adviser gave notice to Registered Participants, and subsequently provided them with a document entitled "List of Boundaries and Marginal Loss Factors for the 2006/7 Financial year (version 3) dated 24 November 2006."

Following an application the DRP made a Direction on 6 December 2006 in respect of the joined parties. This direction provided for them to participate in a Directions hearing and take an active part in the determination if they so desired. A copy of that Direction, including a list of participants joined, is published on the AER web site [www.aer.net.au](http://www.aer.net.au).

No parties other than NEMMCO and Millmerran made submissions in the Dispute or appeared at the hearing on 19 December 2006.

At that hearing a joint submission of NEMMCO and Millmerran was considered and supplementary oral submissions were made. Both parties agreed that inadvertent errors had been made in determining the intra-regional loss factors for the 2006/2007 financial year but were not in agreement on the power of Nemmco unilaterally to publish an amended list.

NEMMCO submitted that its power was spent once it published the relevant loss factors on 31 March 2006. Consequently it had no power to publish an amended list. Millmerran contended that, on a proper construction of the Rules, NEMMCO did have the power to publish an amended list.

Both parties were in agreement as to the course I should take, and that was to make a Decision in a form which they had jointly submitted requiring NEMMCO to take steps appropriate to the publishing of an amended list. Both parties agreed that I had the power to make those directions.

I agree that I have the requisite power under CI 8.2.6D (d) to make the Direction. Further it is clear that, if NEMMCO's submission is correct, I should make an appropriate direction.

If Millmerran's submissions are correct, it is equally clear to me that the more appropriate course to follow is to make a direction requiring NEMMCO to take steps to publish an amended list. In other words an appropriate direction should be made whichever view of NEMMCO's power is correct. I am also of opinion that the proffered direction is appropriate and I will make it at the end of this Determination.

Before doing so I should make it clear that the question of NEMMCO's power to publish an amended list is an important one and, in the reasons which will be published later, I will examine that question and express my conclusion as to which approach is correct.

Because the Direction I propose should be made whichever view is correct, and there is considerable urgency, I have thought it necessary to give this Determination to enable Nemmco to act with expedition.

**Direction**

The DRP makes the following directions:

- 1 NEMMCO is required to withdraw the intra-regional loss factors for the 2006/7 financial year previously published by it.
- 2 NEMMCO is required within 14 business days after the date of this determination to:
  - (a) Publish in the place of the previously published intra-regional loss factors the intra regional loss factors for the 2006/7 financial year published as the "List of Boundaries and Marginal Loss Factors for the 2006/7 Financial year (version 3) dated 24 November 2006."
  - (b) Apply the intra-regional loss factors published in accordance with paragraph (a) of this determination for the 2006/7 financial year with effect from 1 July 2006
- 3 NEMMCO is required to issue routine revised statements or special revised statements (as the case may be) in accordance with clause 3.15.19 of the Rules for Millmerran and the *joined parties* incorporating any adjustments arising from any difference between the intra-regional loss factors referred to in para 1 of this determination and the intra-regional loss factors published in accordance with para 2(a) of this Determination.

**Dated: 22 December 2006**

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John Clarke  
M.J. Clarke Q.C.  
Dispute Resolution Panel