

Notice of Market Rules Modification

Paper No.: EMC/RCP/46/2009/290
Rule reference: Chapter 3 Section 2.3.3
Proposer: Energy Market Company
Date received by EMC: 04 September 2009
Category allocated: 1
Status: Approved By EMA
Effective Date: 9 December 2009

Summary of Proposed Rule Modification:

This proposal is to extend the time period of a current exemption which allows a market participant (MP), or market support services licensee (MSSL), and its affiliates to be concurrently represented on the RCP.

Date considered by Rules Change Panel: 03 November 2009
Date considered by EMC Board: 26 November 2009
Date considered by Energy Market Authority: 07 December 2009

Proposed rule modification:

See attached paper.

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

PAPER NO. : **EMC/BD/06/2009**

RCP PAPER NO. : **EMC/RCP/46/2009/290**

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

FOR : **DECISION**

PREPARED BY : **WANG JING
ANALYST**

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

DATE OF MEETING : **03 NOVEMBER 2009**

Executive Summary

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

However an exemption currently allows market participants or market support services licensee and their affiliates to be concurrently represented on the RCP, if they are affiliates of Temasek Holdings (Private) Limited.

At the moment, there are still quite a number of Temasek-linked companies in the SWEM (i.e. the transmission licensee, the market support services licensee, Sembcorp Cogen Pte Ltd, Sembcorp Power Pte Ltd, Keppel Merlimau Cogen Pte Ltd and Keppel Electric Pte Ltd) who are potentially affiliated to each other. An exemption is still required to allow these companies to be concurrently represented on the RCP.

This proposal seeks to extend the exemption period for one more year i.e. until end of 31 December 2010.

The RCP, by majority vote, recommend that the EMC Board adopt this proposal.

1. Introduction

This 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 market support services licensee ("MSSL") and their affiliates to be concurrently represented on the RCP if they are affiliates 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. One of the requirements in Section 2.3.4 stipulates that 'no market participant or market support services licensee may, alone or in combination with its affiliates, have more than one director, officer, employee or agent who is a member of the rules change panel'.

The implication of Section 2.3.4 is that a MP or MSSL, and its affiliated companies, cannot concurrently be represented on the RCP.

3. Analysis

3.1 Affiliates of Temasek in the SWEM

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

In Section 6 of the Companies Act, there is affiliation between 2 companies if:

- One is the holding company of the other;
- One is a subsidiary of the other; or
- They are subsidiaries of the same holding company;

A company is a subsidiary of another company

- a. if the other company has:
 - Control of the composition of its board of directors;
 - Control of more than half of its voting power; or
 - Holds more than half its issued share capital, or
- b. if the company is a subsidiary of any company which is the other company's subsidiary.

Based on the above definitions, the transmission licensee (SP PowerAssets Ltd) and the MSSL (SP Services Ltd) are affiliates of Temasek¹. Sembcorp Cogen Pte Ltd, Sembcorp Power Pte Ltd², Keppel Merlimau Cogen Pte Ltd and Keppel Electric Pte Ltd³ could be affiliated to Temasek depending on specific circumstances relating to the ownership or control of the company, which could vary from time to time⁴.

3.2 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 market started, most of the electricity companies in the SWEM were affiliated to Temasek. To ensure adequate representation of the industry on the RCP, 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 3.1 above, since Temasek still owns or is potentially affiliated to a number of electricity companies in the SWEM, it is necessary to extend the exemption period for one more year, that is, until 31 December 2010.

4. Conclusion

Until such a time when the electricity industry in Singapore is privatised and the ownership 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 MSSL, and its affiliates, to be concurrently represented on the RCP.

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

² According to the company profiles registered with ACRA, Sembcorp Cogen Pte Ltd and Sembcorp Power Pte Ltd are both wholly owned subsidiaries of Sembcorp Utilities Pte Ltd, which is in turn a wholly owned subsidiary of Sembcorp Industries Ltd. As at 31 March 2009, Temasek has 49% interest in Sembcorp Industries Ltd. (<http://www.temasekholdings.com.sg>).

³ According to the company profiles registered with ACRA, Keppel Merlimau Cogen Pte Ltd and Keppel Electric Pte Ltd are both wholly owned subsidiaries of Keppel Energy Pte Ltd, which is in turn a wholly owned subsidiary of Keppel Corporation Ltd. As at 31 March 2009, Temasek has 21% interest in Keppel Corporation Ltd. (<http://www.temasekholdings.com.sg>).

⁴ Sembcorp Cogen Pte Ltd, Sembcorp Power Pte Ltd, Keppel Merlimau Cogen Pte Ltd and Keppel Electric Pte Ltd would be affiliated to Temasek Holdings if a) Temasek Holdings Ltd increases its stake in Sembcorp Industries and Keppel Corporation to over 50%; b) Temasek Holdings Ltd has control of the composition of the board of directors of Sembcorp Industries and Keppel Corporation; or c) Temasek Holdings (Pte) Ltd has control of more than half of the voting power of Sembcorp Industries and Keppel Corporation.

5. Consultation

We have published the rule modification proposal on the EMC website for comments.

The following comment was received from Power Seraya:

“It would be preferable if the extension is limited to just MSSL and the transmission licensee. Otherwise, if Temasek Holdings were somehow to own a genco and a retailer again, both the genco and the retailer could in theory have representatives on the RCP at the same time. This could put non Temasek gencos at a disadvantage. The exemption for Temasek affiliates was meant to be a temporary thing to provide for adequate representation on the RCP, which is why it has to be extended. The exemption is no longer required for the generation licensees and retail licensees as Temasek has divested its generation assets and the subsidiary retailers. Even with the exemption, it has been the EMC Board's practice to not appoint representatives on the RCP for both a generation licensee and its retail subsidiary. However, it would be preferable if this did not have to be carried out as a practice but rather as a requirement.”

EMC's response:

As explained in section 3.1, other than the MSSL and the transmission licensee, other market participants (i.e. Sembcorp Cogen Pte Ltd, Sembcorp Power Pte Ltd, Keppel Merlimau Cogen Pte Ltd and Keppel Electric Pte Ltd) -- depending on specific circumstances relating to the ownership or control of the company -- could be affiliated with Temasek Holdings (Private) Limited. Thus, it is still necessary for this exemption to be based on a MP's or an MSSL's affiliation with Temasek Holdings (Private) Limited.

6. 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.

7 Deliberation by the RCP

At its 46th meeting the RCP considered the rule modification proposal. By majority vote, the RCP supported the rule modification proposal.

The following Panel members VOTED to support the proposal:

Mr. Robin Langdale
Mr. Brendan Wauters
Mr. Ng Meng Poh
Ms. Annie Tan
Mr. Dallon Kay
Dr. Goh Bee Hua
Mr. Philip Tan
Mr. Kenneth Lim
Mr. Chan Hung Kwan
Mr. Yeo Lai Hin

The following Panel member voted not to support the proposal:

Mr. Sim Meng Khuan

8. Recommendations

With a vote of 10 for and 1 against, the RCP recommends by majority that the EMC Board:

- a. **adopt** the rule modification proposal to amend Section 2.3.3 of Chapter 3 of the Market Rules as set out in the **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 (Release 1 July 2008)	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 2010,</p> <p>(i) <i>a market participant</i>, or</p> <p>(ii) <i>a 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 2010 <u>2011</u>,</p> <p>(i) <i>a market participant</i>, or</p> <p>(ii) <i>a 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 be represented on the RCP</p>