

8 August 2013

Mr John Pierce  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235



Dear Mr Pierce

**Re: National Electricity Amendment (Connecting Embedded Generators) Rule 2013 (ERC0147)**

Energex Limited (Energex) appreciates the opportunity to provide a submission on the Australian Energy Market Commission's (AEMC's) Draft Rule and Draft Rule Determination (Draft Determination) relating to connecting embedded generators to electricity networks.

Energex supports the availability of clear and efficient processes for connecting embedded generators to distribution networks. The connection process set out in the Draft Rule has certain merits such as an additional enquiry stage that recognises the iterative nature of early discussions between Distribution Network Service Providers (DNSPs) and generation proponents. However, Energex has a number of reservations about the connection framework that would result from the Draft Rule and does not agree that the proposed Rule promotes the National Electricity Objective (NEO).

No evidence of Chapter 5A deficiency

The connection process set out in Draft Rule appears to be motivated by a perception that the connection framework under the existing Rules is deficient:

*The Commission considers that the amendments under the draft rule provide a clearer framework than the proposed rule and the current arrangements (p43, Draft Determination).*

Energex notes that Chapter 5A has not been in place in any jurisdiction for more than 13 months and has been in place in NSW for 5 weeks. Subject to State-specific variations, the Queensland Government has recently accepted a recommendation to implement the National Energy Customer Framework (NECF) with a target start date of early to mid-2014.

Energex agrees with the view of the Clean Energy Council (Submission to AEMC Power of Choice Draft Report, 11 October 2012) that the NECF package remains "untested". This view was expressed by Energex in our submission to the Consultation Paper, recognising that NECF may reduce barriers to embedded generation. This has also been recognised by the AEMC:

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*It is likely that the combination of the new Chapter 5A arrangements and the proposed Distribution Network Planning and Expansion Framework rule change can reduce the barriers to demand side participation, especially for distributed generation (Expiry of the Reliability and Emergency Reserve Trader, AEMC Draft Rule Determination, p34).*

If, based on the available evidence, a determination was made that the Chapter 5A connection framework was insufficiently clear, this should be addressed directly through amendment to the deficient rule(s). Adding an additional layer of network connection regulation into the Rules does not promote the NEO and is considered an inefficient approach to address the issue raised by the proponents.

#### Multiple processes create undue compliance costs

The scope of the Draft Rule is not supported because it creates duplicative and inefficient connection requirements for non-registered embedded generators to the detriment of all parties. The Draft Determination appears to assume that Chapter 5A is only applicable to micro-embedded generation contemplated by AS4777. However, it is Energex's view that Chapter 5A was clearly intended to apply to all embedded generation except where the applicant is a Registered Participant.

Attachment 1 illustrates that if the Draft Rule was made, a non-registered embedded generator applicant could potentially progress their connection under one of four different connection processes: Chapter 5A (standard), Chapter 5A (negotiated), existing clause 5.3 and new clause 5.3A. This framework would:

- Inefficiently increase compliance costs for DNSPs that have to establish and maintain multiple embedded generator connection frameworks (e.g. process documentation and implement systems to manage multiple timetables) for similar types of connection, in conflict with the NEO; and
- Create additional uncertainty for embedded generator applicants, who are often unfamiliar with the obligations imposed on them under the Rules.

There has been no claim that having multiple available processes creates 'option value' for embedded generator connection applicants, and certainly no evidence has been presented that any value would outweigh the costs to DNSPs of managing multiple processes. To the contrary, it is the standardisation of a single effective process for embedded generators between 10kW and 30MW which motivates the Rule change request:

*"...the proposed changes aim to replace case-by-case negotiations with a standardised process that is clearer, more certain and efficient"* (Rule Change request, p7)

and

*"Whether the generator is constantly running... or is a standby generator...there should be no discrimination or difference with regard to the connection process.* (EnerNOC submission, p2)

Energex considers that a preferable rule change is open to AEMC which would better contribute to the NEO by enhancing embedded generator connection processes and limiting administrative burden for all parties.

### Preferable rule change

Energex believes a preferable Rule is available to the AEMC that provides certainty and efficiency of process for all parties, and would allow non-registered embedded generators beyond the AS4777 standard to access the draft Rule provisions. The preferable Rule, if one was considered necessary, would:

- For non-registered embedded generators contemplated by AS4777 (e.g. small-scale residential roof-top solar), apply the basic connection framework established under Chapter 5A;
- For non-registered embedded generators not contemplated by AS4777, apply the Draft Rule (Rule 5.3A);
- Amend Chapter 5A to limit the scope of standard and negotiated connections to load customers, noting the detailed process that would be set out in the Draft Rule for non-registered embedded generators;
- For registered embedded generators, apply the connection framework established under Chapter 5 (Rule 5.3); and
- Narrow the scope of the existing Chapter 5 (Rule 5.3) connection process to Registered Participants only. Energex is unable to identify any benefits to extending this process to Non-Registered Participants with the detailed basic, standard and negotiated connection frameworks set out in Chapter 5A.

