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19 December 2005

Mr Paul Wentworth
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GPO Box 521
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FILE No:
DOC: 205/70070
MARS/PRISM:

Dear Mr Wentworth

Network Service Provider Exemptions

Thank you for your letters of 23 September 2005 and 26 October 2005 concerning network service provider exemptions in relation to Rail Corporation New South Wales, Rail Infrastructure Corporation, and Australian Rail Track Corporation Ltd.

On 19 December 2005, the Australian Energy Regulator decided to:

- (a) repeal the exemption granted to Rail Access Corporation on 15 June 2000; and
- (b) grant each of the above applicants an exemption under clause 2.5.1 of the National Electricity Rules subject to conditions.

The decisions are set out at Attachments A to D to this letter.

Thank you for your assistance in this matter. Should you have any queries in relation to this letter, please do not hesitate to contact Paul Dunn on (03) 9290 1426.

Yours sincerely



Michelle Groves
Chief Executive

ATTACHMENT A

NETWORK SERVICE PROVIDER EXEMPTION

RAIL ACCESS CORPORATION

NOTICE OF DECISION TO REPEAL EXEMPTION

On 19 December 2005, the Australian Energy Regulator (“AER”) decided, pursuant to:

- (a) section 6 of the *National Electricity (New South Wales) Act 1997* (NSW);
- (b) section 13 of the National Electricity (NSW) Law; and
- (c) clause 2.5.1 of the National Electricity Rules,

to repeal the decision made by the National Electricity Code Administrator Ltd on 15 June 2000 under clause 2.5 of the National Electricity Code to grant an exemption (“Exemption”) to Rail Access Corporation (“RAC”).

The repeal of the Exemption takes effect on 19 December 2005.¹

¹ The AER preserves its position on whether the Exemption in fact terminated when RAC was dissolved by the *Transport Administration Amendment (Rail Management) Act 2000* (NSW).

ATTACHMENT B

NETWORK SERVICE PROVIDER EXEMPTION RAIL CORPORATION NEW SOUTH WALES NOTICE OF DECISION TO GRANT EXEMPTION

On 19 December 2005, the Australian Energy Regulator ("AER") decided, pursuant to:

- (a) section 6 of the *National Electricity (New South Wales) Act 1997* (NSW);
- (b) section 13 of the National Electricity (NSW) Law ("NEL"); and
- (c) clause 2.5.1 of the National Electricity Rules ("NER"),

to grant Rail Corporation New South Wales constituted under the *Transport Administration Act 1988* (NSW) ("Applicant") an exemption ("Exemption") from:

- (d) the requirement to register as a Network Service Provider ("NSP"); and
- (e) the operation of Chapter 5 of the NER,

subject to the following conditions.

Specified distribution system

1. (a) The Exemption is limited to the distribution system ("Distribution System") that:
 - (i) is owned, controlled and/or operated by the Applicant; and
 - (ii) services the rail infrastructure facilities (for example: electrified track, stations, signals and communications) vested in the Applicant and located in the New South Wales metropolitan rail area (depicted by the black lines ('RailCorp') on the map provided by the Applicant in its application for exemption of 23 September 2005).
- (b) In this Exemption, "rail infrastructure facilities" and "metropolitan rail area" has the meaning given to that term in section 3 of the *Transport Administration Act 1988* (NSW).

Note: Consistent with the definition of "distribution system" in Chapter 10 of the NER, the Exemption applies to the specified distribution network together with any connection assets associated with that distribution network.

Licence exemption

2. The Applicant must be exempt from the requirement to have a licence to operate the Distribution System.

Note: Section 13 of the *Electricity Supply Act 1995* (NSW) provides that a person must not operate a distribution system for the purpose of conveying electricity, for or on behalf of retail suppliers, otherwise than under the authority of a distribution network service provider's licence. Clause 66 of the *Electricity Supply (General) Regulation 2001* (NSW) exempts any person who owns or controls a distribution system (other than TransGrid or a service provider listed in Schedule 3 to the Act). Condition 2 requires the Applicant, in relation to the Distribution System, to remain exempt from section 13 (or any comparable obligation that may replace section 13 from time to time).

