A modern mining company

29 January 2021

Australian Energy Market Commission
Attn: Martina McCowan

Level 15
Castlereagh Street
SYDNEY NSW 2000

Re: **Dedicated Connection Assets Rule Change – OZM Submission**

NOTE: the redacted text in this submission may be confidential. It has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 31 and 108 of the National Electricity Law.

To whom it may concern,

We refer to the Australian Energy Market Commission (**AEMC**) draft determination dated 26 November 2020 in relation to the draft 'connection to dedicated connection assets' rule change and the related draft rules (**Draft Rules**). Set out below are OZ Minerals Limited's (**OZM's**) submissions on the Draft Rules.

H2H TX Line – background

OZM is the counterparty to a connection agreement dated 29 October 2018 (**OZM TCA**) with ElectraNet Pty Limited (**ElectraNet**), the owner and operator of the electricity transmission network in South Australia, under which ElectraNet agreed to build, own, operate and maintain (**BOOM**) a new non-regulated transmission line to provide energy to OZM's Carrapateena and Prominent Hill operations.

This transmission line, known as the "Hill to Hill Transmission Line" (**H2H TX Line**), was commissioned in September 2020 and is now fully operational. It spans over a total distance of 270kms from Davenport Substation near Port Augusta, up to Prominent Hill in the North of South Australia. It is a large dedicated connection asset (**LDCA**) for the purposes of Chapter 5 of the National Electricity Rules (**NER**) as they are in force today and is an asset of significance for OZM (and the NEM).

Construction of the H2H TX Line was a capital-intensive project with an approximate capital expenditure outlay of $270mln. [redacted]

Draft Rules – OZM submissions

In general, OZM welcomes the intent of the Draft Rules insofar as they aim to remove ambiguity regarding certain technical and operational aspects of the current Chapter 5 connections regime in relation to LDCAs, by bringing them within the "transmission network". However, given the size of OZM's investment in the H2H TX Line, we have been compelled to make the following submissions in relation to the Draft Rules:

(a) **grandfathering of existing assets:** it has come to our attention that the Draft Rules do not adequately address the grandfathering of LDCAs constructed under connection agreements entered into post 30 June 2018, being the commencement date of the transmission connection and planning arrangements rule change which introduced the LDCA regime (**TCAPA Rule Change**).

We understand that this is the case because the AEMC was not aware of the status of the H2H TX Line project (**H2H Project**) at the time the Draft Rules were prepared and published. It is likely the AEMC was not aware of the H2H Project status, because the H2H TX Line was categorised by ElectraNet as a LDCA under the existing LDCA regime [redacted] (i.e. after the Draft Rules were published).

However, because OZM entered into the OZM TCA with ElectraNet after 30 June 2018, OZM should be able to rely on the LDCA access regime that was in force as at the date of that agreement. Without appropriate grandfathering provisions, the Draft Rules create risk for OZM, in that they create ambiguity as to how third-party access and cost sharing arrangements will apply to the OZM TCA and the H2H TX Line moving into the future.

Because the AEMC was not aware of the H2H Project status at the time the Draft Rules were prepared and published, this is likely to be an unintended consequence of the Draft Rules. Regardless, subject to our comments below, we submit that the Draft Rules need to be amended in order to contain appropriate grandfathering provisions for the OZM TCA and the H2H TX Line in order to protect the rights and interests of OZM and enable the Draft Rules to align with the National Energy Objective (**NEO**); and

(b) **cost sharing and negotiating principles**: at the time the LDCA access regime in the TCAPA Rule Change was developed, it was acknowledged that in order to have a workable third-party access regime for LDCAs, the owner of such assets needed to be bound by equitable cost sharing principles which were expressly written into the NER. The Draft Rules seem to undo this, by removing the express requirement for "designated network asset" (**DNA**) owners to comply with the cost sharing principles currently contained in Items 5 and 6 of Schedule 5.11 to the NER where third-party access is granted.

Although the intent of the special access regime proposed for DNAs is to protect existing connecting parties, in our view removing these express cost sharing principles creates unacceptable investment risk for connecting parties where they are the first to connect to a non-regulated LDCA (or DNA) and they have effectively underwritten the capital expense required to construct that asset. This risk is contrary to the purpose and intent of the NEO and we submit that the Draft Rule needs to be changed in order to expressly require TNSPs to equitably share the costs of such assets between all users.

