



Australian Energy Market Commission

RULE CHANGE

RULE DETERMINATION

National Electricity Amendment (SA Jurisdictional Derogation (Connections Charging)) Rule 2010

Rule Proponent

Acting South Australian Minister for Energy

Commissioners

Tamblyn
Henderson
Spalding

6 May 2010

JOHN TAMBLYN

Chairman

For and on behalf of the Australian Energy Market Commission

Inquiries

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

Reference: ERC0101

Citation

AEMC 2010, SA Jurisdictional Derogation (Connections Charging), Rule Determination, 6 May 2010, Sydney

About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005 to be the rule maker for national energy markets. The AEMC is currently responsible for rules and providing advice to the MCE on matters relevant to the national energy markets. We are an independent, national body. Our key responsibilities are to consider Rule change proposals, conduct energy market reviews and provide policy advice to the MCE as requested or on AEMC initiative.

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

Summary

On 13 January 2010, the Australian Energy Market Commission (AEMC or Commission) received a Rule Change Request from the Acting South Australian Minister for Energy (Proponent) in relation to connection arrangements. The Rule Change Request is a request for a jurisdictional derogation. It seeks to maintain the current arrangements in South Australia for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia. The current arrangements are contained in clauses 3.3 to 3.11 of the South Australian Electricity Distribution Code (EDC) and its accompanying guideline (Guideline No. 13).

The Proponent requested that these arrangements continue for South Australia until 1 July 2015, by which time the National Energy Customer Framework (NECF), which provides a regime for the charging for connections, should have commenced.

The Proponent also requested that the Rule Change Request be treated as non-controversial and assessed under the expedited Rule making process provided for in section 96 of the National Electricity Law (NEL). The Commission considered that the Rule Change Request is a request for a non-controversial Rule and has adopted the expedited Rule making process in accordance with section 96 of the NEL.

In the Rule Change Request, the Proponent stated that if the existing connection charging arrangements are not maintained in South Australia, the Australian Energy Regulator (AER) would regulate connection service charges in accordance with the relevant provisions under chapters 5 and 6 of the National Electricity Rules (NER). This would be the case until the commencement of the NECF rules relating to customer connections. It considered that these existing NER provisions lack a number of mechanisms to protect the interests of customers and facilitate their connections to distribution networks in South Australia.

According to the Proponent, the proposed derogation would:

- continue the current arrangements in South Australia, under which customers would benefit from the EDC provisions until similar provisions are introduced via the NECF rules;
- specify the calculation of customer contributions; and
- provide certainty for businesses and customers wishing to connect.

The Commission has assessed the Rule Change Request in accordance with the requirements set out in the NEL. In this context, the Commission considered the following issues:

- the impact on efficiency of continuing existing arrangements in South Australia; and

- the impact on certainty of continuing existing arrangements in South Australia.

In assessing these issues, the Commission has determined to make a Rule (Rule as Made). The Rule as Made provides a jurisdictional derogation that maintains the existing arrangements in South Australia for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia. It will commence on 1 July 2010 and will expire on the earlier of 30 June 2015 and the date notified by the South Australian Minister in the South Australian Government Gazette as the date on which the NECF rules relating to customer connections will apply in South Australia.

The Rule as Made requires:

- the arrangements for connection charges requiring distribution network extensions, modifications or augmentations in South Australia to continue to be made in accordance with certain EDC provisions. These include clauses 3.3 to 3.11 of Chapter 3 of the EDC, the provisions of Guideline No. 13, and the relevant definitions in Schedule 1 to the EDC (collectively defined in the Rule as Made as "the Electricity Distribution Code Provisions");¹
- the AER to perform and exercise the functions and powers of the Essential Services Commission of South Australia (ESCOSA) under the Electricity Distribution Code Provisions; and
- ETSA Utilities to comply with the Electricity Distribution Code Provisions.

The Commission is satisfied that the Rule as Made will, or is likely to, contribute to the achievement of the National Electricity Objective (NEO) because it promotes efficiency and certainty:

- by maintaining an established process in South Australia with the exception that the AER, rather than ESCOSA, will be responsible and avoiding the need for the AER and ETSA Utilities to develop a new interim process for a limited period until the NECF rules relating to customer connections are introduced. Developing a new interim process would require additional costs and effort in administration and operation on the part of ETSA Utilities and the AER. It would therefore be administratively and operationally more efficient to maintain the existing arrangements in South Australia rather than establishing a new process knowing that it would be in place for a limited period; and
- by maintaining prescription in an established process, which includes the calculation of charges for connections requiring distribution network extensions, modifications or augmentations as part of the terms and conditions for charging for such connections. As ETSA Utilities and South Australian customers are familiar with this existing approach, maintaining the same level of prescription will provide certainty to them. Without this level of prescription, South

¹ The effect of the Rule as Made is that the Electricity Distribution Code Provisions referred to in the Rule as Made operate separately to the South Australian regulatory instruments.