Supply of electricity

3. (a) If requested by a person whose premises are connected to the Distribution System, the Applicant must supply electricity to that person (subject to the Applicant's contractual rights to disconnect and refuse to supply for failure to pay for the supply or for another breach of contract or any other contractual rights entitling the Applicant to terminate or take such action).
- (b) The Applicant must not hinder or obstruct a person whose premises are connected to the Distribution System from obtaining supply from another person who is authorised to supply electricity.

Note 1: At the date this Exemption was granted, the electricity supplier, in order to be "authorised", would need to be registered under the NER as a "Customer" and hold a "retail supplier's licence" under the *Electricity Supply Act 1995* (NSW).

Note 2: The purpose of condition 3 is to allow a person whose premises are connected to the Distribution System to elect whether to be supplied by the Applicant or an electricity retailer.

Retail pricing

4. (a) Subject to condition 4(b), the Applicant must not charge a person whose premises are connected to the Distribution System, for the supply of connection services or electricity during a particular period, more than:
 - (i) subject to condition 4(a)(ii), the amount that would apply if clause 70(2)(b) of the *Electricity Supply (General) Regulation 2001* (NSW) was deemed to apply to that person; or
 - (ii) where the charge is a network charge, the lesser of:
 - (A) the direct cost of the person's connection to the Distribution System; or
 - (B) the network charge that would apply under condition 4(a)(i).

- (b) Condition 4(a) does not apply where the person is Rail Corporation New South Wales, Rail Infrastructure Corporation, or Australian Rail Track Corporation Ltd.

Note 1: Clause 70(1) of the *Electricity Supply (General) Regulation 2001* (NSW) provides that, if the person in respect of whom the connection services are provided, or electricity is supplied, occupies residential premises and the person's electricity consumption is measured by a separate electricity meter, then the exemption from clause 66 is subject to the conditions set out in clause 70. Clause 70(2)(b) states: "The maximum amount that may be charged for the supply of electricity during a particular period is the amount that the standard retail supplier in whose supply district the premises are located would have charged under a standard form customer supply contract for that supply during that period". Condition 4 imposes on the Applicant an obligation similar to clause 70(2)(b) (except that condition 4 is not limited to persons who occupy residential premises and have separate electricity meters). The purpose of condition 4 is to protect customers whose premises are connected to the Distribution System and who are supplied with electricity by the Applicant.

Note 2: For the avoidance of doubt, condition 11(a) applies to the interpretation of condition 4(a).

Dispute resolution

5. The Applicant must:

- (a) refer any dispute or complaint with respect to the Distribution System involving:
 - (i) the Applicant; and
 - (ii) a person ("Customer") whose premises is connected to the Distribution System (other than the persons specified in condition 4(b)),

to the ombudsman under the ombudsman scheme approved, from time to time, for the purpose of the *Electricity Supply Act 1995* (NSW);

Note: For the avoidance of doubt, condition 11(a) applies to the interpretation of condition 5(a).

- (b) where required by law or the ombudsman, become a member of that ombudsman scheme or otherwise submit to its jurisdiction for the purpose of resolving that dispute;
- (c) provide for an equivalent dispute resolution scheme to resolve any dispute or complaint with respect to the Distribution System involving the Applicant and a Customer where that dispute or complaint would not come within the jurisdiction of the ombudsman;
- (d) advise Customers that the Applicant:
 - (i) is a member of the ombudsman scheme (where that is the case); and

- (ii) has established an alternative dispute resolution scheme in the event that the dispute or complaint does not come within the jurisdiction of the ombudsman; and
- (e) comply with any decision of the ombudsman or the alternative dispute resolution scheme relating to a dispute or complaint with respect to the Distribution System involving the Applicant and a Customer.

Note: Under section 96B of the *Electricity Supply Act 1995* (NSW), the Minister may approve an 'electricity industry ombudsman scheme'. At the date this Exemption was granted, the relevant body was the Energy & Water Ombudsman NSW (ABN 21 079 718 915). Section 96C of the Act makes it a condition of a distribution network service provider's licence that the licence holder be a member of the scheme, and comply with any decision by the ombudsman. Condition 5 imposes on the Applicant an obligation similar to section 96C but also provides for an alternative dispute resolution scheme in the event that the dispute does not come within the jurisdiction of the Energy & Water Ombudsman NSW.