We have decided it is appropriate (and necessary) for us to make submissions on this second item despite the fact that the OZM TCA is already in place, as there is currently uncertainty as to how the Draft Rules (including any grandfathering provisions that the AEMC deems suitable) could impact cost sharing in relation to the H2H TX Line in the future. In any event, our submissions will also be relevant for future NEM projects and we trust that they will assist in finalising this rule change process.

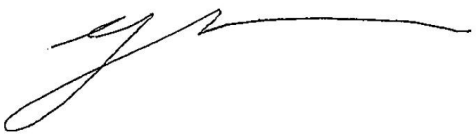
Our submissions in relation to the above items and our reasoning in relation to them are set out in the Attachment to this letter for consideration by the AEMC. At this stage we have opted to keep our reasoning brief however, we would be very happy to provide more detail if required.

Finally, we note that if our submissions on cost sharing and negotiation principles in Item 2 of the Attachment were to be accepted by the AEMC and reflected in the new rules in order to provide OZM with certainty regarding equitable terms of future access and cost sharing requirements for the H2H TX Line and our other interests (such as existing performance standards and metering arrangements)

were not detrimentally impacted, grandfathering may not be needed to the extent we have suggested in Item 1 of the Attachment. In this regard, please see our comments in Items 2.1 to 2.3 of the Attachment.

We'd like to take this opportunity to thank you for your due consideration of our submissions. If you'd like to discuss the contents of this letter (or the attached submissions) please do not hesitate to contact Jason Camery on 0428 745 430.

Warm regards,



Gabrielle Iwanow
General Manager, Prominent Hill
OZ Minerals

ATTACHMENT - CONNECTION TO DEDICATED CONNECTION ASSETS RULE CHANGE – OZM SUBMISSIONS

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Item 1: Grandfathering of existing connection agreements

Facts/Background

1.1 OZM entered into the OZM TCA for ElectraNet to BOOM the H2H TX Line [redacted]. The H2H TX Line spans for approximately 270kms and cost ElectraNet approximately $270mln (capital expenditure) to construct.

1.2 [redacted]

1.3 At the time OZM entered into the OZM TCA with ElectraNet, the decision was made by OZM to have ElectraNet BOOM the H2H TX Line (rather than OZM owning and operating the OZM TX Line itself) for a number of reasons. The main reasons which are relevant to this submission were as follows:

(a) ownership, operation and maintenance of high voltage transmission assets is not core business for OZM and it was considered to be preferable for the H2H TX Line to be owned, operated and maintained by an electricity transmission infrastructure expert; and

(b) as owner and operator of the South Australian electricity transmission network, ElectraNet was better placed to manage the connection of third parties (**Subsequent TNUs**) to the H2H TX Line in the future and importantly, to facilitate related cost sharing arrangements.

1.4 OZM entered into the OZM TCA on the basis that where possible (or appropriate given OZM's operational demand outlook at the time and provided OZM's required power transfer capability would not be prejudiced), OZM would support the connection of certain Subsequent TNUs to the H2H TX Line in order to reduce the charges payable by OZM to ElectraNet for access to the H2H TX Line [redacted] and therefore improve the efficiency of OZM's operations.

1.5 The OZM TCA was entered into after the commencement of the rules created by the TCAPA Rule Change. As such, at the time the OZM TCA was entered into (and as at the date of this submission), Chapter 5 of the NER required ElectraNet to:

(a) publish an AER-approved LDCA access policy (**LDCAAP**) on its website following categorisation of the H2H TX Line as a LDCA, covering each of the items as required by r 5.2A.8 of the NER (including the cost sharing principles in Items 5 and 6 of Schedule 5.11 to the NER as they apply to LDCA services); and

(b) comply with such LDCAAP in the context of third-party access to the H2H TX Line (i.e. when a Subsequent TNU applies to ElectraNet for access to LDCA services).

OZM Submission

Summary

1.6 The Draft Rules do not contemplate that any LDCAs are in existence (or under contract) which are subject to Chapter 5 of the NER as it was in force as at 30 June 2018, being the effective date of the TCAPA Rule Change. As mentioned above in our covering letter, we understand this is because the AEMC was not fully aware of the H2H Project status at the time the Draft Rules were published.