Under this preferred Rule connection applicants would be unable to choose whether to process their connection application under Chapter 5 or Chapter 5A, thereby eliminating the potential for process shopping.

### Independent expert opinion

Energex remains of the view that the connection process would be materially enhanced if the proponent was required to engage a suitably qualified expert to scope their proposed project and facilitate technical engagement with the DNSP. Energex acknowledges that such an approach may be perceived to create a barrier to entry for generation proponents. However it is Energex's belief that such a requirement would help remove a key barrier to entry for generation proponents, that is, an incomplete understanding of electricity distribution networks and the requirements of the technical regulatory framework.

### Dispute Resolution

The Draft Determination indicates that there is a reluctance to involve the Australian Energy Regulator (AER) in dispute resolution due to the possibility that DNSPs will create an applicant "black list" (p52, Draft Determination).

Energex does not understand the basis for this suggestion which appears to be largely speculative and is completely incorrect as far as Energex is concerned. Inaccurate speculation should not form a basis to introduce a new dispute resolution arrangement when appropriate dispute resolution mechanisms already exist.

Energex requests that the AEMC refer to the existing arrangements under Chapter 8 of the Rules, which outlines the dispute resolution arrangements that apply to 'connection applicants' electing to connect under Chapter 5.

Chapter 8 specifically provides that:

- Registered Participants (i.e. DNSPs) must adopt and implement a dispute management system, which sets out the procedures to be followed when responding to requests for information or notification of disputes;
- The AER must appoint a dispute resolution adviser to administer the dispute resolution provisions of Chapter 8. It is a position that runs independently of the AER (clause 8.2.2(b)(4));
- The dispute resolution adviser must establish and maintain a pool of persons from which members of a dispute resolution panel (DRP) may be selected to assist in hearing disputes;
- The dispute process has 2 main components:
  - Stage 1 encourages participants to resolve their own disputes, through commercial resolution of issues and using a range of user friendly Alternative Dispute Resolution processes; and
  - Stage 2 of the process includes the option of both a DRP and an Adviser to assist in the resolution of the dispute and can include a final, binding determination by an expert DRP. It aims to be responsive to the industries needs including providing specialty expertise and responsive timeframes.

#### Civil penalties

The Draft Determination states that the AEMC will recommend that certain obligations the Draft Rule places on DNSPs be subject to civil penalties because:

- Breach would pose a risk to the secure operation of the National Electricity Market (NEM); and
- Such an approach would encourage compliance; and
- The draft provisions are equivalent to existing Chapter 5 civil penalty provisions.

The first rationale appears in tension with the application of this Rule to non-registered embedded generators. Non-registered generators are exempt from registration primarily because those generating units are not considered to have an impact on the operation of the NEM (AEMO NEM Registration Guide, Appendix 6).

Energex does not believe the second or third rationales reflect a balanced approach nor are sufficient in themselves to support the recommendation because:

- There is no evidence that DNSPs do not and would not comply with mandated connection timings set out in the Rules;
- A civil penalty regime is inconsistent with achieving positive co-operative engagement between DNSPs and generation proponents, and may incentivise DNSPs to take a conservative approach to engagement;
- The annual reporting requirements set out in clause S5.8 of the Draft Rule encourage compliance; and

- The existence of a dispute resolution framework in Chapter 8 of the Rules further encourages compliance.

Energex also notes that an amendment has been made to the NER to facilitate the inclusion of embedded generation research into the Demand Management Incentive Scheme. The new scheme provides incentives for DNSPs to not only implement efficient non-network alternatives, or to manage the expected demand for standard control services in some other way but also provides for incentives to efficiently connect embedded generators.

For these reasons Energex does not consider that the Draft Rule should be subject to the civil penalty regime. If a civil penalty recommendation is made, Energex believes that all mandated enquiry timeframes should be "subject to agreement, agreement to not be unreasonably withheld" to provide a reasonable level of flexibility in the connection process framework, recognising the points made above.

#### Connection charges

Energex supports the AEMC's decision to not exempt embedded generators from paying for shared network augmentation when appropriate. The Final Determination should clarify the applicability of the AER's Connection Charging Guidelines to embedded generation connections progressed under current Chapters 5 and 5A, and any new Rule.