Australian customers may defer connections until the NECF rules relating to customer connections are introduced. This may lead to inefficient investment and inefficient use of the network.

For these reasons, the Commission considers that the Rule as Made will be in the long term interests of consumers with respect to the price of supply of electricity.

Contents

1	Acting South Australian Minister for Energy's Rule Change Request	1
1.1	The Rule Change Request	1
1.2	Rule Change Request Rationale	1
1.3	Solution proposed by the Rule Change Request	1
1.4	Relevant background.....	2
1.5	Commencement of Rule making process	5
2	Final Rule Determination.....	6
2.1	Commission's determination	6
2.2	Commission's considerations.....	6
2.3	Commission's power to make the Rule	7
2.4	Rule making test.....	7
2.5	Other requirements under the NEL	8
3	Commission's reasons.....	11
3.1	Assessment.....	11
3.2	Rule as Made	12
3.3	Amendments to the Proposed Rule.....	13
3.4	Civil Penalties.....	16
4	Commission's assessment approach.....	17
5	Impact on efficiency of continuing existing arrangements in South Australia	18
5.1	Proponent's view	18
5.2	Stakeholder views.....	18
5.3	Commission's analysis	19
5.4	Conclusion	20
6	Impact on certainty of continuing existing arrangements in South Australia..	21
6.1	Proponent's view.....	21
6.2	Stakeholder views.....	21
6.3	Commission's analysis	21

6.4	Conclusion	22
	Abbreviations.....	23
A	Summary of issues raised in submissions	24

1 Acting South Australian Minister for Energy's Rule Change Request

1.1 The Rule Change Request

On 13 January 2010, the Australian Energy Market Commission (AEMC or Commission) received a Rule change request from the Acting South Australian Minister for Energy (Proponent) in relation to arrangements for charging for connections (Rule Change Request). The Rule Change Request is a request for a jurisdictional derogation to maintain the current arrangements in South Australia for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia (current South Australian connection arrangements). The Proponent requested that the Rule Change Request be treated as non-controversial and expedited under section 96 of the National Electricity Law (NEL).

1.2 Rule Change Request Rationale

In its Rule Change Request, the Proponent considered that if the current South Australian connection arrangements are not maintained, the Australian Energy Regulator (AER) would regulate charging for connections requiring distribution network extensions, modifications or augmentations in South Australia in accordance to the relevant provisions under chapters 5 and 6 of the National Electricity Rules (NER). It considered that the NER lacks a number of mechanisms to protect the interests of customers and facilitate their connections to distribution networks, compared to the South Australian Electricity Distribution Code (EDC).²

According to the Proponent, the proposed derogation would:

- continue the current arrangements in South Australia, under which customers would benefit from the EDC provisions until similar provisions are introduced via the National Energy Customer Framework (NECF) rules;
- specify the calculation of customer contributions; and
- provide certainty for businesses and customers wishing to connect.³

1.3 Solution proposed by the Rule Change Request

The Rule Change Request from the Proponent proposed to:

- amend an existing derogation by extending the expiry date to 1 July 2015 to allow for sufficient time for the NECF rules relating to customer connections to commence;

² Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 5.

³ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, pp. 5-6.

- require the AER to administer and retain clauses 3.3.5 to 3.11 of the EDC and relevant provisions of the accompanying Guideline No. 13 because these are currently applied in South Australia;
- remove redundant provisions in clause 9.28.2 of the NER and certain provisions in the EDC because the AER is taking over the regulation of distribution network services in accordance with the NER more broadly; and
- fix in the value for the published standard unit augmentation charge ('f', which would be used to derive the customer allocation for the augmentation under Chapter 3 of the EDC) and require the AER to escalate this value by the Consumer Price Index (CPI) for the quarter ending 31 March each year.

The effect of this Rule Change Request would:

- maintain the procedures for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia;
- require the AER to administer the existing arrangements in South Australia; and
- require the AER to only use the defined value for the published standard unit augmentation charge ('f).

