



Agenda Item 6(b): Outcomes of consultation on the Market Advisory Committee Constitution and Operating Practices Concept Paper (CP_2009_03)

1. Purpose of this paper

The purpose of this paper is to:

- Present the Market Advisory Committee (MAC) with the submissions received on the MAC Constitution and Operating Practices Concept Paper;
- Outline the Independent Market Operator's (IMO) response to the submissions received; and
- Note the process to be undertaken from here.

2. Background:

During the annual review of the composition of the Market Advisory Committee (MAC) for the 2009 calendar year, the Independent Market Operator (IMO) identified a number of areas of the Wholesale Electricity Market Rules (Market Rules) and MAC Constitution were identified that could benefit from improvement.

At the 29 April 2009 MAC meeting the IMO presented the MAC Constitution and Operating Practices Concept Paper (CP_2009_03) which summarised the broad issues identified by the IMO needing to be addressed to ensure:

- a continual high standard of representation on the MAC; and
- that the MAC operates in the best interests of the Wholesale Electricity Market (WEM).

The issues that the IMO addressed in the Concept Paper were:

- Representation and Proxies;
- Appointment Process;
- Eligibility Criteria and Key Skills;
- Tenure;
- Responsibilities;

- Removal and Replacement of Members;
- Reappointment;
- Operating Practices; and
- MAC Working Groups.

The Concept Paper also outlined the IMO's recommendations to address each of these issues, based on the review of the composition and operation of similar committees in other jurisdictions and industries.

MAC members were generally amenable to the IMO's recommendations, in particular agreeing that a review was appropriate and timely. The MAC suggested that the IMO consult with the Economic Regulation Authority (ERA) on the proposal to remove its observer membership status. The IMO also invited MAC members to provide additional comment on the recommendations presented.

The IMO received submissions from the following MAC members on the recommendations:

- ERA;
- Landfill Gas & Power (LGP);
- Office of Energy (OoE);
- System Management; and
- Western Power.

2. Summary of Submissions:

Overall, the submissions received from MAC members on CP_2009_03 were broadly supportive of the IMO in reviewing the MAC Constitution and Operating Practices and of the recommended changes and approach.

A number of further key issues were however identified by MAC members as requiring further consideration by the IMO. These are summarised below:

- **Observer status for ERA** - There were concerns raised by a number of submitters regarding making ERA a full member of the MAC due to possible conflicts of interest.

In the submission received from the ERA, it was noted that the Secretariat does not support the role of the observer being removed nor any change to the ERA's class of membership on the MAC. Furthermore, the ERA noted that the purpose of their representation on the MAC is so that they may provide advice and assistance in respect of the issues and/or rule changes being considered by the MAC where it is able to do so.

Given the broader role and obligations of the ERA under the Market Rules, the ERA noted that it should not be providing a formal view regarding rule changes presented to the MAC as this may lead to potential sources of conflict. The ERA also expressed an interest in consulting with the IMO in respect of the problems presented with regard to speaking rights in relation to observer membership.

- **Membership status of the OoE** - OoE noted concerns in its submission with regard to the IMO's proposal for the OoE to officially be designated as representing the "interest of small-use customers".

In particular, the OoE submitted that should another potential representative of small-use customers become available in the future the MAC Constitution should provide sufficient flexibility to enable such a change in representation to occur.

The OoE also requested that the Minister for Energy retain the discretion to appoint a MAC representative to allow the OoE to occupy a position following a potential change to the small-use customer representation.

- **Requirements of compulsory class members** – Both System Management and Western Power expressed concerns that the suggested processes seemed prescriptive and onerous.

System Management, in particular, submitted that the requiring appointees representing compulsory memberships to "provide a current CV and cover letter outlining their relevant experience and which addresses the eligibility criteria" seems bureaucratic. System Management suggested that the best determination of the representative from a compulsory member organisation would be made by the particular organisation. Further, System Management noted that requiring this type of information for compulsory members would be superfluous as it considered that it would be unlikely that the IMO would refuse the appointment of any compulsory class nominee.

- **Access to information** - LGP noted in its submission that a key issue is that Rule Participants should have full access to both information and the IMO and have their concerns properly addressed. The task is therefore to ensure that exclusion from MAC does not inhibit this, and ensure that this fact is accurately perceived by the market.

LGP stated that non-membership of MAC would not disadvantage them as they would still have access to MAC minutes and meeting papers and be able to continue to participate through Working Groups and the Rule Change Process, supplemented by meetings with the IMO when reasonably requested.

LGP noted that MAC members may be advantaged by their ability to potentially stop propositions from formally continuing through the formal rule or procedure change process. However, LGP noted that because these situations would be recorded in the minutes interested stakeholders outside of MAC would be kept informed and could potentially consult with the Chair of the MAC. LGP suggested that Rule Participants who were not represented on the MAC should be able to make submissions on the points recorded in the MAC minutes in order to facilitate this consultation process.

- **Working Group access** – LGP noted in its submission that the IMO's intention to facilitate greater access to Working Groups would be of significant benefit to interested parties as it offers a good venue for offering participation to anyone who reasonably wants it.

In particular, LGP submitted that they welcome the initiative to facilitate broader access to the working groups of parties who are not Rule Participants. Furthermore, LGP noted that if access to Working Group is easy, then future objections on the grounds of not having been represented are diminished.