Should you have any enquiries regarding this submission please contact Neil Andersen on (07) 3664 4009.

Yours sincerely



Kevin Kehl  
Executive General Manager  
Customer and Corporate Relations

# Attachment 1 – Non Registered Embedded Generator Connection Frameworks

	Chapter 5A - Basic / Standard	Chapter 5A - Negotiated	Clause 5.3	Draft Clause 5.3A	
Preliminary Enquiry	Applicant Preliminary Enquiry				
	Content	Not addressed	5.3.2 Type, magnitude and timing of proposed connection	5.3A.5 - Description of the objective of the project proposal - Information "of the kind" listed in Schedule 5.4 - Information required from Energex with reasoning;	
	DNSP must publish form	5A.D.2 No - information detailed below to be published on website	Not addressed	5.3A.3 Yes	
	DNSP Response				
	Acknowledgement of Receipt	Not addressed	Not addressed	5.3A.5 2 business days	
	Advise of Deficiency	Not addressed	5 business days	5 business days	
	Timeframe	5 business days, unless relevant information is published on website	10 business days for certain information (refer below) 20 business days for remaining information (refer below)	5.3A.7 15 business days unless otherwise agreed	
Content	5A.D.2 Provision of details such as basic and standard connection services, relevant model standing offers, process, information required for application, fees, right to negotiate (and relevant process), contestable aspects of connection, any other necessary information.	5.3.3. Within 10 business days: identity of other involved parties, whether the services are contestable, proposed preliminary program  Within 20 business days: automatic and minimum access and plant standards, negotiated standards requiring AEMO involvement, normal voltage level, if changed from nominal level, all necessary information required to assess application	5.3A.7, 5.4A - technical information including minimum requirements necessary to maintain system security and reliability of supply: 10 specified matters + other relevant information		
Detailed Enquiry	Applicant Detailed Enquiry				
	Content	5A.D.2 (Exclusions/Exemptions) Enquirer requests a written response to the enquiry or asks for specific information/advice regarding their particular situation	N/A	Not addressed	
	Timeframe	N/A	N/A	5.3A.7 Within 3 months of preliminary response	
	DNSP Response				
	Acknowledgement of Receipt	Not addressed	N/A	5.3A.8 2 business days	
	Advise of Deficiency	N/A	N/A	10 business days, advice of material deficiencies	
	Content	5A.D.2 (Exclusions) Not specifically addressed. Presumably additional information as requested and/or information published on website.	N/A	Not addressed	
Timeframe	As soon as reasonably practical	N/A	Within 30 business days unless otherwise agreed / RIT-D required		
Application	Applicant Connection Application				
	Content	5A.D.3 (a) Per the application form determined by the DNSP	5.3.4 Information requested by DNSP in response to enquiry, proposed access standards not meeting automatic standards	5.3A.9 Should reflect "agreed project" unless departure is justified	
	Timeframe	Not addressed	Per preliminary program	5.3A.8 30 business days of Detailed Response unless otherwise agreed	
	DNSP must publish form	5A.D.1 Yes	N/A (dependent upon what DNSP requests in response to enquiry)	No	
	DNSP Response				
	Content	5A.D.3 (f) - Advice detailing whether the application is a basic or standard connection (or neither) - Details of the negotiated connection process and potential associated costs	5A.C.3 - estimated fees associated with assessment of application and making of a connection offer - estimate of connection charges - statement detailing the calculation of connection charges - estimate of charges for supply services and calculation of charges (if applicable)	5.3.4A Negotiated access standards DNSP proposes to reject, and the standard that the DNSP will accept, and other information required to assess technical performance and costs of connection	Not addressed
	Advise of Deficiency	N/A	Not addressed	5.3A.9 5 business days	
Timeframe	10 business days	10 business days for above advice unless request further info (within 20 business days), then as soon as practicable 20 business days for DNSP to request and/or provide additional information	Per preliminary program	Not addressed	