Safety and network management

- 6. The Applicant must operate and maintain the Distribution System in accordance with any plan lodged by a person specified in condition 4(b) in accordance with the *Electricity Supply (Safety and Network Management) Regulation 2002* (NSW) that is applicable to the Distribution System.

Note: The *Electricity Supply (Safety and Network Management) Regulation 2002* (NSW) (clause 5) provides that the Director-General may require a network operator to lodge a network management plan, customer installation safety plan, public electrical safety awareness plan, and/or bush fire risk management plan. The network operator is required to implement any plan that is lodged with the Director-General by the network operator. Condition 6 requires the Distribution System to satisfy the requirements of any plan (or any other comparable obligation that may replace the Regulation from time to time) that applies to that Distribution System (regardless of whether or not the plan was lodged by the Applicant). The AER understands that the relevant plans have been lodged by Rail Corporation New South Wales. The purpose of condition 6 is to ensure that Rail Infrastructure Corporation and Australian Rail Track Corporation Ltd implement those plans as if the plans applied to them.

Commencement and expiry

- 7. The Exemption takes effect on and from 19 December 2005.
- 8. The Exemption terminates on the date that:
 - (a) the Applicant is dissolved; or
 - (b) the AER decides to repeal the Exemption in accordance with condition 10.
- 9. If the Applicant becomes aware that any condition of this Exemption is not satisfied, the Applicant must immediately notify the AER.
- 10. The AER may decide to amend or repeal the Exemption. The decision to amend or repeal the Exemption is exercisable in the same way, and subject to the same conditions, as the decision to grant the Exemption.

Note: For example, the AER may decide to repeal the Exemption in the event that a condition to the Exemption is not satisfied, or the Applicant does not allow a person to connect to the Distribution System.

Interpretation

11. In this Exemption, unless the contrary intention appears, a reference to:
- (a) a statute, regulation, law, rule or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (b) a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
 - (c) an agreement or a provision of an agreement includes an amendment or supplement to, or replacement or novation of, that agreement or that provision of that agreement;
 - (d) except in relation to references to the Applicant, a particular person includes a reference to the person's successors, substitutes (including persons taking by novation) and assigns.

Note: The Exemption is personal to the Applicant, and does not apply to any other person that owns, controls or operates the Distribution System at the time of the decision or in the future.

ATTACHMENT C

NETWORK SERVICE PROVIDER EXEMPTION RAIL INFRASTRUCTURE CORPORATION NOTICE OF DECISION TO GRANT EXEMPTION

On 19 December 2005, the Australian Energy Regulator (“AER”) decided, pursuant to:

- (a) section 6 of the *National Electricity (New South Wales) Act 1997* (NSW);
- (b) section 13 of the National Electricity (NSW) Law (“NEL”); and
- (c) clause 2.5.1 of the National Electricity Rules (“NER”),

to grant Rail Infrastructure Corporation constituted under the *Transport Administration Act 1988* (NSW) (“Applicant”) an exemption (“Exemption”) from:

- (d) the requirement to register as a Network Service Provider (“NSP”); and
- (e) the operation of Chapter 5 of the NER,

subject to the following conditions.

Specified distribution system

1. (a) The Exemption is limited to the distribution system (“Distribution System”) that:
 - (i) is owned, controlled and/or operated by the Applicant; and
 - (ii) services the rail infrastructure (for example: signals, communications and depot lighting and facilities) located in New South Wales outside the metropolitan rail area (depicted by the red lines (‘Leased Network’) and blue lines (‘Country Regional Network Operational Lines’) on the map provided by the Applicant in its application for exemption of 23 September 2005); and
 - (iii) is depicted by the green lines on the map provided by the Applicant in its application for exemption of 23 September 2005.
- (b) In this Exemption, “rail infrastructure facilities” and “metropolitan rail area” has the meaning given to that term in section 3 of the *Transport Administration Act 1988* (NSW).

Note: Consistent with the definition of “distribution system” in Chapter 10 of the NER, the Exemption applies to the specified distribution network together with any connection assets associated with that distribution network.

