

Notice of Market Rules Modification

Paper No.: EMC/RCP/52/2010/299
Rule Reference: Market Rules/Chapter 3 Section 2.3.3
Proposer: Energy Market Company
Date Received by EMC: 25 August 2010
Category Allocated: 1
Status: Approved By EMA
Effective Date: 09 December 2010

Summary of Proposed Rule Modification:

This proposal is to extend the time period of a current exemption which allows affiliates of Temasek Holdings to be concurrently represented on the RCP.

Date considered by Rules Change Panel: 02 November 2010
Date considered by EMC Board: 16 November 2010
Date considered by Energy Market Authority: 08 December 2010

Proposed rule modification:

See attached paper.

Reasons for rejection/referral back to Rules Change Panel (if applicable):

PAPER NO. : **EMC/BD/06/2010/07(a)**

RCP PAPER NO. : **EMC/RCP/52/2010/299**

SUBJECT : **EXTENSION OF EXEMPTION TO ALLOW AFFILIATES
OF TEMASEK TO BE REPRESENTED ON THE RCP**

FOR : **DECISION**

PREPARED BY : **MOK XINYING
SENIOR ECONOMIST**

VETTED BY : **PAUL POH LEE KONG
SVP, MARKET ADMINISTRATION**

DATE OF MEETING : **16 NOVEMBER 2010**

Executive Summary

The intention of the Market Rules is for the composition of the RCP to result in fair representation of the electricity industry in Singapore. Affiliated companies, ideally, should not be concurrently represented on the RCP.

However an exemption currently allows a market participant or a market support services licensee, and its affiliates, to be concurrently represented on the RCP, if such market participant or market support services licensee is an affiliate of Temasek Holdings (Private) Limited.

At the moment, there are still a number of Temasek-linked companies in the SWEM (i.e. the market support services licensee, the transmission licensee and another six market participants) who are potentially affiliated to each other. Thus, the current exemption is still required to allow some of these companies to be concurrently represented on the RCP.

This proposal seeks to extend the exemption period for one more year i.e. until the end of 31 December 2011.

The RCP recommend that the EMC Board **adopt** this proposal.

1. Introduction

This rule change proposal seeks to extend the time period of a current exemption – given via Section 2.3.3 of Chapter 3 of the Market Rules – which allows a market participant (“MP”) or a market support services licensee (“MSSL”), and its affiliates, to be concurrently represented on the RCP, if such MP or MSSL is an affiliate of Temasek Holdings (Private) Limited (“Temasek”).

2. Background

Section 2.3 of Chapter 3 of the Market Rules governs the composition of the RCP and the qualifications of its members. In general, Section 2.3.4 stipulates that ‘no MP or MSSL may, alone or in combination with its affiliates, have more than one of its directors, officers, employees or agents appointed as a member of the RCP’. The implication of Section 2.3.4 is that a MP or a MSSL, and its affiliated corporations, cannot concurrently be represented on the RCP.

3. Analysis

3.1 Definition of Affiliate in the Market Rules

In the Market Rules – affiliate means, with respect to a corporation, any corporation that is related to the first-mentioned corporation in terms of Section 6 of the Companies Act.

In Section 6 of the Companies Act, two corporations are related to each other if:

- One is the holding company of the other;
- One is a subsidiary of the other; or
- The two corporations are subsidiaries of the same holding company;

Per the Companies Act, a corporation is a subsidiary of another corporation:

- a. If that other corporation, with respect to the corporation –
 - controls the composition of the board of directors;
 - controls more than half of the voting power; or
 - holds more than half of the issued share capital.
- b. OR if the corporation is a subsidiary of any corporation which is that other corporation’s subsidiary.

Per the Companies Act, a corporation is the holding company of another corporation if that other corporation is a subsidiary.

3.2 Affiliates of Temasek in the SWEM

Based on the definition of affiliation as discussed in section 3.1, the MSSL (SP Services Limited) and the transmission licensee (SP PowerAssets Limited) are affiliates of Temasek¹. The following six MPs – Sembcorp Cogen Pte Ltd and Sembcorp Power Pte Ltd², Keppel Merlimau Cogen Pte Ltd and Keppel Electric Pte Ltd, Keppel Seghers Tuas Waste-to-Energy Plant Pte. Ltd. (in its capacity as trustee of Tuas DBOO Trust) and Senoko Waste-to-Energy Pte. Ltd. (in its capacity as trustee of Senoko Trust)³ – could be affiliated to Temasek depending on specific circumstances relating to the ownership or control of these corporations, which could vary from time to time⁴.

Chart 1 (at the end of this paper) depicts the linkages of the MSSL, the transmission licensee and these six MPs to Temasek.

3.3 Representation of Affiliates of Temasek on the RCP

The intention of the Market Rules is that affiliate(s) of a corporation should not be concurrently represented on the RCP. This is to ensure that the composition of the RCP results in fair representation. However, this is feasible only in a privatized industry where ownership of electricity companies is not concentrated in a single holding company.