DNSP Offer					
Offer and Acceptance	Content	<p><b>Schedule 5A.1 (Part B) - Connection offer involving embedded generation</b></p> <p>Details of;</p> <ul style="list-style-type: none"> <li>- Commencement of Connection Contract</li> <li>- Connection point and embedded generators</li> <li>Installation required at the connection point</li> <li>- Maximum capacity to import/export</li> <li>- Components of the distribution system used to provide connection, additional equipment required and identification of responsibility for completion of the work</li> <li>- network extension or augmentation required for the connection</li> <li>- timeframes for completion</li> <li>- metering installation requirements</li> <li>- technical and safety obligations</li> <li>- access requirements</li> <li>- Obligations to accommodate and protect any additional equipment required for the connection at the premise</li> <li>- Connection charges including billing arrangements</li> <li>- DNSP monetary obligations</li> <li>- DNSP obligation to provide additional connection information</li> <li>- Provisions for contract amendments by agreement</li> <li>- DNSP right to interrupt or reduce supply</li> <li>- warranties and liability limitations</li> <li>- disconnection and reconnection</li> <li>- reporting of and correction of faults</li> <li>- dispute resolution</li> <li>- ongoing obligations for both parties</li> <li>- Termination of contract</li> </ul>	<p><b>Schedule 5A.1 (Part B) - Connection offer involving embedded generation</b></p> <p><b>5A.F.4</b></p> <p>Per basic, plus specified terms of negotiated contract</p>	<p><b>5.3.5, 5.3.6, 55.6</b></p> <ul style="list-style-type: none"> <li>- Risks and obligations in respect of planning and environmental laws</li> <li>- automatic and negotiated access standards</li> <li>- terms and conditions of the kind set out in 55.6</li> <li>- must be fair and reasonable</li> </ul>	<p><b>5.3A.10</b></p> <ul style="list-style-type: none"> <li>- Itemised statement of connection costs</li> <li>- Terms and conditions of connection</li> <li>- For each technical requirement in the detailed response to automatic or negotiated access standard</li> <li>- details of how to accept the offer</li> </ul>
	Timeframe	<p><b>5A.E.4</b></p> <p>10 business days or;</p> <p>If the applicant has requested an expedited connection and indicated acceptance of the relevant model standing offer, the offer is considered to have been made</p>	Best endeavours - 65 business days	Per preliminary program	20 business days for agreed projects, otherwise 4 months
	<b>Applicant response to Offer</b>				
Timeframe	<p><b>5A.F.2 and 5A.F.3</b></p> <p>45 business days or;</p> <p>If the applicant requested expedited connection and indicated acceptance of model offer, submission is considered acceptance.</p>	20 business days (unless extended by agreement)	Not addressed	20 business days for agreed project, but provision for extension beyond 20 days for variations	

Fees/Charges	Fees	Dispute Resolution Process	Definition	Dispute Resolution Process
5A.D.3 (3), 5A.E.1, 5A.E.2	<ul style="list-style-type: none"> <li>- Site inspection fee</li> <li>- Connection charges compliant with Connection Charge Principles</li> </ul>	5A.D.3 (3), 5A.E.2, 5A.C.3	Part G Relevant Dispute Per Section 2A of the National Electricity Law: (a) a dispute between a network service user (or prospective network service user) and a network service provider about an aspect of access to an electricity network service specified by the Rules to be an aspect to which Part 10 applies; or (b) without limiting paragraph (a)—a dispute between a retail customer (or other person specified by the Rules) and a regulated distribution system operator about an aspect of access to a connection service specified by the Rules to be an aspect to which Part 10 applies.	Part G 1. The prospective customer, customer or DNSP notify the AER, in writing, that an access dispute exists 2. AER makes a determination or; 3. AER terminates proceedings
5A.D.3 (3), 5A.E.2, 5A.C.3	<ul style="list-style-type: none"> <li>- Site inspection fee</li> <li>- Application assessment fee / negotiated offer fee (recoverable whether or not offer is accepted)</li> <li>- Connection charges compliant with connection charge principles and guidelines</li> </ul>	5A.3.3, 5A.3.7	Part L of Chapter 6 Provides for dispute resolution for terms of access under clause 5.5 (an access dispute for the purposes of the NEL). Part B of Chapter 8 Sets out the general processes for dispute resolution under the NEL.	Part G 1. The prospective customer, customer or DNSP notify the AER, in writing, that an access dispute exists 2. AER makes a determination or; 3. AER terminates proceedings
5A.3.A.4	<ul style="list-style-type: none"> <li>- Detailed enquiry response fee</li> <li>- Application fee</li> </ul>	5.9A	Technical dispute relating to: - negotiated or minimum access standards - augmentation or extensions required - design at connection point - physical layout adjacent to connection point - primary and/or backup protection - control characteristics - communications facilities - insulation co-ordination and lightning protection - fault levels and clearance - switching and isolation facilities - interlocking and synchronising arrangements - metering installations	Part G 1. Initiating party notifies other party to the dispute in writing of; intent to initiate independent expert appraisal matters) for which the expert appraisal is sought Details of at least 2 independent experts to be considered to undertake the appraisal 2. Appointment of Expert 3. Technical expert proceeds with appraisal and determination (20 business days) 4. Experts appraisal is final but not binding 5. Experts appraisal is admissible in any judicial or dispute resolution proceedings under the Rules of the Law.