Licence exemption

2. The Applicant must be exempt from the requirement to have a licence to operate the Distribution System.

Note: Section 13 of the *Electricity Supply Act 1995* (NSW) provides that a person must not operate a distribution system for the purpose of conveying electricity, for or on behalf of retail suppliers, otherwise than under the authority of a distribution network service provider's licence. Clause 66 of the *Electricity Supply (General) Regulation 2001* (NSW) exempts any person who owns or controls a distribution system (other than TransGrid or a service provider listed in Schedule 3 to the Act). Condition 2 requires the Applicant, in relation to the Distribution System, to remain exempt from section 13 (or any comparable obligation that may replace section 13 from time to time).

Supply of electricity

3. (a) If requested by a person whose premises are connected to the Distribution System, the Applicant must supply electricity to that person (subject to the Applicant's contractual rights to disconnect and refuse to supply for failure to pay for the supply or for another breach of contract or any other contractual rights entitling the Applicant to terminate or take such action).
- (b) The Applicant must not hinder or obstruct a person whose premises are connected to the Distribution System from obtaining supply from another person who is authorised to supply electricity.

Note 1: At the date this Exemption was granted, the electricity supplier, in order to be "authorised", would need to be registered under the NER as a "Customer" and hold a "retail supplier's licence" under the *Electricity Supply Act 1995* (NSW).

Note 2: The purpose of condition 3 is to allow a person whose premises are connected to the Distribution System to elect whether to be supplied by the Applicant or an electricity retailer.

Retail pricing

4. (a) Subject to condition 4(b), the Applicant must not charge a person whose premises are connected to the Distribution System, for the supply of connection services or electricity during a particular period, more than:
 - (i) subject to condition 4(a)(ii), the amount that would apply if clause 70(2)(b) of the *Electricity Supply (General) Regulation 2001* (NSW) was deemed to apply to that person; or
 - (iii) where the charge is a network charge, the lesser of:
 - (A) the direct cost of the person's connection to the Distribution System; or
 - (B) the network charge that would apply under condition 4(a)(i).

- (b) Condition 4(a) does not apply where the person is Rail Corporation New South Wales, Rail Infrastructure Corporation, or Australian Rail Track Corporation Ltd.

Note 1: Clause 70(1) of the *Electricity Supply (General) Regulation 2001* (NSW) provides that, if the person in respect of whom the connection services are provided, or electricity is supplied, occupies residential premises and the person's electricity consumption is measured by a separate electricity meter, then the exemption from clause 66 is subject to the conditions set out in clause 70. Clause 70(2)(b) states: "The maximum amount that may be charged for the supply of electricity during a particular period is the amount that the standard retail supplier in whose supply district the premises are located would have charged under a standard form customer supply contract for that supply during that period". Condition 4 imposes on the Applicant an obligation similar to clause 70(2)(b) (except that condition 4 is not limited to persons who occupy residential premises and have separate electricity meters). The purpose of condition 4 is to protect customers whose premises are connected to the Distribution System and who are supplied with electricity by the Applicant.

Note 2: For the avoidance of doubt, condition 12(a) applies to the interpretation of condition 4(a).

Dispute resolution

5. The Applicant must:

- (a) refer any dispute or complaint with respect to the Distribution System involving:
 - (i) the Applicant; and
 - (ii) a person ("Customer") whose premises is connected to the Distribution System (other than the persons specified in condition 4(b)),

to the ombudsman under the ombudsman scheme approved, from time to time, for the purpose of the *Electricity Supply Act 1995* (NSW);

Note: For the avoidance of doubt, condition 12(a) applies to the interpretation of condition 5(a).

- (b) where required by law or the ombudsman, become a member of that ombudsman scheme or otherwise submit to its jurisdiction for the purpose of resolving that dispute;
- (c) provide for an equivalent dispute resolution scheme to resolve any dispute or complaint with respect to the Distribution System involving the Applicant and a Customer where that dispute or complaint would not come within the jurisdiction of the ombudsman;
- (d) advise Customers that the Applicant:
 - (ii) is a member of the ombudsman scheme (where that is the case); and

- (ii) has established an alternative dispute resolution scheme in the event that the dispute or complaint does not come within the jurisdiction of the ombudsman; and
- (e) comply with any decision of the ombudsman or the alternative dispute resolution scheme relating to a dispute or complaint with respect to the Distribution System involving the Applicant and a Customer.