When the wholesale market started, most of the electricity companies in the SWEM were affiliated to Temasek. To ensure adequate representation of the industry on the RCP – an exemption was given so that an electricity company affiliated to Temasek, and affiliates of this company, can be concurrently represented on the RCP.

As described in section 3.2, Temasek is still affiliated or potentially affiliated to a number of electricity companies in the SWEM. Until such a time when the electricity industry in Singapore is privatised and the affiliation of companies is not concentrated in a single holding company like Temasek, an extension of the exemption – given via Section 2.3.3 of Chapter 3 of the Market Rules – is necessary to allow a MP or a MSSL, and its affiliates, to be concurrently represented on the RCP.

¹ According to the ACRA company profiles, SP Services and SP PowerAssets are both wholly owned subsidiaries of Singapore Power which in turn is a wholly owned subsidiary of Temasek.

² According to the ACRA company profiles, Sembcorp Cogen and Sembcorp Power are both wholly owned subsidiaries of Sembcorp Utilities Pte Ltd, which in turn is a wholly owned subsidiary of Sembcorp Industries Ltd. As at 31 March 2010, Temasek reported a 49% shareholding in Sembcorp Industries Ltd (http://www.temasekreport.com/2010/portfolio/major_transport.html).

³ According to ACRA company profiles: Keppel Merlimau Cogen and Keppel Electric are both wholly owned subsidiaries of Keppel Energy Pte. Ltd., which in turn is a wholly owned subsidiary of Keppel Corporation Limited; Keppel Seghers Tuas WTE Plant (as trustee) and Senoko WTE (as trustee) are both wholly owned by Keppel Infrastructure Fund Management Pte. Ltd. which itself is wholly owned by Keppel Integrated Engineering Limited, which in turn is a wholly owned subsidiary of Keppel Corporation Limited. As at 31 March 2010, Temasek reported a 21% shareholding in Keppel Corporation Limited (http://www.temasekreport.com/2010/portfolio/major_transport.html).

⁴ These six MPs would be affiliated to Temasek if: a) Temasek has control of the composition of the board of directors of Sembcorp Industries and Keppel Corporation; b) Temasek has control of more than half of the voting power of Sembcorp Industries and Keppel Corporation; or c) Temasek increases its shareholding in Sembcorp Industries and Keppel Corporation to over 50%.

Thus, we propose to extend the exemption period for one more year i.e. until the end of 31 December 2011. Our proposed modifications to the market rules are set out in Annex 1 of this paper.

4. Legal sign-off

Text of the rule modification has been vetted by EMC's legal counsel, to reflect the intent of the rule modification proposal.

5. Consultation

EMC published this paper for consultation on 26 August 2010 – we did not receive any comments.

6. Conclusion

An exemption – given via Section 2.3.3 of Chapter 3 of the Market Rules – currently allows a MP or a MSSL, and its affiliates, to be concurrently represented on the RCP, if such MP or MSSL is an affiliate of Temasek. As there are still a number of Temasek-linked companies in the SWEM who are affiliates or potentially affiliated to each other, thus, the current exemption is still required to allow some of these companies to be concurrently represented on the RCP.

We propose to extend the exemption period for one more year i.e. until the end of 31 December 2011. The proposed modifications to the market rules are set out in Annex 1 of this paper.

7. Recommendations

The RCP unanimously recommends that the EMC Board

- a. **adopt** the rule modification proposal set out in Annex 1;
- b. **seek** EMA's approval of the rule modification proposal; and
- c. **recommend** that the rule modification proposal come into force **one business day** after the date on which the approval of the Authority is published by the EMC.

ANNEX 1: PROPOSED MODIFICATIONS TO MARKET RULES

Existing Rules (Released on 1 July 2010)	Proposed Rules (Deletions represented by strikethrough text and addition underlined)	Reason for Modification
<p>Chapter 3, Section 2.3.3</p> <p>Prior to 01 January 2011,</p> <p>(i) a <i>market participant</i>, or</p> <p>(ii) a <i>market support services licensee</i></p> <p>may have its director, officer, employee or agent appointed as a member of the <i>rules change panel</i> as a representative of the relevant class of <i>market participant</i> or <i>market support services licensee</i> notwithstanding sections 2.3.2 and 2.3.4, if such <i>market participant</i> or <i>market support services licensee</i> is an <i>affiliate</i> of Temasek Holdings (Private) Limited.</p>	<p>Chapter 3, Section 2.3.3</p> <p>Prior to 01 January 2011 <u>2012</u>,</p> <p>(i) a <i>market participant</i>, or</p> <p>(ii) a <i>market support services licensee</i></p> <p>may have its director, officer, employee or agent appointed as a member of the <i>rules change panel</i> as a representative of the relevant class of <i>market participant</i> or <i>market support services licensee</i> notwithstanding sections 2.3.2 and 2.3.4, if such <i>market participant</i> or <i>market support services licensee</i> is an <i>affiliate</i> of Temasek Holdings (Private) Limited.</p>	<p>An extension of the exemption is required to allow a market participant or a market support services licensee, and its affiliates, to be concurrently represented on the RCP</p>

Chart 1: Affiliates of Temasek in the SWEM