1.4 Relevant background

1.4.1 Jurisdictional derogation

The Proponent indicated "[i]n accordance with section 91(3) of the NEL I [the Acting South Australian Minister for Energy] have consulted with Ministers of the other participating jurisdictions before forwarding this [Rule change] request to you [the Commission]".⁴

1.4.2 Current arrangements

On 1 January 2008, South Australia transferred its economic regulation of electricity distribution network services to the AER.⁵ However, the Essential Services Commission of South Australia (ESCOSA) is currently still responsible for administering the current electricity distribution price determination until 30 June 2010.⁶ One component of the distribution determination process is the charging for connections. This is provided for under clause 9.28.2 of the NER, which is a jurisdictional derogation for South Australia.

Clause 9.28.2(a) of the NER provides that:

⁴ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 2.

⁵ Part 6 of the *National Electricity (South Australia) Act 1996* (SA).

⁶ Section 18(1) of the *National Electricity (South Australia) Act 1996* (SA).

“Notwithstanding anything to the contrary in the Rules, the Jurisdictional Regulator appointed for South Australia is responsible for the regulation of access in respect of any distribution network situated in South Australia concerning:

- (i) connection;
- (ii) modification of a connection;
- (iii) augmentation;
- (iv) provision of network services and distribution use of system services;
- (v) modification of the provision of network services and distribution use of system services.”

Clause 9.28.2(b) relates to how ESCOSA decides on "any question as to the fairness and reasonableness of an offer to connect in relation to a distribution network situated in South Australia". Clause 9.28.2(c) relates to the dispute resolution process under this jurisdictional derogation. Clause 9.28.2(d) provides that clause 9.28.2 expires on 1 July 2010.

Under clause 9.28.2 of the NER, ESCOSA is responsible for the regulation of access of distribution network connections requiring distribution network extensions, modifications or augmentations in South Australia. ESCOSA applies certain provisions of its EDC and Guideline No. 13 for charging for such connections.⁷ As a condition of its licence with ESCOSA, ETSA Utilities is required to comply with the EDC. Clauses 3.3 to 3.11 of the EDC set out the procedures for calculating and allocating costs of the connection assets, extension and augmentation that the connection applicant must contribute to. This includes:

- a formula for customer payment which is comprised of connection assets cost, extension cost, customer allocation of augmentation, customer contribution to upstream customers, and a potential rebate from the Distribution Network Service Provider (DNSP) to the connecting customer (clause 3.5 of the EDC);
- an assessment of whether an individual evaluation would be required which would determine the formula for calculating the customer allocation for the augmentation (clause 3.6.4 of the EDC);
- a defined value for the published standard unit augmentation charge ('f'). As of 1 July 2009, this value is \$135 per kVA. This would be applied to the formula to derive the customer allocation for the augmentation (clause 3.6.4.1 of the EDC);
- a formula to calculate the rebate from the DNSP to a connecting customer for the cost of the connection assets, extension and augmentation if the connecting customer seeks the most efficient and technically feasible solution to meet the

⁷ These documents are available from ESCOSA's website.

customer's electrical requirements and any expected customer load growth in the short term (clause 3.7 of the EDC); and

- procedures for calculating the customer contribution by a customer towards amounts paid by upstream customers for an extension (clauses 3.8 and 3.9 of the EDC).

1.4.3 Future arrangements

The Proponent stated that the NECF will provide similar provisions as the current South Australian connection arrangements.⁸ The objective of the NECF is to provide a national framework for the regulation of energy distribution and retail which would be regulated by the AER.⁹ This will include making amendments to the NER on charging for connections to distribution networks in the National Electricity Market (NEM).¹⁰ At the time of making this final Rule determination, the Ministerial Council on Energy (MCE) has indicated that a recommended final NECF legislative package is scheduled to be considered by the MCE, followed by the introduction of that package into the South Australian Parliament in the Spring Session of 2010. Applications Acts in each participating jurisdiction are then expected to follow from 2011.¹¹

1.4.4 AER draft distribution determination and decision

ETSA Utilities submitted a regulatory proposal to the AER for the regulatory period 1 July 2010 to 30 June 2015.¹² In response to ETSA Utilities' regulatory proposal, the AER published its draft decision on the distribution determination with respect to ETSA Utilities (the AER's draft decision).¹³

In the AER's draft decision, the AER proposed that if a connection service is at the quality or reliability standards required by the NER, the EDC or any other applicable regulatory instruments, and the customer is not required to make a financial contribution under the EDC, the AER would classify this as a direct control service.¹⁴ If the service requires higher or lower quality or reliability standards than that required by the NER, the EDC or any other applicable regulatory instruments, and the customer

⁸ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 5.