1.7 In order to address this, we submit that the Draft Rules need to be amended in order to properly contemplate the existence of the OZM TCA and the H2H TX Line. Subject to our comments set out below, we submit that these amendments should:

(a) 'grandfather' the OZM TCA and the H2H TX Line, to provide that they remain subject to the existing r 5.2A.8 and Schedules 5.11-12 of the NER as in force today; and

(b) insert transitional provisions providing that the other changes in the Draft Rules relating to boundary points, TNCPs, boundary point losses and metering:

(i) will apply in relation to Subsequent TNU connections to the H2H TX Line in the future (in order to help facilitate such connections); but

(ii) only on the proviso that OZM's performance standards and metering installations will not be impacted as a result.

OZM's preference for grandfathering

1.8 We understand that the H2H TX Line is the only LDCA connected to the NEM that is subject to the rules introduced by the TCAPA Rule Change. Because it is the only LDCA in this category, one way to address the grandfathering issue could potentially be to provide in the final rules which are passed as a result of the Draft Rules (**Final Rules**) that neither the Final Rules nor the rules created by the TCAPA Rule Change apply to the OZM TCA and the H2H TX Line.

1.9 This would categorise the H2H TX Line as a pre-TCAPA Rule Change asset and essentially leave the parties to their own devices in negotiating the terms of third-party access to the H2H TX Line in the future. From OZM's perspective, this would be an undesirable outcome as it would:

(a) place ElectraNet in a stronger negotiating position (relative to OZM) when negotiating terms of access and cost sharing in relation to the use of the H2H TX Line by Subsequent TNUs in the future;

(b) place OZM in a position where it is exposed to opportunistic behaviour, by reducing the level of transparency available to OZM in relation to the terms of access ultimately provided by ElectraNet to Subsequent TNUs in relation to the H2H TX Line;

(c) leave terms of access open for negotiation, and therefore reduce the likelihood that a suitable Subsequent TNU could seamlessly connect to the H2H TX Line in the future and reduce OZM's operational expenses; and

(d) be contrary to the NEO, by sending unfavourable investment signals to future investors in material NEM connected assets (as a result of risk posed by perceived regulatory instability).

1.10 As at the date of the OZM TCA, OZM was entitled to the benefit of the current r 5.2A.8 of the NER and ElectraNet's obligation to publish (and comply with) a LDCAAP containing the pricing and cost sharing principles in Schedule 5.11 and 5.12 (in particular Items 5 and 6 of Schedule 5.11 as they apply to LDCAs) in its negotiations with Subsequent TNUs at the time they seek access to the H2H TX Line.

1.11 If OZM was to lose the benefit of these provisions, there would be no express NER requirement for ElectraNet to (i) charge an equitable (or equal) amount to any Subsequent TNU for access to the H2H TX Line; or (ii) pass through to OZM the cost benefits received by ElectraNet when it connects a Subsequent TNU to the H2H TX Line. As a result, OZM would be in a considerably weaker negotiating position in relation to Subsequent TNU access to the H2H TX Line assets (being assets owned by ElectraNet, but which are wholly being paid for by OZM).

1.12 This could have 2 undesirable and inequitable effects:

(a) initially, it could enable ElectraNet (whether intentionally or inadvertently) to achieve a windfall gain by enabling ElectraNet to use transmission assets underwritten (and paid for by OZM) to connect Subsequent TNUs to its transmission network in exchange for material charges; and

(b) secondly, it could enable Subsequent TNUs to establish a connection to the transmission network which has been subsidised by OZM as the original connecting party to the H2H TX Line, because ElectraNet could potentially connect a Subsequent TNU in exchange for inequitable charges (compared to the charges paid by OZM).

1.13 It is important also to give due consideration here to the fact that the OZM TCA is already in place and the H2H TX Line is already operational. As such, OZM's opportunity to negotiate a different (or more favourable) position with ElectraNet regarding Subsequent TNU access to the

H2H TX Line (or to award the LDCA BOOM scope to a different provider) and related cost sharing arrangements has passed.

1.14 It would be equally undesirable from OZM's perspective for the Final Rules (if they are the same as the Draft Rules) to apply to the H2H TX Line and the OZM TCA (as an alternative to the H2H TX Line being categorised as a pre-TCAPA Rule Change asset), because the Draft Rules do not expressly require the LDCA owner to contain pricing principles in its access policy for DNAs similar to those contained in Items 5 and 6 of Schedule 5.11 of the current NER. Rather, they seem to create further ambiguity in this regard by placing additional discretion on the TNSP, as per our submissions in Item 2 below, which are also relevant here.

