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# RULE

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Australian Energy Market Commission

## CONSULTATION PAPER

# NATIONAL ELECTRICITY AMENDMENT (ISP PRIORITY PROJECTS - SA ENERGY TRANSFORMATION) RULE 2019

### PROPONENT

Dr Kerry Schott AO

21 FEBRUARY 2019

## INQUIRIES

Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

**E** [aemc@aemc.gov.au](mailto:aemc@aemc.gov.au)  
**T** (02) 8296 7800  
**F** (02) 8296 7899

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AEMC, ISP priority projects - SA Energy Transformation, Consultation paper, 21 February 2019

## ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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# 1 INTRODUCTION

On 14 February 2019, Dr Kerry Schott AO (proponent) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) to amend the National Electricity Rules (NER) to streamline two of the regulatory processes that are required to be undertaken by the Australian Energy Regulator (AER) after the completion of the South Australia Energy Transformation regulatory investment test for transmission (RIT-T). The RIT-T examined the costs and benefits of a new South Australia-New South Wales (SA-NSW) interconnector (Project EnergyConnect), as well as alternative non-network solution options.<sup>1</sup>

The rule change request proposes that, for Project EnergyConnect, the following processes be conducted concurrently, rather than sequentially, as is currently required in the NER:<sup>2</sup>

- the AER's analysis of the preferred option for the investment identified in the RIT-T under clause 5.16.6 of the NER
- the application for, and assessment of, the revenue allowance for Project EnergyConnect as a contingent project under rule 6A.8 of the NER.

Unlike Dr Schott's rule change request submitted on 21 December 2018 that relates to minor upgrades to the Queensland-New South Wales interconnector (QNI) and the Victoria-New South Wales interconnector (VNI), *Early implementation of ISP priority projects*, this rule change request relating to Project EnergyConnect does **not** propose to allow the transmission network service provider (TNSP) to submit a request to the AER for a preferred option assessment under clause 5.16.6 of the NER during the 30 day period in which a person can dispute the conclusions reached in the RIT-T under clause 5.16.5.

This consultation paper has been prepared to facilitate public consultation on the rule change request and to seek stakeholder submissions.

This paper:

- provides a summary of, and background to, the rule change request
- identifies a number of questions and issues to facilitate consultation on this rule change request
- outlines the process for making submissions.

## 1.1 Background

### 1.1.1 Related rule change request

The Commission received a rule change request from Dr Kerry Schott AO on 21 December 2018 seeking to amend the NER to streamline three regulatory processes that are required to

1 This paper will refer to this new interconnector, and the regulatory processes associated with it, as relating to Project EnergyConnect.

2 For the avoidance of doubt, the rule change request sets out that the dispute process will not be undertaken concurrently alongside these two processes.

be undertaken by the AER after the completion of the RIT-T for minor upgrades to the QNI and the VNI.<sup>3</sup> These two projects were identified as being urgently required by the Australian Energy Market Operator (AEMO) in the 2018 integrated system plan (ISP).

The Commission published a consultation paper on 24 January 2019 to initiate this rule change request, and submissions were due on 21 February 2019.<sup>4</sup>

The Commission has not yet consolidated the two rule change requests from Dr Schott, but may seek to do so after it has considered stakeholder interest in the latest rule change request relating to Project EnergyConnect.

### 1.1.2

#### ISP projects

AEMO published the inaugural ISP in July 2018. The ISP identifies transmission investments that AEMO states will be needed in the National Electricity Market (NEM) over the next 20-30 years. The ISP grouped investments identified in the plan into three phases.<sup>5</sup> The group 1 investment projects are those that AEMO considers should be progressed as soon as possible because they provide immediate benefits.

The group 2 investment projects are of a larger scale and cost than those in group 1. The ISP stated that they require longer lead times to design and develop, however they also provide larger benefits if they have timely implementation. One of these group 2 projects is Project EnergyConnect which the ISP stated would improve resilience for South Australia and enable the connection of large amounts of renewable energy resources.<sup>6</sup>