⁹ MCE, National Energy Customer Framework, Second Exposure Draft (NECF2), Explanatory Material, November 2009, p. 4.

¹⁰ MCE, National Energy Customer Framework, Second Exposure Draft (NECF2), Explanatory Material, November 2009, p. 18.

¹¹ MCE, National Energy Customer Framework, Second Exposure Draft (NECF2), Explanatory Material, November 2009, p. 6.

¹² ETSA Utilities, Regulatory Proposal 2010-2015, 1 July 2009.

¹³ AER, Draft decision, South Australia Draft distribution determination 2010-11 to 2014-15, 25 November 2009.

¹⁴ AER, Draft decision, South Australia Draft distribution determination 2010-11 to 2014-15, 25 November 2009, p. 10.

is required to make a financial contribution under the EDC, the AER would classify this as a negotiated distribution service.¹⁵

In the absence of a new derogation, the arrangements for such connections require a customer payment which would become subject to the Negotiated Distribution Service Criteria (NDSC) and the negotiating framework under Chapter 6 of the NER. It is possible that the relevant provisions of the EDC could be included as part of these Chapter 6 negotiation arrangements. However, there would be no guarantee that such provisions would continue the prescribed connection arrangements in South Australia as the Chapter 6 arrangements are based on the principle of negotiation between the DNSP and customer. There is the possibility that either the customer or ETSA Utilities could seek to negotiate more favourable terms in a manner which is consistent with the NDSC under clause 6.7.1 of the NER.

By contrast, under the proposed derogation, it would be clear that charges related to a negotiated distribution service would be based on the EDC provisions and administered by the AER.

1.5 Commencement of Rule making process

On 18 March 2010, the Commission published a notice under section 95 of the NEL advising of its intention to commence the Rule making process and consultation in respect of the Rule Change Request. A consultation paper prepared by Commission staff identifying specific issues or questions for consultation was also published with the Rule Change Request. Submissions closed on 15 April 2010.

The Commission received two submissions on the Rule Change Request as part of the consultation. Both were in agreement with the derogation being made. They are available on the AEMC website.¹⁶ A summary of the issues raised in submissions and the Commission's response to each issue is contained in Appendix A.

The Commission accepted that the Rule Change Request was a request for a non-controversial Rule. Accordingly, the Commission proposed to expedite the Rule Change Request under section 96 of the NEL, subject to any written objections not to do so. Receipt of written objections closed on 1 April 2010. No written objections were received. Accordingly, the Rule Change Request was considered under an expedited Rule making process in accordance with section 96 of the NEL.

On 15 April 2010, the Commission published a notice under section 107 of the NEL advising of the extension date for the publication of the final Rule determination and Rule as Made. It considered that there was a material change in circumstances such that it was necessary to extend the publication date to 6 May 2010.

¹⁵ AER, Draft decision, South Australia Draft distribution determination 2010-11 to 2014-15, 25 November 2009, p. 10.

¹⁶ See www.aemc.gov.au.

2 Final Rule Determination

2.1 Commission's determination

In accordance with section 102 of the NEL the Commission has made this final Rule determination in relation to the Rule proposed by the Acting South Australian Minister for Energy. In accordance with section 103 of the NEL the Commission has determined to make, with amendments, the Rule proposed by the Proponent.

The Commission's reasons for making this final Rule determination are set out in section 3.1.

The *National Electricity Amendment (SA Jurisdictional Derogation (Connections Charging)) Rule 2010 No 3* (Rule as Made) is published with this final Rule determination. The Rule as Made commences operation on 1 July 2010. The Rule as Made is different from the Rule proposed by the Proponent.¹⁷ Its key features are described in section 3.2.

2.2 Commission's considerations

In assessing the Rule Change Request the Commission considered:

- the Commission's powers under the NEL to make the Rule;
- the Rule Change Request;
- the fact that there is no relevant MCE Statement of Policy Principles;¹⁸
- submissions received during consultation;
- the Commission's analysis as to the ways in which the proposed Rule will or is likely to, contribute to the achievement of the National Electricity Objective (NEO);
- the matters to which the Commission is required to have regard under section 89 of the NEL (for a jurisdictional derogation) and section 88B of the NEL (the revenue and pricing principles);
- ETSA Utilities' regulatory proposal and revised regulatory proposal for the regulatory period 2010-11 to 2014-15;

¹⁷ Under section 103(3) of the NEL, the Rule that is made in accordance with section 103(1) need not be the same as the draft of the proposed Rule to which a notice under section 95 relates or the draft of a Rule contained in a draft Rule determination.