Suggested grandfathering rule

1.15 The H2H TX Line is an asset of great significance to OZM (and the NEM being the largest transmission asset constructed in South Australia for decades). Creating higher levels of LDCA owner negotiating power regarding the terms of access by Subsequent TNUs to the H2H TX Line, including by removing the pricing and cost sharing principles in Chapter 5 after it has been constructed, could quite easily result in unfair and inequitable outcomes for OZM as mentioned above.

1.16 In addition, we respectfully submit that changing the negotiating balance of power (and cost sharing provisions) in relation to the H2H TX Line without providing the relevant parties with the protection of adequate grandfathering would be contrary to the objectives and intent of the NEO, as the perceived regulatory instability arising as a result would discourage investment by private sector entities in high value or capex intensive electricity transmission assets in the future.

1.17 In order to avoid these undesirable (and likely unintended) consequences, subject to our comments in our covering letter and in Items 2.1 to 2.3 below, we submit that the Draft Rules must be amended to grandfather the OZM TCA and the H2H TX Line in a similar manner to the manner in which existing dedicated transmission assets subject to a connection agreement pre-30 June 2018 were grandfathered in the TCAPA Rule Change process.

1.18 This could be achieved in a large number of ways, however, given the H2H TX Line is the only NEM connected LDCA which needs to be grandfathered, the cleanest option (which would not impact on the remainder of the drafting contained in the Draft Rule) would be to insert a new, standalone, grandfathering rule into Chapter 11 of the NER which provides that:

(a) the Final Rule, insofar as is it replaces the existing LDCAAP requirements (i.e. the existing r 5.2A.8 and Schedules 5.11-12 of the NER as they apply to LDCAs) will not apply to connection agreements (and related LDCAs) which were entered into post 30 June 2018, but before the commencement date of the Final Rules; and

(b) the existing LDCAAP policy requirements (i.e. the existing r 5.2A.8 and Schedules 5.11-12 of the NER as they apply to DCAs) in the rules which were created by the TCAPA Rule Change continue to apply to such connection agreements and related LDCAs (and LDCA services which are provided to Subsequent TNU using such LDCAs).

1.19 From a more 'operational' perspective, OZM has no material objections to the balance of the changes proposed in the Draft Rules regarding transmission network connection point location, metering points and loss factors applying to future connections to the H2H TX Line. We are generally supportive of these changes, which we agree will help to remove uncertainty surrounding the technical and operational issues these changes address.

1.20 OZM's key concern in this regard is ensuring the Final Rule does not in itself require OZM's existing performance standards, metering arrangements (or other technical or operational arrangements impacting its facility) to be changed upon the commencement of the Final Rule, resulting in additional capital or operational expenses to be incurred by OZM in connection with its facilities or the H2H TX Line.

1.21 As such, on the proviso that OZM's performance standards and current metering installations are not impacted as a result, we submit that the grandfathering provisions mentioned above

should be accompanied by a transitional provision which provides that the 'grandfathered LDCAs' are included in the definition of "designated network asset" (and hence technically part of the "transmission network") for the purposes the new rules relating to these more operational issues if the AEMC is of the view this will help to facilitate Subsequent TNU access in the future.

Item 2: Cost sharing and negotiation principles

Facts/Background

2.1 The facts and background which apply to this Item 2 are largely the same as those set out in Item 1 above, so we have not repeated them here. Given the uncertainty regarding the AEMC's likely treatment of our submissions, we are compelled to make the broader submissions below regarding cost sharing and negotiation principles.

2.2 As noted in our covering letter, if our broader submissions on cost sharing and negotiation principles in this Item 2 were to be accepted by the AEMC and reflected in the new rules in order to provide OZM with certainty regarding equitable terms of future access and cost sharing requirements for the H2H TX Line and our other interests (such as existing performance standards and metering arrangements) were not detrimentally impacted, grandfathering may not be required to the extent set out in Item 1.

