

Your ref:

Our ref: MAD054 v5
Enquiries: Troy Forward
9254 4304

Shane Cremin
Griffin Energy
Level 15, 28 The Esplanade
PERTH WA 6000

Dear Shane

CAPACITY CREDIT REFUND MECHANISM PROPOSED RULE CHANGE

Thank you for submitting a rule change proposal to amend the capacity credit refund mechanism.

The proposal was received by the IMO on Friday 14 November 2008. The proposal appears to raise significant issues relating to the reserve capacity refund mechanism, and accordingly the IMO has determined that it will progress the proposal.

The IMO acknowledges the complexity of the proposed rule change and appreciates the risks and cost pressures faced by new entrant generators.

In section 2 of the proposed rule change, Griffin Energy has requested that the proposal be made subject to the fast-track rule change process. Clause 2.5.9 outlines the requirements that must be met for the IMO to conclude that the fast track process should apply. The clause reads as follows:

The IMO may subject a Rule Change Proposal to the Fast Track Rule Change Process if, in its opinion, the Rule Change Proposal:

- (a) is of a minor or procedural nature; or*
- (b) is required to correct a manifest error; or*
- (c) is urgently required and is essential for the safe, effective and reliable operation of the market or the SWIS.*

Taking each of these tests in turn we would comment as follows:

(a) Minor or procedural

The IMO's view is that the proposed rule change does not meet the criteria in sub-clause 2.5.9(a). The proposed change to the capacity refund table is not procedural in nature and would bring about significant financial implications. In addition, it would require a comprehensive analysis of the impact of the change on other market participants as well as a consideration of whether the change is consistent with the substantive intent or purpose of clause 2.5.9 and the market objectives.

(b) Manifest error

Neither is the proposed rule change required to correct a manifest error as required by sub-clause 2.5.9(b). A "manifest error" is an error that is evident or obvious and capable of recognition without prolonged argument. In relation to this rule change

proposal, the IMO would need to be satisfied that any discrimination against new entrant generators was an unintended result.

The IMO acknowledges the importance of the subject matter of the proposal to Griffin Energy, however it is of the opinion that the market rules, as they currently stand, maintain a delicate balance between providing sufficient incentive to facilitate the entrance of new generators and ensuring those new entrant generators meet their capacity obligations.

RC_2007_05 is one rule change which was progressed under the fast-track mechanism with respect to sub-clause 2.5.9(b). The proposal submitted that subclause 4.26.2(b)ii had an unintended detrimental impact on participant refund calculations in certain circumstances even though participants had complied with their obligations. This rule change proposal differs significantly to Griffin's proposal which submits that due to Griffin's status as a new entrant generator, it is discriminated against when it *fails to comply* with its reserve capacity obligations.

(c) Urgently required

The condition contained in sub-clause 2.5.9(c) consists of four elements:

- it must be urgent;
- it must be essential for the safe operation of the market or the SWIS;
- it must be essential for the effective operation of the market or the SWIS; and
- it must be essential for the reliable operation of the market or the SWIS.

That is, a proposed rule change may only be made subject to the fast-track process under sub-clause 2.5.9(c) if it satisfies all four of these elements. While Griffin contends that the proposed rule change would facilitate the effective operation of the market or the SWIS through supporting the entrance of new generators into the market. However, the proposed rule change has no bearing on the *safe* operation of the market or the SWIS or on the *reliable* operation of the market or the SWIS and as such, the wording of the market rules explicitly precludes a fast-track progression of the proposed rule change with respect to sub-clause 2.5.9(c).

The IMO is aware that a different test may have been applied in the past in relation to sub-clause 2.5.9(c), which resulted in a fast track progression of a proposed rule change based on the fulfilment of only one or two of the elements listed above. However, having received legal advice on this issue, the IMO is now of the view that it may only subject to the fast track rule change process those proposed rule changes that satisfy all four elements under sub-clause 2.5.9(c).

The IMO is therefore of the opinion that the proposed rule change does not meet any of the conditions under (a), (b) or (c) of clause 2.5.9 and accordingly, cannot be fast-tracked.

However, the IMO has determined that the proposed rule change be progressed via the standard rule change process. Given the complexity of the matter it may be appropriate to reconvene the Reserve Capacity Refund Mechanism Working Group to ensure that sufficient consideration is given to the complexities and financial implications associated with this proposed rule change.

The IMO appreciates the time and effort involved in putting together a proposed rule change of this magnitude and trust that you will consider the standard rule change process as a workable alternative.

Please do not hesitate to contact our Manager Market Administration and System Capacity, Mr Troy Forward, on 9254 4304 if you wish to discuss this matter further.

Yours sincerely



ALLAN DAWSON
CHIEF EXECUTIVE OFFICER

21 November 2008