Note: Under section 96B of the *Electricity Supply Act 1995* (NSW), the Minister may approve an 'electricity industry ombudsman scheme'. At the date this Exemption was granted, the relevant body was the Energy & Water Ombudsman NSW (ABN 21 079 718 915). Section 96C of the Act makes it a condition of a distribution network service provider's licence that the licence holder be a member of the scheme, and comply with any decision by the ombudsman. Condition 5 imposes on the Applicant an obligation similar to section 96C but also provides for an alternative dispute resolution scheme in the event that the dispute does not come within the jurisdiction of the Energy & Water Ombudsman NSW.

Safety and network management

- 6. The Applicant must operate and maintain the Distribution System in accordance with any plan lodged by a person specified in condition 4(b) in accordance with the *Electricity Supply (Safety and Network Management) Regulation 2002* (NSW) that is applicable to the Distribution System.

Note: The *Electricity Supply (Safety and Network Management) Regulation 2002* (NSW) (clause 5) provides that the Director-General may require a network operator to lodge a network management plan, customer installation safety plan, public electrical safety awareness plan, and/or bush fire risk management plan. The network operator is required to implement any plan that is lodged with the Director-General by the network operator. Condition 6 requires the Distribution System to satisfy the requirements of any plan (or any other comparable obligation that may replace the Regulation from time to time) that applies to that Distribution System (regardless of whether or not the plan was lodged by the Applicant). The AER understands that the relevant plans have been lodged by Rail Corporation New South Wales. The purpose of condition 6 is to ensure that Rail Infrastructure Corporation and Australian Rail Track Corporation Ltd implement those plans as if the plans applied to them.

Commencement, application and expiry

- 7. The Exemption takes effect on and from 19 December 2005.
- 8. Conditions 3, 4, 5 and 6 do not apply to the Applicant where the Distribution System is leased to Australian Rail Track Corporation Ltd ("ARTC") under an ARTC lease entered into pursuant to Part 8A of the *Transport Administration Act 1988* (NSW) under which ARTC is the operator and has exclusive possession and control of the Distribution System.
- 9. The Exemption terminates on the date that:
 - (a) the Applicant is dissolved; or
 - (b) the AER decides to repeal the Exemption in accordance with condition 11.

10. If the Applicant becomes aware that any condition of this Exemption is not satisfied, the Applicant must immediately notify the AER.
11. The AER may decide to amend or repeal the Exemption. The decision to amend or repeal the Exemption is exercisable in the same way, and subject to the same conditions, as the decision to grant the Exemption.

Note: For example, the AER may decide to repeal the Exemption in the event that a condition to the Exemption is not satisfied, or the Applicant does not allow a person to connect to the Distribution System.

Interpretation

12. In this Exemption, unless the contrary intention appears, a reference to:
 - (a) a statute, regulation, law, rule or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (b) a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
 - (c) an agreement or a provision of an agreement includes an amendment or supplement to, or replacement or novation of, that agreement or that provision of that agreement;
 - (d) except in relation to references to the Applicant, a particular person includes a reference to the person's successors, substitutes (including persons taking by novation) and assigns.

Note: The Exemption is personal to the Applicant, and does not apply to any other person that owns, controls or operates the Distribution System at the time of the decision or in the future.

ATTACHMENT D

NETWORK SERVICE PROVIDER EXEMPTION AUSTRALIAN RAIL TRACK CORPORATION LTD NOTICE OF DECISION TO GRANT EXEMPTION

On 19 December 2005, the Australian Energy Regulator ("AER") decided, pursuant to:

- (a) section 6 of the *National Electricity (New South Wales) Act 1997* (NSW);
- (b) section 13 of the National Electricity (NSW) Law ("NEL"); and
- (c) clause 2.5.1 of the National Electricity Rules ("NER"),

to grant Australian Rail Track Corporation Ltd (ACN 081 455 754) ("Applicant") an exemption ("Exemption") from:

- (d) the requirement to register as a Network Service Provider ("NSP"); and
- (e) the operation of Chapter 5 of the NER,

subject to the following conditions.