¹⁸ Under section 33 of the NEL, the Commission must have regard to any relevant MCE Statements of Policy Principles.

- the AER's draft decision on its draft distribution determination with respect to ETSA Utilities for the regulatory period 1 July 2010 to 30 June 2015; and
- that section 91(8) of the NEL is not relevant as it applies only to the Rules having effect in Victoria.

2.3 Commission's power to make the Rule

The Commission is satisfied that the Rule as Made falls within the subject matter about which the Commission may make Rules. The Rule as Made falls within the matters set out in section 34 of the NEL as it relates to the activities of persons participating in the NEM. The subject matter of charging for connections requiring distribution network extensions, modifications or augmentations in South Australia relates to the activities of ETSA Utilities, South Australian customers and the AER. Further, the Rule as Made falls within the matters set out in Schedule 1 to the NEL as it relates to items 26 and 26D of Schedule 1 to the NEL because the Rule as Made relates to the regulation of prices for services subject to a distribution determination and the economic framework to be applied by the AER for the purposes of such regulation.

2.4 Rule making test

Under section 88(1) of 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 NEO. This is the decision making framework that the Commission must apply.

The NEO is set out in section 7 of the NEL as follows:

"The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long 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."

For the Rule Change Request, the Commission considers that the relevant aspect of the NEO are: "the efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to the price ... of supply of electricity."¹⁹

The Commission is satisfied that the Rule as Made will, or is likely to, contribute to the achievement of the NEO because it promotes efficiency and certainty:

¹⁹ Under section 88(2) of the NEL, for the purposes of section 88(1) of the NEL the AEMC may give such weight to any aspect of the NEO as it considers appropriate in all the circumstances, having regard to any relevant MCE Statements of Policy Principles.

- by maintaining an established process in South Australia with the exception that the AER, rather than ESCOSA, will be responsible and avoiding the need for the AER and ETSA Utilities to develop a new interim process for a limited period until the NECF rules relating to customer connections are introduced. Developing a new interim process would require additional costs and effort in administration and operation on the part of ETSA Utilities and the AER. It would therefore be administratively and operationally more efficient to maintain the existing arrangements in South Australia rather than establishing a new process knowing that it would be in place for a limited period; and
- by maintaining prescription in an established process, which includes the calculation of charges for connections requiring distribution network extensions, modifications or augmentations as part of the terms and conditions for charging for such connections. As ETSA Utilities and South Australian customers are familiar with this existing approach, maintaining the same level of prescription will provide certainty to them. Without this level of prescription, South Australian customers may defer connections until the NECF rules relating to customer connections are introduced. This may lead to inefficient investment and inefficient use of the network.

For these reasons, the Commission considers that the Rule as Made will be in the long term interests of consumers with respect to the price of supply of electricity.

In reaching this decision, the Commission has not assessed the policy merits of clauses 3.3 to 3.11 of the EDC and Guideline No. 13 as an arrangement for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia.

2.5 Other requirements under the NEL

Under section 88B of the NEL, the Commission must take into account the revenue and pricing principles in making a Rule for, or with respect to, any matter or thing specified in items 15 to 24 and 25 to 26J of Schedule 1 to the NEL. Given that the Rule as Made relates to items 26 and 26D of Schedule 1 to the NEL, the Commission has taken into account the revenue and pricing principles only to the extent that the derogation impacts on direct control services.²⁰

The Commission has not carried out an analysis of how the derogation would, in comparison to the application of the chapters 5 and 6 provisions under the NER, promote each of the revenue and pricing principles. This is not necessary as the Rule as Made, through continuing the existing South Australian connection arrangements,

²⁰ It is likely that most, if not all, of the requests for connection which are subject to this derogation would be classified as negotiated distribution services to the extent that the customer would be required to pay a share of the augmentation or extension costs (see section 1.4.4). However, there is a theoretical possibility that a request for connection may not require a customer payment where there is a \$3000 rebate under clause 3.7 of the EDC. In such a scenario, it would fall under the classification of a direct control service.

promotes efficiency and certainty. Furthermore, as outlined below, regard has been had to section 89 of the NEL.

