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Mr Glenn Appleyard,
Regulator
Office of the Tasmanian Economic Regulator
GPOBox770
Hobart TAS 7001

Dear Mr Appleyard

Declaration of Raise FCAS

The National Generator Forum (NGF) represents essentially all of the generators in the NEM and pursues policy positions in the interests of efficient market design.

We are very concerned at the proposal that you canvassed on 23 July 2009 to regulate a part of the NEM which is subject to market forces, namely raise contingency FCAS provided by Hydro Tasmania. In a general policy sense, the degradation of the market by this intervention is a very significant issue for the forum. Although it could be considered a small part of the market, the interconnectedness of market means that it will impact throughout the NEM in both the energy and ancillary services market. We are also concerned that it may be a precedent for further jurisdictional intervention in other states.

The NGF is strongly opposed to this move as we believe that it is inconsistent with the commitment which Tasmania made in joining the market. Any experienced observer of markets will note that the beginning of a market can be volatile. Although Tasmania has been connected for 3 years, there has only been significant on-island competitive generation capacity since April 2009. For a regulator to step in following a short period of volatility is an entirely inappropriate response and will delay the development of the market by suppressing price signals.

If we step back from this issue, the fundamental problem is a shortage of raise contingency FCAS, likely to be exacerbated with the tightening of the frequency operating standard in the Tasmanian Region. Regulating one of the major potential suppliers is not likely to lead to an increase in supply. It may also cap the Tasmanian price to an extent which will not provide a sufficient incentive for other participants in Tasmania to make an investment in providing this service. The setting of a regulated price in such a complex area is very difficult and may well prove to not reflect the costs in reality. In this market, barriers to entry are low and there are various mechanisms available to

customers, generators and third parties to enter the raise contingency FCAS market, provided the price signals are there.

The AEMA provides a policy framework which should be adhered to by jurisdictional bodies. The State of Tasmania is a party to the Australian Energy Market Agreement (AEMA). Each Party to the AEMA agrees that it:

- will take all steps reasonably necessary to amend, to the extent necessary to ensure consistency, any legislation which is inconsistent with, or would alter the effect, scope or operation of the Australian Energy Market Legislation (which is defined to include the National Electricity Rules); and
- will not take any action that would limit, vary or alter the effect, scope or operation of the Australian Energy Market Legislation without the agreement of the MCE.

The AEMA manifests a clear intention that the subject matter of the National Electricity Rules should not be limited by an inconsistent regulatory instrument of a party to the AEMA. Consequently, regulation of raise FCAS is intended by both the Ministerial Council on Energy and the jurisdictions participating in the NEM to be outside the purview of OTTER and the Tasmanian regulatory framework. We suggest the new Tasmanian proposal is not consistent with the AEMA.

We submit that this regulation will distort the appropriate investment signal and in the long run hamper the market's ability to deliver least cost solutions in line with NEM objective. It is also likely to delay a market response by dampening the price signals.

We therefore request that you terminate this proposed declaration and allow time for the markets to develop.

Please contact me on (03) 8633 6026 or by email to acruicks@agl.com.au if you wish to discuss this submission.

Yours faithfully,



Alex Cruickshank
Chair, Market Working Group