LGP recommended that the IMO consider formalising the procedure for appointments to the Working Groups and possibly include direct application from any suitably qualified entity.

- **Other** – The following additional queries were also raised by submitters:
 - How does the proposed ballot work?
 - Should members reflect the views of their class or take a best-for-market approach while properly representing the position of their class?

3. The IMO's response:

The IMO's response to the queries raised in the submissions received from MAC members is presented below:

- **Observer status for ERA:** The IMO accepts the views expressed by the ERA and other submitters and agrees that there could be possible conflicts of interests arising from making the ERA a full member.

As a result of this feedback and discussions held with the ERA, the IMO no longer proposes to remove the observer category from the MAC. Furthermore, the IMO agrees that the ERA should maintain its observer status on the MAC, and notes that it will consult with the ERA and other affected parties to determine an appropriate and workable option for further defining the role of an observer in the MAC Constitution.

- **Membership status of the Office of Energy:** The IMO agrees with the OoE's suggestion that should another representative for small-use customers become available in the future, it should not be excluded from being able to apply to serve on the MAC. To limit potential representation to only the OoE would discriminate against other appropriate representatives and therefore not be in the best interests of the market. The IMO therefore no longer proposes to amend the status of the small-customer representative on the MAC.

In response to the OoE's request that the Minister for Energy retain the discretion to appoint a representative, the IMO agrees that in the case of the OoE not being the small customer representative it should be represented on the MAC. As previously noted the IMO no longer proposes to remove the role of observer and will be working with ERA and OoE to better define the role of observers on the MAC.

- **Requirements of compulsory class members:** The IMO does not agree that the recommended process for compulsory members is overly bureaucratic or burdensome. The level of detail surrounding the processes is intended to make the IMO's appointment decisions more transparent and to ensure that the best possible combination of representatives can be appointed to serve the market.

The IMO agrees that a compulsory member should be able to make the best determination of a representative, and notes that it would not make compulsory membership decisions based on the contents of an applicant's CV. The purpose of requiring applicants to provide a CV is that it will allow the IMO to consider the skills and experience of the compulsory members when making discretionary appointment decisions. This would ensure that the MAC is well rounded. The IMO also notes that it is conceivable that an organisation may have a number of appropriate personnel to put

forward for consideration which would require a basis for the IMO to assess these applications.

- **Access to information:** The IMO notes the comments received from LGP on the importance of access to information for all key stakeholders and agrees that exclusion from the MAC should not be a detriment.

In order to better facilitate transparency of the MAC decision making and allow external parties an opportunity to provide feedback on relevant issues, the IMO proposes to note on the IMO webpage that anyone can contact the MAC chair or secretariat to have an issue raised at a MAC meeting. Additionally the Chair has the discretion to invite them along to any MAC meeting to present the issue.

Furthermore, the IMO wishes to reiterate that it is open to discussing any concerns that interested parties may have with regard to the Wholesale Electricity Market.

- **Working Group access:** The IMO agrees with LGP that there is much advantage to Working Group membership and that Working Groups generally are highly motivated and add significant value.

As such, the IMO is currently investigating options for initiating membership of non-Rule Participants on Working Groups.

To further cement the process for appointments to Working Groups the IMO proposes:

- To formalise the appointment process for Working Groups in the Terms of Reference; and
 - That Market Rule 2.3.17 be expanded to allow other interested stakeholders to be either full or observer members of MAC appointed Working Groups i.e. Office of Energy, potential developers and any other suitably qualified entity.
- **Other :** The IMO's response to the additional queries that were raised is presented below:
 - How does the proposed ballot work? The IMO will determine six members (or half) of the MAC by ballot to serve a single year membership in 2010, the remaining MAC members will have a 2 year initial term. The ballot will be designed so that not everyone in a particular class will be rotated out in a single year. MAC members chosen by ballot for a 1 year appointment term will be eligible for reappointment to an additional 2 year term conditional on meeting the specified appointment criteria.
 - Should members reflect the views of their class or take a best-for-market approach while properly representing the position of their class? Members will be required to act in the best interests of the market.

4. Recommendations:

The IMO recommends that the MAC:

1. **Discuss** the points identified in the submissions received;
2. **Confirm** whether the IMO's additional recommendations adequately address the points raised ;
3. **Note** that if agreed, then the IMO will:
 - (a) **Seek** wider consultation from the market concerning the recommendations;
 - (b) **Amend** the MAC Constitution as relevant (noting that the IMO must invite public submissions when developing and amending the constitution – clause 2.3.4);
 - (c) **Develop** the necessary Rule Change Proposals and Procedure Change Proposals to implement the changes proposed in CP_2009_03 and amended in this paper;
 - (d) **Amend** each Working Group's Terms of Reference as relevant; and
 - (e) **Prepare** "Guidelines for the appointment of members of the MAC", this will include:
 - i. Scope and purpose of the guidelines;
 - ii. The background to the MAC;
 - iii. The requisite skills, knowledge and experience of MAC members;
 - iv. The requirements for independence of MAC members;
 - v. The length of tenure of appointed members;
 - vi. The steps undertaken by the IMO during the appointment process; and
 - vii. Any other matters that the IMO considers will contribute to good governance and the effective operation of the MAC.
4. **Note** that once complete and implemented the IMO will undertake the MAC review for 2010 year with aim of being completed by 15 December 2009.