

**NIE Energy Limited
Power Procurement Business (PPB)**

**The Market Monitoring Unit (MMU)
Governance Process Manual**

SEM-10-085

Response by NIE Energy (PPB)

25 February 2011.



Introduction

NIE Energy – Power Procurement Business (“PPB”) welcomes the opportunity to respond to the SEM Committee’s (SEMC) consultation paper on The Market Monitoring Unit (MMU) Governance Process Manual.

General Comments

PPB welcomes the clarification of the role and responsibilities of the MMU provided by this consultation paper. It is however, a concern that as little as 50% of an MMU analysts time is spend on his primary role of market monitoring.

A critical issue to consider is whether the identity of generators (or generating units) that are being investigated should be identified (particularly where the investigation is informal). The main benefit of explicitly identify generating units being investigated and the specific area of concern is that it will improve transparency and enable all market participants to consider the matter and, if they desire, provide input into the investigation. Against this however, is that public identification may mean a generator’s reputation is tainted even though, following investigation, they may be fully exonerated. Such unwarranted stigma could have negative consequences on a generator (e.g. view of the investment community) and therefore must be sensitively managed. On balance, we consider that the benefits of identification outweigh the concerns, but only on the proviso that there is an equally public renouncement should the party be found to be compliant with the BCOP and its licence obligations.

In this context, the publication of the new Traffic Light Report will help address the transparency shortfall, providing there is equivalent weight attached to highlighting where a generator is found not to be in breach of any obligations. A further benefit is that it will help promote consistency of interpretation of the BCOP since if a generating unit adopts an approach that is different to other similar generating units but which, following investigation, is found to be legitimate, then other generators may also choose to adopt that approach. This further aids transparency in the market.

Given the need to formally close off all investigations and to ensure all market participants are operating on a level playing field, a closure report must be published following the conclusion of all investigations (the detail required will clearly vary depending on the complexity and outcome of the investigation).

Specific Comments

Section 4.1

We consider that the MMU should be more proactive in their monitoring activities and therefore spending more than 50% of their time on market monitoring. It is also a concern that they are spending time on collating market data, producing reports that would appear to duplicate other market reporting activities (e.g. produced by SEMO).

Section 5.5.2

This section indicates that the MMU will seek permission from the Oversight Committee where “the suspected breach would have a major impact upon the market”. However, no objective criteria has been specified for determining what constitutes “a major impact upon the market”. Furthermore, it is unclear what scope is intended in the reference to “the market”. For example is this in relation to customers, other generator participants, or any other category of stakeholders.

Section 5.3

In relation to the investigation process, it is important to note that in the case of PPB as an intermediary, the underlying generating units are not a “party” to the Trading and Settlement Code (TSC) although they have licence obligations to provide certain components of the commercial offer data. Hence any investigation of those generators will have to be instigated under their licence obligations rather than the TSC.

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Sections 4.3 & 7.1

We consider that the term “Enforcement Journal” is an inappropriate title for what is essentially an “Investigation Register”, particularly since if a generator is not in breach, it follows that no enforcement is required. This investigation register (or a summary version of it) should be a public document that provides a detailed list of all investigations, that could be viewed both chronologically and by category of investigation, and the outcome thereof (i.e. clearance and breaches).

Section 4.6

The Traffic Light Report (TLR) should be published documenting all current investigations. Monthly updating would mean an investigation commencing immediately after a publication of the TLR remains invisible for a complete month. The TLR should be updated every time the status of an existing investigation changes or a new investigation commences with some form of notification to market participants (e.g. an email) to provide notice that the TLR has been modified.

Section 5.4, item 9

It is not clear why, in step 9, the name of a generator will only be identified “where necessary”. The TLR will identify the generator and hence the context of the information request should be made totally clear.

As we have noted in our general comments, it is not sufficient to just remove a case from the TLR when no breach has been found. A public acknowledgement that the generator was found to be compliant with its BCOP and licence obligations is required to counter balance being named in the first place.

In circumstances where the investigated party agrees to amend its behaviour, all market participants and not just the complainer should be informed. This would be addressed by our earlier suggestion that a closure report should be published following all investigations.

Section 8

Not all flow lines in the Process Flow Chart are clear, in particular the flows from decision diamond “MMU requests permission from the OC to ask the SEMC for a binding direction under licence/legislation”.

Conclusion

PPB believes that the TLR devised by the MMU should be a live public document showing the status of all current investigations. We also consider that the “Investigation Register” (renamed Enforcement Journal) should be a public document showing the history of all closed investigations. Finally, as each investigation concludes and is removed from the TLR, a summary report should be made available to all market participants (and which would be available thereafter through the Investigation Register).