2.3 In this case, it could be more appropriate for a transitional provision to be contained in the Final Rules providing that the existing rules (including the LDCAAP requirements and cost sharing principles in Schedules 5.11 insofar as they apply to LDCAs) will apply until such time as ElectraNet has its new access policy approved by the AER and located on its website, when the transition over to the Final Rules may occur.

OZM Submission

Summary

2.4 Where the costs of constructing LDCAs (or DNAs) have been underwritten by a connecting party such as OZM (**Foundation User**), it is fundamentally important that any third-party access regime in relation to such assets protects the rights and interests of the Foundation User, by ensuring that the costs of such assets (i.e. Capital Charges and O&M Charges) are equitably shared between the Foundation User and all future users.

2.5 As discussed in the final determination for the TCAPA Rule Change, the third-party access regime in relation to LDCAs currently contained in the NER was introduced to enable whole of NEM investment efficiencies to be achieved by enabling third-party access to assets of significance. It was accepted at the time that appropriate cost sharing principles were required as part of such a third-party access regime in order to protect the interests of Foundation Users.

2.6 In search of simplicity, the Draft Rules seem to cut across this rationale, by removing the pricing and cost sharing principles (currently in Items 5 and 6 of Schedule 5.11) (**Cost Sharing Principles**) from the proposed third-party access regime which is contained in Chapter 5 of the NER for DNAs. OZM submits that this could quite easily undermine the integrity of the third-party access regime by creating inequitable outcomes and therefore discourage investment in DNAs across the board, which is contrary to the NEO.

2.7 It was also a key theme of the TCAPA Rule Change process that Chapter 5 of the NER should encourage greater competition in relation to the design, construction and ownership of certain transmission asset categories, including LDCAs. Whilst providing the TNSP with operational control of DNAs (and control of access policies relating to them) as proposed by the Draft Rules may make certain operational improvements to Chapter 5, if the Draft Rules are not appropriately balanced, they will also have the undesired effect of discouraging competition.

2.8 In order to promote and encourage efficient investments in transmission assets (wherever possible) adopting a whole of NEM approach, and in order to encourage competition in the market for designing, constructing and owning non-regulated transmission assets, (both of which are consistent with the purpose and intent of the NEO) we submit that the Draft Rules should be amended to (among other things as mentioned further below):

(a) include express provisions equivalent to those contained in Items 5 and 6 of the current Schedule 5.11 into the new Schedule 5.12 which the TNSP must comply with when they are granting DNA access to Subsequent TNUs; and

(b) where the relevant DNAs are owned by a party other than the TNSP, amend the proposed r 5.2A.7 in the Draft Rules to require network operating agreements (**NOAs**) for DNAs to contain provisions which require both parties to the NOA to ensure compliance with the Cost Sharing Principles in the new Schedule 5.12 in relation to the DNA.

Cost Sharing Principles in Schedules 5.11 and 5.12

2.9 Before the TCAPA Rule Change came into force (pre-30 June 2018), the NER (**Old Rules**) did not expressly define dedicated connection assets. Rather, the assumption under the Old Rules was that assets not used to provide negotiated transmission services or prescribed transmission services were purely non-regulated assets, which were severable from the transmission network and connecting parties were free to negotiate future access and cost sharing terms in relation to them.

2.10 Because no mandated third-party access regime applied in relation to such non-regulated assets (including assets that would today fall within the current definition of large dedicated connection assets), Foundation Users of such non-regulated assets were able to protect their rights and interests in such assets contractually, by effectively vetoing access by third-parties unless such access occurred on reasonably acceptable terms.

2.11 Assets used to provide negotiated transmission services on the other hand were not ''contestable' but they were subject to the open access regime in the Old Rules. As a result, the costs and prices for providing negotiated transmission services needed to be subject to the negotiation principles in Chapter 6A of the Old Rules, which included equivalents to the current Cost Sharing Principles, in order to facilitate equitable access and pricing outcomes as between TNSPs and connecting parties.

2.12 When the TCAPA Rule Change came into force, the Cost Sharing Principles in Schedule 5.11 (among other items) were expressly and intentionally 'carried over' into Schedule 5.12 of the NER, which is required to be complied with by a LDCA service provider (including a TNSP) where a third-party seeks access to LDCA services. These items were necessary, as the third-party access regime introduced by the TCAPA Rule Change effectively removed the Foundation User's rights to veto access contractually in order to negotiate equitable asset and cost sharing outcomes.

