

**RESERVE AGREEMENT WITH NEMMCO
SUMMARY REPORT ON PROCESS AND OUTCOMES RELATING TO LEGAL AND
CONTRACTUAL MATTERS**

1. Background and Tender Process

- 1.1 The National Electricity Rules (NER) provide for NEMMCO to contract for reserves under its Reserve Trader provisions in the event that the Reserve Safety Margin is likely to be breached.
- 1.2 On or about 23 September 2005, NEMMCO issued an invitation to tender for reserves in Victoria and South Australia. This was due to the medium term forecast for Victoria and South Australia showing that reserve levels in these regions would fall significantly below the minimum reserve level of 530MW during January, February and March of 2006. Shortfalls in the margin of up to 500 MW for a number of weeks were forecast in the Medium Term PASA for the coming summer.
- 1.3 Energy Response Pty Ltd (**ER**) was interested in submitting a tender to NEMMCO and securing a contract for reserves using its access to broad-based demand side response (DSR). The Energy Users Association of Australia (**EUAA**) has taken a strong position supporting greater DSR in the NEM and has a track record of having undertaken a number of successful past projects in this area, which have helped to stimulate interest in DSR. The EUAA had been involved in several previous attempts by NEMMCO to secure DSR, which had not been successful. Whilst there were a number of reasons for this, one impediment had been the complex and very detailed legal and contractual arrangements involved and the lack of experience, especially on the part of end users.
- 1.4 EUAA felt that NEMMCO's current process offered an opportunity to redress some of these problems and hence assist the procurement of DSR by NEMMCO. The legal arrangements were clearly an obstacle on the critical path to a successful tender by NEMMCO and so this was targeted as an important area. It was also felt that, if this could be overcome, then end-users would gain access to a commercial DSR arrangement and gain valuable practical experience with implementing DSR. ER had recently been set up as a DSR aggregator and offered the prospect of collecting together DSR from a variety of end users and spreading its commercial benefits and learning through the NEMMCO tender. EUAA was also concerned that there could be a threat to supply in the Vic/SA region unless NEMMCO's process was successful and that any DSR gained would help to ensure that "the lights stayed on" during the summer.
- 1.5 Given the above, EUAA and ER agreed to work together on the legal and contractual issues associated with the NEMMCO tender. EUAA secured funding from the Advocacy Panel to allow them to engage legal experts to assist in this. ER was seen as a good vehicle to help conduct this work given that it was set up and the only dedicated DSR provider in the NEM, had access to a variety of customers (type, industry, different forms of DSR) and had systems in place that would permit timely and certain activation. These factors greatly enhanced the prospects of a successful

tender and also the number of customers who would be able to get involved.

- 1.6 This enabled ER to prepare and submit a response to NEMMCO's Reserve Trader tender.
- 1.7 It should be noted that the results of this project, including the tender documentation and this summary report, would be made public. Indeed, the funding agreement that the EUAA has with the Advocacy Panel provides for this. EUAA has a view that the results of this process and the resulting documentation need to be disseminated widely in order that lessons learnt and the benefits derived could be used by others in future. However, within the budget provided, it was not possible to work with other individuals involved with the tender. Nevertheless, parties were advised that the process was underway and offered access to 'working documentation' if they requested it.
- 1.8 As part of the preparation, EUAA appointed Maddocks Lawyers who reviewed the draft Reserve Agreement provided by NEMMCO. A draft Demand Side Response (**DSR**) Provider Agreement was also prepared by Maddocks for the onward supply of reserves by ER. This document is also being made available to others for use in future.
- 1.9 ER lodged and won a tender with NEMMCO for reserves in Victoria. The ER tender with NEMMCO provided for 125MW of reserves, drawn from some 60 sources and ranging in size, location and type (eg load shedding, on site generation). This made up one-third of the NEMMCO tender. It is felt that the project assisted in significant way in ensuring that many users were able to participate and gain some experience; and that the NEMMCO tender was so successful.
- 1.10 Energy Response were provided with an opportunity to add any comments they felt necessary but did not respond before this document was finalised.