The RIT-T for this project was completed on 13 February 2019 with the publication of a Project Assessment Conclusions Report.<sup>7</sup> ElectraNet's RIT-T Project Specific Consultation Report stated that the identified need for the RIT-T is driven by allowing greater competition between generators in different regions, improving security of electricity supply in SA and facilitating the transition to lower carbon emissions and the adoption of new technologies.<sup>8</sup> The outcome of the RIT-T was that a high-capacity interconnector between SA and NSW, with an added connection to north-west Victoria, is the preferred option to generate a range of benefits for South Australia, New South Wales and Victoria. These benefits include improved electricity affordability, energy and network security and the connection of renewable energy needed to meet Australia's carbon emissions targets. The proposed interconnector would be built between Robertstown in South Australia and Wagga Wagga via Buronga in New South Wales, with an added connection to Red Cliffs in north-west Victoria.<sup>9</sup>

3 Dr Kerry Schott AO, Early implementation of ISP priority projects rule change request, 21 December 2018. See: <https://www.aemc.gov.au/rule-changes/early-implementation-isp-priority-projects>

4 The rule change is following the expedited process on the basis that the rule change request is a request for a non-controversial rule.

5 This is based on the timing within which the identified network need is forecast to arise, and the time that may be needed to build infrastructure to address the need.

6 AEMO, *Integrated System Plan*, July 2018, p.8.

7 ElectraNet, SA Energy Transformation RIT-T: Project Assessment Conclusions Report, 13 February 2019.

8 ElectraNet, South Australian Energy Transformation, RIT-T: Project Specification Consultation Report, 7 November 2018, pp.3-5.

9 See: <https://www.electranet.com.au/projects/south-australian-energy-transformation/>

The dispute lodgement period for this RIT-T is currently open, and will expire on 15 March 2019.

This rule change request relates to two of the post-RIT-T regulatory processes for Project EnergyConnect.

### **1.1.3 Energy Security Board's December 2018 report to the COAG Energy Council**

At the COAG Energy Council meeting on 10 August 2018, the Energy Security Board was requested to report in December 2018 on:

- how the group 1 projects in the ISP could be delivered as soon as practicable
- how group 2 and 3 projects should be progressed
- how the ISP would be converted into an actionable strategic plan<sup>10</sup>

On 19 December 2018, the Energy Security Board provided a report to the COAG Energy Council outlining how the points listed above should be addressed.<sup>11</sup> Responding to the report, the COAG Energy Council agreed to a recommendation made by the Energy Security Board that a rule change request be progressed to allow the AER to undertake post RIT-T regulatory processes concurrently for the QNI and VNI minor upgrades identified as group 1 projects in the ISP, reducing the time it would take to implement them.<sup>12</sup>

Also at the COAG Energy Council meeting on 19 December 2018, Ministers tasked the Energy Security Board to consider how these reforms could be applied to other priority projects such as Project EnergyConnect.

This rule change request relates to this request to consider how Project EnergyConnect could be delivered as soon as practicable.

### **1.1.4 The RIT-T and subsequent regulatory processes**

For investments in new or replacement transmission assets over \$6 million, TNSPs are required under the NER to undertake a cost-benefit analysis (the RIT-T) of potential options. This cost-benefit analysis is conducted to determine the most appropriate solution for addressing a need (e.g. a forthcoming network constraint or limitation) on the transmission network, and whether addressing the need provides a net positive benefit to consumers. The transmission business must consult with stakeholders when undertaking a RIT-T.

After a TNSP(s) has completed a RIT-T, the AER has to undertake several processes before the relevant network businesses is entitled to earn revenue to cover the efficient costs of the investment, outlined below.

The rule change request does not seek to change any of these existing processes, but rather seeks to allow the AER to undertake two of these processes (the preferred option and contingent project assessments) concurrently.

<sup>10</sup> COAG Energy Council, Meeting Communique, 10 August 2018.

<sup>11</sup> Energy Security Board, Integrated System Plan - Action Plan, 20 December 2018. See: <http://www.coagenergycouncil.gov.au/publications/integrated-system-plan-action-plan>

<sup>12</sup> COAG Energy Council, Meeting Communique, 19 December 2018, p.2.

### **RIT-T dispute process**

A number of parties, including registered participants, the AEMC, AEMO and connection applicants, are able to raise a dispute in regard to defined components of the conclusions set out in the final report published at the conclusion of a regulatory investment test process.<sup>13</sup> Notice of the dispute has to be provided within 30 days of publishing the final report for the RIT-T.<sup>14</sup> The AER has to make a determination either rejecting the dispute or publishing a determination setting out whether the network business will be required to amend the conclusions report within 40 days of the receipt of the notice.<sup>15</sup> The AER may only require amendment where it finds that the RIT-T proponent has:

- not correctly applied the RIT-T in accordance with the NER
- erroneously classified the preferred option as being for reliability corrective action
- not correctly assessed whether the preferred option will have a material inter-network impact, or
- made a manifest error in calculations when applying the RIT-T.