2.13 It was recognised by the AEMC at the time that a proper a framework to provide third parties with access to LDCA services (which included the Cost Sharing Principles) would promote the efficient investment on a whole of NEM basis. In this regard, although LDCA assets were unlikely to be assets of 'national significance' for the purposes of the *Competition and Consumer Act 2010* (Cth), certain LDCAs were likely to be 'significant enough' to warrant similar treatment.

2.14 In order to understand the rationale as to why the Cost Sharing Principles were included in the third-party access regime for LDCAs, the overarching principles necessary for balancing the rights and interests of the parties involved need to be considered. These overarching principles that appear to have been relevant when the LDCA regime was created are as follows:

(a) a third-party access regime for significant transmission assets was deemed to be necessary to encourage efficient NEM wide investment in transmission assets (including, where possible, assets underwritten by a Foundation User);

(b) in the absence of such a regime, a Foundation User would not likely be incentivised to grant third-party access to such transmission assets, which in itself would not always promote the most efficient investment outcomes;

(c) as a result, the decision was made to provide that the owner of such assets (which would often be a party other than the Foundation User) must provide third party access to such assets where certain defined requirements designed to protect the Foundation User were met;

(d) because the rights of the Foundation User (and its ability to negotiate freely on terms of Subsequent TNU access) were prejudiced by the third-party access regime, it was

necessary to impose the Cost Sharing Principles on the LDCA owner to prevent inequitable outcomes; and

(e) this was analogous to a situation where a party essentially funded an asset used to provided negotiated transmission services, where the open access regime in respect of such assets had the similar effect of preventing the Foundation Customer from vetoing access.

Position in the Draft Rules regarding cost sharing

2.15 As they currently stand, the Draft Rules appear to have removed the Cost Sharing Principles contained in Schedule 5.11 from the equivalent provisions relating to third-party access to services using DNAs in the new Schedule 5.12. As an alternative, they appear to:

(a) provide that the TNSP (as operator of the DNA) "may" contemplate in their access policy for DNAs a methodology for cost sharing by Subsequent TNUs as part of the mechanisms proposed by the TNSP to ensure that the interests of the initial connected party are protected (proposed r 5.2A.8(c)(4)); and

(b) where the DNA is to be owned by a third-party, provide that the TNSP is required to contain a provision in the NOA which enables "relevant amounts" that the TNSP has collected for connection to the DNA to be paid to the DNA owner in accordance with the TNSP's access policy (proposed r 5.2A.7(e)(7)).

2.16 In our view, the express Cost Sharing Principles in Schedule 5.11 are fundamentally important to protect the interests of Foundation Users (where the DNAs are owned by the TNSP or a third-party) and without them, a third-party access regime for non-regulated assets should not be contained in the NER. Although the intent of the special access regime as mentioned in the draft determination for the Draft Rules is to protect Foundation User, we believe it to be unworkable to replace the express obligation imposed on the DNA owner to comply with the Cost Sharing Principles with a discretion on the TNSP 'to do the right thing'.

2.17 For all current intents and purposes, because the relevant assets are non-regulated, DNA owners (including TNSPs, who will have the negotiation power balance in their favour at the onset, and when Subsequent TNU's seek access) need to be viewed as competitive entities capable of taking opportunistic courses of action to increase their profits. It cannot be consistent with the objectives of the NEO to strip the Foundation User of their power to negotiate terms of future access to a DNA where the costs of such an asset has been wholly underwritten by the Foundation User, whilst at the same time:

(a) providing the TNSP with a greater ability to derive windfall gains by providing Subsequent TNUs access to the DNA without needing to comply with the Cost Sharing Principles; and

(b) providing Subsequent TNUs with the ability to obtain grid access which has quite possibly been subsidised by the Foundation User.

2.18 In our view, replacing the Cost Sharing Principles with provisions mentioned in Item 2.15 above places an unacceptable amount of discretion (as to the methodology for sharing costs and the methodology for protecting the Foundation User's interests when third-party access to assets of significance is granted) in the hands of the TNSP and therefore creates too much of a margin for the Foundation User's interests to be prejudiced (and/or for other parties to take advantage of the Foundation User's initial investment).

