Agenda item 4, appendix 2: MAC Member comments on Vesting Contract Review

1. BACKGROUND

Mr Jamie Hamilton of Deloitte attended the 12 May 2010 Market Advisory Committee (MAC) meeting to present on the Vesting Contract Review. During the meeting it was agreed that MAC members raise their issues with the IMO and that the Chair would table these at the Steering Group meeting on behalf of the MAC.

2. SUMMARY OF COMMENTS

Mr Stephen MacLean, Synergy

Synergy noted that during the MAC meeting Mr Hamilton emphasised that the:

- new arrangement will replace only the residual part of the existing Vesting Contract, given that displacements already undertaken represent a significant re-contracted volume; and
- residual supply will be different from the current Vesting Contract, structured similarly to the displacement contracts, making it a normal bilateral agreement.

Mr Corey Dykstra

Mr Dykstra noted that the comments on the Vesting Contract were his personal view and did not represent Alinta's views.

Mr Dykstra noted:

- The presentation suggested that many of the aspects of the current Vesting Contract that concerned Market Participants will not feature in the new contract. Specifically, it was indicated that the contract would feature a "commercial allocation" of risk and would relate to the franchise market segment only.
- Deloitte also indicated that consideration was being given to having the final contract reviewed by an independent party to verify that it was fair, reasonable and unbiased.
- As discussed at the MAC meeting, Mr Dykstra considers that it would be appropriate that Market Participants have an opportunity to see the terms of reference of this independent review, and ideally to comment on the proposed terms of reference. Mr Dykstra notes that this will be useful in alleviating residual concerns that might be held that the contract might permit Synergy to compete unfairly with other retailers.

Dr Steve Gould, Landfill Gas & Power

- Dr Gould supported Mr Dykstra's comments to the effect that it is necessary to ensure that the value added to Verve via the Oates Review process doesn't leak to Synergy.

- Dr Gould advocates taking this opportunity to allow Verve to properly participate in the Reserve Capacity Mechanism market by selling capacity to parties other than Synergy.

Mr Shane Cremin, Griffin Energy

Mr Cremin did not provide comment on the review process itself rather the legality of it – and the potential broader implications to the market.

- Part 4 of the *Electricity Corporations Act 2005* (Act) allows the Minister to make, amend or rescind prescribed contracts between the government utility corporations. Many of these provisions are given with the intention of allowing the transition to a competitive market. In other words, as competition in the market evolves, the Minister is permitted to alter the pre-existing contracts (such as the Vesting Contract) to reflect the competitive landscape. Mr Cremin notes that it appears that the Minister has used his powers to rescind a prescribed contract in this instance for the opposite reason.
- Section 86 of the Act requires the Minister to engage with the ERA to seek advice on the competitive aspects of changes to prescribed contracts before making changes. Mr Cremin notes that it does not appear that the Oates Implementation Team or the Minister's office has done this. Mr Cremin considers that if the ERA's advice was sought, they would *"likely be advised that simply replacing the existing vesting arrangements with new (commercial) bilaterals between the two state corporations would not have a positive influence on competition in the market, rather would further entrench the monopolies of each organisation"*.
- Mr Cremin considers that there should be additional considerations given to implications under Part IV of the Trades Practices Act (TPA), noting that however section 87 of the *Electricity Corporations Act 2005* authorises the contravention of the TPA.
- Mr Cremin considers that the Vesting Contract review process should also give regard to Competitive Neutrality principles, as contained in the Competition Principles Agreement, agreed by COAG in 1995 as part of the National Competition Policy; and as outlined in the Western Australian government's Policy Statement on Competitive Neutrality (1996). Mr Cremin considers that, in a predominantly bilaterally contracted market where generators compete to sell electricity under long term agreements with credible counterparties, unilaterally allocating Verve a bilateral contract with the largest bankable offtaker in the market without any competitive tension would (not??) comply with these principles and policies.
- Mr Cremin is uncertain as to the effects this review may have on competition within the Market.

3. SUMMARY OF MAIN POINTS

In summary, the MAC's main points were:

- Many of the aspects of the current Vesting Contract that concerned Market Participants will not feature in the new contract;
- While finalising the Vesting Contracts consideration should be given to:
    - allowing Market Participants to have an opportunity to review and comment on the proposed terms of reference of the independent review of the Vesting Contract;

- engaging with the ERA to seek advice on the competitive aspects of the changes to the Vesting Contracts;
- the implications of the Vesting Contract under Part IV of the TPA; and
- Competitive Neutrality principles (outlined in the Western Australian government's Policy Statement on Competitive Neutrality (1996)).

3. RECOMMENDATIONS

It is recommended that the MAC:

- **Note** that the IMO will forward the MAC's comments to the Steering Committee for discussion during the next Steering Committee meeting (17 June 2010); and

- **Note** that the IMO will update the MAC with any outcomes from the discussion with the Steering Committee.