#### **A 5.16.6 determination - the preferred option assessment**

After the expiry of the period that parties have to dispute the RIT-T, and where a preferred option identified through the RIT-T is not for reliability corrective action, the RIT-T proponent may request, in writing to the AER, that the AER make a determination as to whether the preferred option satisfies the regulatory investment test for transmission. If this occurs then the AER:

- must, within 120 business days of receipt of the request from the applicant, make a determination, and specify reasons for its determination<sup>16</sup>
- must use the findings and recommendations in the Project Assessment Conclusions Report in making its determination
- may request further information from the RIT-T proponent
- may have regard to any other matter the AER considers relevant.

These determinations typically take around six months to complete.

### **Revenue approval - contingent project assessment**

The economic regulatory regime allows for limited circumstances in which network revenue can be adjusted during the five-year revenue determination process. One way in which this can happen is through the contingent projects mechanism. This is applied to large discrete projects that are uncertain in terms of their need or timing at the start of the regulatory period. If they are considered necessary during the regulatory period (on the basis of a pre-determined trigger, which is specified in the TNSP's determination), the AER must then make

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13 The defined components that can be disputed are set out in NER clause 5.16.5(a).

14 For a summary of the RIT-T process, see section 5.3.2 of the options paper published as part of the *Coordination of generation and transmission investment review*, which can be found here: <https://www.aemc.gov.au/sites/default/files/2018-09/Options%20paper.pdf>

15 However, the time frame for the AER to consider a dispute can be extended by an additional period of up to 60 days.

16 This time may be extended where the AER requires further information from the proponent.

a decision as to whether the trigger events for the contingent project have occurred. The AER must also determine the amount of capital and operating expenditure reasonably required to undertake the project and the impact of allowing such expenditure as revenue. Most of the projects identified in the ISP have been identified in TNSPs' revenue determinations as contingent projects. One way to minimise the time it takes for the AER to make its post-RIT-T regulatory decisions is for businesses to keep the AER informed throughout the process of undertaking the RIT-T.

Most contingent projects that the AER has approved in recent revenue determinations have as a trigger event the successful completion of the RIT-T and the AER's preferred option assessment of the RIT-T.

## 1.2 Issues raised in the rule change request

Project EnergyConnect is identified as a group 2 project in the ISP which seeks to increase capacity between SA and NSW with a new high capacity interconnector between the two states. In addition to enabling the connection of large amounts of renewable energy resources, the ISP states that this new interconnector would improve resilience for SA. The rule change request states that at the December 2018 COAG Energy Council meeting, the Energy Security Board was asked to consider how ISP priority projects such as Project EnergyConnect could be fast tracked.<sup>17</sup>

ElectraNet commenced a RIT-T for this project in November 2016, and the RIT-T process was completed on 13 February 2019. Given the RIT-T process is now complete, the rule change request seeks to streamline two of the post RIT-T processes undertaken by the AER (the preferred option and contingent project assessments) and so reduce the time taken for regulatory approval.

### QUESTION 1: ISSUES

- What are stakeholders' views on the issues raised by the proponent?
- Are there any other issues relevant to this rule change request that the AEMC should consider?

## 1.3 Proposed solution

The rule change request proposes that the NER be amended to reduce the time between the completion of the RIT-T for Project EnergyConnect and the AER's approval of revenue associated with this projects, specifically by:

- Permitting the relevant TNSP(s) to submit an application for a contingent project revenue adjustment for Project EnergyConnect before the AER has made a RIT-T preferred option determination under clause 5.16.6. This is achieved by allowing the contingent project

<sup>17</sup> Dr Kerry Schott, Streamlining regulatory processes for ISP Group 2 Project - South Australia Energy Transformation (SAET) rule change request, 14 February 2019, p.3.

revenue application to be made despite the fact that one of the trigger events for the contingent project, the successful outcome of the preferred option analysis by the AER, will not have occurred. This will allow the AER to commence assessing the revenue application, but it will not be permitted to make its revenue decision before the preferred option determination is made. As a result the proposed rule change may affect the time frames for these processes.<sup>18</sup>

- Unlike what is proposed for the QNI and VNI minor upgrades in the *Early implementation of ISP priority projects* rule change request, this rule change request does **not** propose to allow the TNSP to submit a request to the AER for a preferred option assessment under clause 5.16.5 of the NER during the 30 day period in which a person can dispute the conclusions reached in the RIT-T under clause 5.16.5.