2.19 If any party involved should have discretion in its favour to benefit from connecting third parties to a DNA, our view is that it should be the Foundation User who has paid for the entire project, and not the TNSP solely because it has operational control of the transmission network. This is not consistent with the statement in the new r 5.2A.2(b)(8) which is proposed in the Draft Rules and will not always be conducive to efficient NEM-wide investment outcomes.

Impact on competition

2.20 As mentioned above the impact that the new DNA third party access regime will have on competition needs to be properly considered as part of this rule change process. One of the main benefits of the separate registered participant category for LDCA service providers, was that third party LDCA service providers were able to keep their affairs (including pricing and commercials) private and separate from the primary TNSP.

2.21 Under the new regime that is proposed, the primary TNSP appears to have the right to connect Subsequent TNUs to a DNA and pass through amounts it collects from the Subsequent TNU for access to the DNA in accordance with the TNSP's access policy. This seems to discourage competition in the market for designing, constructing and owning DNAs for the following reasons:

(a) it seems to provide the TNSP, which will invariably be a competitor of a third-party DNA owner, to negotiate the charges that will be charged for access to the third-party DNA owner's asset, provided that the access policy of the TNSP has been complied with, which potentially enables the TNSP to profiteer from third-party DNA owner's assets; and

(b) if the third-party DNA owner was able to negotiate suitable protections in this regard into the relevant NOA, this may well require the third-party DNA owner to share sensitive information with the primary TNSP (which will invariably be its competitor) regarding its pricing and cost sharing methodology.

2.22 This creates additional complications that need to be resolved in the Draft Rule, with the simplest solution seemingly being that where the DNA is owned by a third party DNA owner, the Cost Sharing Principles should apply equally to the TNSP and the third-party DNA owner, with the net effect being that all costs of DNAs (and related DNA services) are to ultimately be spread equitably between the Foundation Customer and all Subsequent TNUs.

2.23 We assume such a cost sharing requirement would extend the contestable scope only (i.e. design, build and ownership of the DNA) as the costs associated with the non-contestable scope (i.e. O&M of the DNA) would already need to be shared by the TNSP between the Foundation User and Subsequent TNUs in accordance with the requirements of Schedule 5.11, which expressly applies to such non-contestable services by virtue of the proposed r 5.2A.4(b).

2.24 Where the TNSP is to collect charges from Subsequent TNUs which are to be passed through to the third party DNA asset owner in accordance with the proposed r 5.2A.7(d)(7), in order to limit the impact of the Final Rule on competition, it would also be necessary to include a methodology in the NOA to enable the TNSP and the third party DNA agree to the amounts which are to be recovered and passed through to the DNA owner without the need for the DNA holder to disclose its existing pricing model for the charges made to it by the Foundation Customer.

Submission

2.25 Our comments and observations in this Item 2 highlight a number of challenges that arise when balancing the interests of the TNSPs, their competitors, Foundation Users and Subsequent TNUs.

2.26 However, where the NER interferes with the fundamental rights of Foundation Users by removing their ability to negotiate suitable outcomes regarding third-party access to DNAs they pay for, by their nature, such assets become 'quasi-regulated' and the income which is able to be derived by the owner of such assets needs to also be appropriately regulated to avoid unjust outcomes and to encourage efficient investment.

2.27 We submit that in order to address these issues, and continue to promote cost competitive and efficient investment in the NEM (which will become even more relevant in the near future with the impending development of renewable energy zones (**REZs**) and REZ hubs etc.) the Draft Rules should be amended to:

(a) expressly include provisions equivalent to those contained in Items 5 and 6 of the current Schedule 5.11 in the new Schedule 5.12 which apply in the context of third-party access to DNAs; and

(b) require all connection agreements which relate to DNAs to contain a clear methodology for ensuring such Cost Sharing Principles are properly adhered to by the parties when Subsequent TNUs seek access to DNA services; and

(c) where the relevant DNAs are owned by a third party, include in the proposed r 5.2A.7 a requirement for all DNA NOAs to contain provisions which:

(i) require both parties to the NOA to ensure compliance with the Cost Sharing Principles (as included in the new Schedule 5.12) in order to ensure the net effect is that costs are shared equitably between DNA users and the Foundation Customer is not disadvantaged for making the initial investment; and

(ii) express a methodology to enable the parties to agree on the Capital Charges which the TNSP is required to collect from the Subsequent TNU and pass through to the third party DNA (without the requirement for the third party DNA to disclose its financial model to the TNSP).