Specified distribution system

1. (a) The Exemption is limited to the distribution system ("Distribution System") that:
 - (i) is controlled and/or operated by the Applicant;
 - (ii) is leased to the Applicant under an ARTC lease entered into pursuant to Part 8A of the *Transport Administration Act 1988* (NSW) under which the Applicant is the operator and has exclusive possession and control of the Distribution System; and
 - (iii) is described in condition 1(a)(ii) and (iii) to the exemption granted to Rail Infrastructure Corporation on 19 December 2005.
- (b) In this Exemption, "rail infrastructure facilities" and "metropolitan rail area" has the meaning given to that term in section 3 of the *Transport Administration Act 1988* (NSW).

Note: Consistent with the definition of "distribution system" in Chapter 10 of the NER, the Exemption applies to the specified distribution network together with any connection assets associated with that distribution network.

Licence exemption

2. The Applicant must be exempt from the requirement to have a licence to operate the Distribution System.

Note: Section 13 of the *Electricity Supply Act 1995* (NSW) provides that a person must not operate a distribution system for the purpose of conveying electricity, for or on behalf of retail suppliers, otherwise than under the authority of a distribution network service provider's licence. Clause 66 of the *Electricity Supply (General) Regulation 2001* (NSW) exempts any person who owns or controls a distribution system (other than TransGrid or a service provider listed in Schedule 3 to the Act). Condition 2 requires the Applicant, in relation to the Distribution System, to remain exempt from section 13 (or any comparable obligation that may replace section 13 from time to time).

Supply of electricity

3. (a) If requested by a person whose premises are connected to the Distribution System, the Applicant must supply electricity to that person (subject to the Applicant's contractual rights to disconnect and refuse to supply for failure to pay for the supply or for another breach of contract or any other contractual rights entitling the Applicant to terminate or take such action).
- (b) The Applicant must not hinder or obstruct a person whose premises are connected to the Distribution System from obtaining supply from another person who is authorised to supply electricity.

Note 1: At the date this Exemption was granted, the electricity supplier, in order to be "authorised", would need to be registered under the NER as a "Customer" and hold a "retail supplier's licence" under the *Electricity Supply Act 1995* (NSW).

Note 2: The purpose of condition 3 is to allow a person whose premises are connected to the Distribution System to elect whether to be supplied by the Applicant or an electricity retailer.

Retail pricing

4. (a) Subject to condition 4(b), the Applicant must not charge a person whose premises are connected to the Distribution System, for the supply of connection services or electricity during a particular period, more than:
 - (i) subject to condition 4(a)(ii), the amount that would apply if clause 70(2)(b) of the *Electricity Supply (General) Regulation 2001* (NSW) was deemed to apply to that person; or
 - (iv) where the charge is a network charge, the lesser of:
 - (A) the direct cost of the person's connection to the Distribution System; or
 - (B) the network charge that would apply under condition 4(a)(i).

- (b) Condition 4(a) does not apply where the person is Rail Corporation New South Wales, Rail Infrastructure Corporation, or Australian Rail Track Corporation Ltd.

Note 1: Clause 70(1) of the *Electricity Supply (General) Regulation 2001* (NSW) provides that, if the person in respect of whom the connection services are provided, or electricity is supplied, occupies residential premises and the person's electricity consumption is measured by a separate electricity meter, then the exemption from clause 66 is subject to the conditions set out in clause 70. Clause 70(2)(b) states: "The maximum amount that may be charged for the supply of electricity during a particular period is the amount that the standard retail supplier in whose supply district the premises are located would have charged under a standard form customer supply contract for that supply during that period". Condition 4 imposes on the Applicant an obligation similar to clause 70(2)(b) (except that condition 4 is not limited to persons who occupy residential premises and have separate electricity meters). The purpose of condition 4 is to protect customers whose premises are connected to the Distribution System and who are supplied with electricity by the Applicant.

Note 2: For the avoidance of doubt, condition 11(a) applies to the interpretation of condition 4(a).