The rule change request does not propose removing any steps in the regulatory process for Project EnergyConnect - just to allow two of the post RIT-T AER processes to be run concurrently, rather than sequentially.

If made, and in the absence of a dispute notice being lodged, the proposed solution would have the effect of potentially reducing the time between the completion of the RIT-T and the AER's approval of revenue associated with Project EnergyConnect by five to six months.<sup>19</sup>

The rule change proposal states that, provided the rule is made, Project EnergyConnect will be able to be implemented more quickly, promoting reliability and security in the NEM at a time when there are generator retirements and an increasing proportion of intermittent generation in South Australia.<sup>20</sup>

The rule change request does not include a proposed rule. However, the rule drafting to give effect to the proposal would be substantially similar to that proposed in the *Early implementation of ISP priority projects* rule change request. The exception would be that the rule drafting for this rule change would not modify clause 5.16.6 to enable submission of a request during the dispute notification period and would define the relevant projects by reference to the contingent projects specified for Project EnergyConnect in the ElectraNet and TransGrid revenue determinations.<sup>21</sup>

## QUESTION 2: PROPOSED SOLUTION

- Does the proposed rule address the issues stated by the proponent?
- Are there alternatives to the proposed rule that would more effectively address the issue stated by the proponent?

18 Dr Kerry Schott AO, Streamlining regulatory processes for ISP Group 2 Project - South Australia Energy Transformation rule change request, pp.2-3.

19 The rule change request states that these time savings will only be possible if the relevant TNSP is willing and able to work with the AER to provide requested information related to the post RIT-T regulatory processes in a timely manner.

20 Dr Kerry Schott AO, Streamlining regulatory processes for ISP Group 2 Project - South Australian Energy Transformation, rule change request, pp.3-4.

21 For ElectraNet, see: <https://www.aer.gov.au/system/files/D18-43867%20ElectraNet%20final%20decision%20overview.pdf>. For TransGrid, see: <https://www.aer.gov.au/system/files/D18-43863%20TransGrid%20final%20decision%20overview.pdf>

- Do stakeholders envisage any costs of implementing the proposed rule?

## 1.4

## Assessment framework

### 1.4.1

### Achieving the NEO

Under the NEL, the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).<sup>22</sup> This is the decision-making framework that the Commission must apply.

The NEO is:<sup>23</sup>

to promote efficient investment in, and efficient operation and use of, electricity services for the longer term interests of consumers of electricity with respect to -

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

The AEMC considers that the relevant aspects of the NEO for this rule change request are the promotion of efficient investment in and use of electricity services with respect to the price, reliability and security of the supply of electricity, and reliability and security of the national electricity system. In determining whether the proposed rule is likely to promote the NEO, the Commission proposes to have regard to the following principles:

- **Making the investment (i.e. Project EnergyConnect) at the right time:** A process which promotes making investment at the right time reduces the risk of price, reliability and/or security issues arising from investments that are too late.
- **Minimising inefficient increases in regulatory cost:** Increased regulatory costs are ultimately borne by consumers in the form of higher prices. The benefit of any increased regulatory activity needs to outweigh the costs in order for the change to be efficient.
- **Promoting certainty for the market about project status:** A process that minimises uncertainty in the market, or provides certainty earlier, promotes efficient outcomes designed to meet the reliability needs of the national electricity system.

The assessment framework will consider if the benefits of the proposed rule outweigh the costs. The benefits of allowing post RIT-T regulatory processes undertaken by the AER to be conducted concurrently for Project EnergyConnect should outweigh the costs or risks of such a change.

<sup>22</sup> Section 88 of the NEL.

<sup>23</sup> Section 7 of the NEL.

### QUESTION 3: ASSESSMENT FRAMEWORK

- Is the assessment framework appropriate for considering the proposed rule change request?
- Are there other relevant considerations that should be included in the assessment framework?

From 1 July 2016, the NER, as amended from time to time, apply in the Northern Territory, subject to derogations set out in Regulations made under the Northern Territory legislation adopting the NEL. Under those Regulations, only certain parts of the NER have been adopted in the Northern Territory. As the proposed rule is intended to apply to Project EnergyConnect only (and that project does not relate to the Northern Territory), and the rule would modify Chapter 6A of the NER which does not apply in the Northern Territory, the Commission does not consider that the proposed rule needs to be assessed against additional elements required by the Northern Territory legislation.<sup>24</sup>

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<sup>24</sup> See the AEMC website for the NER that applies in the Northern Territory. *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*.