2. Reserve Agreement

- 2.1 The Reserve Agreement is an agreement for the provision of the reserve by:
 - 2.1.1 load reduction;
 - 2.1.2 generation increase; or
 - 2.1.3 both load reduction and generation increase.
- 2.2 ER, as the reserve provider, must ensure that the minimum technical requirements for the reserve equipment are met throughout the period of the Reserve Agreement.
- 2.3 ER must conduct tests reasonably required by NEMMCO to ensure that the minimum technical requirements of the reserve equipment are met.
- 2.4 The reserve provider must also compile and maintain records of, amongst others:
 - 2.4.1 procedures for conducting tests;

- 2.4.2 maintenance and modification of any reserve equipment;
- 2.4.3 measurement and verification of the provision of the reserve.
- 2.5 The Reserve Agreement sets out in detail the calculation and payment mechanism for charges owed by NEMMCO for any reserve provided. These include an availability fee and a dispatch fee.
- 2.6 There is a liability cap in the Reserve Agreement in respect of any claims in connection with any pre-activation, dispatch or activation of a reserve.
- 2.7 Each party must comply with the applicable legislation and with the lawful requirements of authorities.
- 2.8 The Reserve Agreement provides for certain contracted levels of performance, with minimum technical requirements and minimum availability.
- 2.9 Provision of any reserve would be subject to prior notification by NEMMCO.
- 2.10 Details of consumers at each location in respect of load reduction at the relevant connection points are also listed in the Reserve Agreement.
- 2.11 Maddocks, together with Mr Glenn Johnston, provided input into the drafting of the Reserve Agreement.
- 2.12 The final outcome of the Reserve Agreement included substantial variations agreed upon directly between ER and NEMMCO, which was ultimately executed by the parties. NEMMCO's work and co-operation is gratefully acknowledged.
- 2.13 It is felt that the process highlighted the need for legal input from the demand side to ensure that identified legal obstacles could be addressed.
- 2.14 It is also felt that the process highlighted the detail and complexity of the legal documentation, that this was an impediment to securing DSR under the Reserve Trader and that individual customers, in particular, would find it even more of an impediment.
- 2.15 The process also achieved certain variations and refinements that improved the Reserve Agreement and should make its future use easier.
- 2.16 However, the Reserve Agreement in our view remains overly complex, detailed and will prove operationally troublesome to potential providers in future. It would be helpful if NEMMCO could review this. It is also recommended that the EUAA take this matter up with NEMMCO and that the EUAA take other steps that would help improve the Reserve Trader process and the Reserve Agreement.

3. **DSR Provider Agreement**

- 3.1 Initially, the DSR Provider Agreement was prepared on a back-to-back basis with the Reserve Agreement. This is because ER essentially played the role of a coordinator, with the consumers ultimately providing the reserve.

- 3.2 Eventually, a simplified DSR Provider Agreement in plain English form was used by ER but it remains uncertain if they have made this public. Again, Maddocks provided input into the drafting of the DSR Provider Agreement.
- 3.3 It is recommended that the EUAA undertake additional work that would result in a simplified public DSR Provider Agreement that could be used by users and DSR providers. This is seen as one of the critical next steps in activating DSR across the NEM.

4. **Copyright**

- 4.1 The terms and conditions of both the Reserve Agreement and the DSR Provider Agreement are subject to copyright, and must not be used or reproduced without the consent of the EUAA, NEMMCO and the Advocacy Panel. However, as mentioned above, they are to be made public.

5. **Acknowledgements**

- 5.1 The National Electricity Consumers Advocacy Panel provided funding for this project. Their assistance is gratefully acknowledged but the views outlined herein should not necessarily be attributed to them.
- 5.2 The assistance of Energy response Pty Ltd and NEMMCO is also gratefully acknowledged.

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