Dispute resolution

5. The Applicant must:

- (a) refer any dispute or complaint with respect to the Distribution System involving:
 - (i) the Applicant; and
 - (ii) a person ("Customer") whose premises is connected to the Distribution System (other than the persons specified in condition 4(b)),

to the ombudsman under the ombudsman scheme approved, from time to time, for the purpose of the *Electricity Supply Act 1995* (NSW);

Note: For the avoidance of doubt, condition 11(a) applies to the interpretation of condition 5(a).

- (b) where required by law or the ombudsman, become a member of that ombudsman scheme or otherwise submit to its jurisdiction for the purpose of resolving that dispute;
- (c) provide for an equivalent dispute resolution scheme to resolve any dispute or complaint with respect to the Distribution System involving the Applicant and a Customer where that dispute or complaint would not come within the jurisdiction of the ombudsman;
- (d) advise Customers that the Applicant:
 - (iii) is a member of the ombudsman scheme (where that is the case); and

- (ii) has established an alternative dispute resolution scheme in the event that the dispute or complaint does not come within the jurisdiction of the ombudsman; and
- (e) comply with any decision of the ombudsman or the alternative dispute resolution scheme relating to a dispute or complaint with respect to the Distribution System involving the Applicant and a Customer.

Note: Under section 96B of the *Electricity Supply Act 1995* (NSW), the Minister may approve an 'electricity industry ombudsman scheme'. At the date this Exemption was granted, the relevant body was the Energy & Water Ombudsman NSW (ABN 21 079 718 915). Section 96C of the Act makes it a condition of a distribution network service provider's licence that the licence holder be a member of the scheme, and comply with any decision by the ombudsman. Condition 5 imposes on the Applicant an obligation similar to section 96C but also provides for an alternative dispute resolution scheme in the event that the dispute does not come within the jurisdiction of the Energy & Water Ombudsman NSW.

Safety and network management

- 6. The Applicant must operate and maintain the Distribution System in accordance with any plan lodged by a person specified in condition 4(b) in accordance with the *Electricity Supply (Safety and Network Management) Regulation 2002* (NSW) that is applicable to the Distribution System.

Note: The *Electricity Supply (Safety and Network Management) Regulation 2002* (NSW) (clause 5) provides that the Director-General may require a network operator to lodge a network management plan, customer installation safety plan, public electrical safety awareness plan, and/or bush fire risk management plan. The network operator is required to implement any plan that is lodged with the Director-General by the network operator. Condition 6 requires the Distribution System to satisfy the requirements of any plan (or any other comparable obligation that may replace the Regulation from time to time) that applies to that Distribution System (regardless of whether or not the plan was lodged by the Applicant). The AER understands that the relevant plans have been lodged by Rail Corporation New South Wales. The purpose of condition 6 is to ensure that Rail Infrastructure Corporation and Australian Rail Track Corporation Ltd implement those plans as if the plans applied to them.

Commencement and expiry

- 7. The Exemption takes effect on and from 19 December 2005.
- 8. The Exemption terminates on the date that:
 - (a) the Applicant is dissolved; or
 - (b) the AER decides to repeal the Exemption in accordance with condition 10.
- 9. If the Applicant becomes aware that any condition of this Exemption is not satisfied, the Applicant must immediately notify the AER.
- 10. The AER may decide to amend or repeal the Exemption. The decision to amend or repeal the Exemption is exercisable in the same way, and subject to the same conditions, as the decision to grant the Exemption.

Note: For example, the AER may decide to repeal the Exemption in the event that a condition to the Exemption is not satisfied, or the Applicant does not allow a person to connect to the Distribution System.

Interpretation

11. In this Exemption, unless the contrary intention appears, a reference to:
- (a) a statute, regulation, law, rule or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (b) a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
 - (c) an agreement or a provision of an agreement includes an amendment or supplement to, or replacement or novation of, that agreement or that provision of that agreement;
 - (d) except in relation to references to the Applicant, a particular person includes a reference to the person's successors, substitutes (including persons taking by novation) and assigns.

Note: The Exemption is personal to the Applicant, and does not apply to any other person that owns, controls or operates the Distribution System at the time of the decision or in the future.