## 2 PROCESS FOR THIS RULE CHANGE

### 2.1 Treatment as a non-controversial rule change

In the rule change request, the proponent proposed the rule change be treated as a request for a non-controversial rule in accordance with s. 96 of the NEL such that it could be processed on an expedited basis. This is on the basis that the rule change proposal only applies to Project EnergyConnect, and it does not remove any steps in the regulatory process, but only allows post RIT-T regulatory processes undertaken by the AER to be run concurrently.<sup>25</sup>

The Commission considers that the rule change request is a request for a non-controversial rule (and, as such, should be processed on an expedited basis) because the rule change is unlikely to have a significant impact on the national electricity market.<sup>26</sup> This is because the proposed rule does not remove any steps in the regulatory process but just allows two of the post RIT-T regulatory steps for Project EnergyConnect to be run concurrently. Therefore, the rule change is not expected to result in any significant adverse impacts or costs on market participants. Any resourcing implications for the AER in implementing the rule change are not considered to be material.

Rule changes that are considered to be non-controversial may be processed under an expedited (faster) process under which there is only one round of consultation and the AEMC must publish its final rule determination within eight weeks of commencing the rule change process.<sup>27</sup>

The Commission has decided to use an expedited process to consider this rule change request provided that it does not receive any valid requests not to use the expedited process by 7 March 2019.<sup>28</sup> To be valid, an objection should set out the reasons why the rule change request will have a significant impact on the NEM.

### 2.2 Key dates

Given the tightly defined nature of the issue, and the background information provided in the rule change request, this consultation paper is brief. Nevertheless, submissions are invited in relation to the matters identified above, and any other relevant issue identified by stakeholders.

The key dates for stakeholders in this process are as follows:

- Commencement of this rule change process: 21 February 2019
- Objections to an expedited process to be received by: 7 March 2019
- Submissions to the proposal to be received by: 21 March 2019

<sup>25</sup> Dr Kerry Schott AO, Streamlining regulatory processes for ISP Group 2 Project - South Australia Energy Transformation rule change request, p.4.

<sup>26</sup> See definition of non-controversial Rule in section 87 of the National Electricity Law.

<sup>27</sup> Section 96 of the NEL.

<sup>28</sup> The AEMC has published a notice under sections 95 and 96 of the NEL to commence and assess the rule change request as a non-controversial rule.

- Final decision to be published under an expedited process by: 18 April 2019.

Note that in contrast to the standard rule making process, an expedited rule making process does not include a draft determination.

## 3 LODGING A SUBMISSION

The Commission invites requests not to make a rule under the expedited process and written submissions on this rule change proposal.

All enquiries on this project should be addressed to Elizabeth Bowron on (02) 8296 0619 or [elizabeth.bowron@aemc.gov.au](mailto:elizabeth.bowron@aemc.gov.au).

### 3.1 Lodging a request not to make a rule under an expedited process

Written requests not to make a rule under the expedited process in s. 96 of the NEL must include reasons for the request, and must be lodged with the Commission by 7 March 2019 online in accordance with the process specified below in section 3.3.

### 3.2 Lodging a submission to this rule change request

Written submissions on the rule change request must be lodged with Commission by 21 March 2019 online in accordance with the process specified below.

Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.<sup>29</sup> The Commission publishes all submissions on its website, subject to a claim of confidentiality.

### 3.3 Lodging online

Submissions, or requests not to make a rule under the expedited process, must be lodged online via the Commission's website, [www.aemc.gov.au](http://www.aemc.gov.au), using the "lodge a submission" function and selecting the project reference code ERC0264.

The request or submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

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<sup>29</sup> This guideline is available on the Commission's website [www.aemc.gov.au](http://www.aemc.gov.au).

## ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
ISP	Integrated system plan
NEL	National Electricity Law
NEM	National electricity market
NEO	National electricity objective
NER	National electricity rules
NSW	New South Wales
QNI	Queensland-New South Wales interconnector
RIT-T	Regulatory investment test for transmission
SA	South Australia
TNSP	Transmission network service provider
VNI	Victoria - New South Wales interconnector