The Commission also has had regard to the matters as required under section 89 of the NEL as the Rule Change Request is a request for a jurisdictional derogation. Section 89 of the NEL states that:

“In making a jurisdictional derogation, the AEMC must have regard to whether –

- (a) the derogation provides for the orderly transfer of the regulation of the electricity industry in a participating jurisdiction under jurisdictional electricity legislation to the regulation of that industry under the national electricity legislation; or
- (b) the derogation continues existing regulatory arrangements applying to the electricity industry in a participating jurisdiction and the Minister of the participating jurisdiction requesting the derogation has notified, in writing, the AEMC that he or she considers it necessary and appropriate that the existing regulatory arrangements continue; or
- (c) the derogation is necessary to exempt, on an ongoing basis, generating, transmission or distribution systems or other facilities owned, controlled or operated in the participating jurisdiction to which the derogation relates from complying with technical standards relating to connection to the national electricity system set out in the Rules because those systems or facilities, by reason of their design or construction, are unable to comply with those standards.”

The Proponent submitted that "the proposed derogation seeks to extend the derogation for the 1 July 2010 - 30 June 2015 regulatory period [i.e. until 1 July 2015], or until rules are introduced following the introduction of the National Energy Customer Framework".²¹ The Commission considers that the Rule as Made is consistent with section 89(a) of the NEL because it contemplates the transition from jurisdictional electricity regulation to regulation under national electricity legislation, being the NECF.

The Proponent considered that "[t]he proposed derogation is consistent with the concepts described in paragraph (b) of section 89 [of the NEL]" that seeks to extend the derogation after 1 July 2010.²² The Commission considers that the Rule as Made is also consistent with section 89(b) of the NEL, subject to the following minor variations to the existing arrangements in South Australia:

- the AER would perform and exercise the current functions and powers of ESCOSA under the Electricity Distribution Code Provisions;

²¹ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 7.

²² Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 7.

- the value for the published standard unit augmentation cost would be fixed to \$135 per kVA (for the quarter ending 31 March 2009) and escalated by the CPI for the quarter ending 31 March each year. Under the existing arrangements, ESCOSA has the discretion to change this value; and
- the value of the discount rate, which is used in calculating the initial value of the unit cost for a network element requiring augmentation ('F') where the request for connection requires an individual evaluation, would be taken to be 8.5% per annum until the AER specifies a different discount rate or approves a different method for calculating the value of 'F'.

Section 89(c) of the NEL does not apply to the proposed derogation.

3 Commission's reasons

The Commission has analysed the Rule Change Request and assessed the issues/propositions arising out of this Rule Change Request. For the reasons set out below, the Commission has determined to make the Rule as Made. Its analysis of the Rule proposed by the Proponent is also set out below.

3.1 Assessment

Currently, there are arrangements in place for the regulation of charging for connections requiring distribution network extensions, modifications or augmentations in South Australia. The current South Australian connection arrangements are contained in certain provisions of the South Australian jurisdictional instruments (clauses 3.3 to 3.11 of Chapter 3 of the EDC and Guideline No. 13) and regulated by ESCOSA. ESCOSA's distribution determination will cease at the end of the regulatory period which will be on 30 June 2010.²³ The existing jurisdictional derogation (clause 9.28.2 of the NER) will expire on 1 July 2010.²⁴

After this time, the AER will become the economic regulator for ETSA Utilities more generally. This includes responsibility for regulating the arrangements for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia. In addition to the quality or reliability standards for connection services, the AER intends to use the South Australian jurisdictional instruments to determine whether connection services are classified as either direct control or negotiated distribution services. The decision will be based on whether the customer would have to make a financial contribution for the provision of the connection service.²⁵ If the connection service is classified as a negotiated distribution service, the charges to be paid and the terms and conditions for these would be subject to negotiation between ETSA Utilities and its customers which would be in accordance with chapters 5 and 6 of the NER.

While ETSA Utilities may attempt to use the provisions of the EDC as a basis for negotiation, there would be no guarantee that the substance of the EDC provisions would be ultimately agreed upon between ETSA Utilities and the customer. Customers could seek to negotiate different terms and conditions. ETSA Utilities could also seek to set different terms and conditions. ETSA Utilities would need to put in place new systems and procedures to support these negotiations for the provision of these services. As a result, customers may experience higher transaction costs and possible unfavourable terms and conditions relative to the existing provisions. This is different to the current South Australian connection arrangements where the process is established and prescribed without requiring negotiation.

²³ Section 18(1) of the *National Electricity (South Australia) Act 1996* (SA).

²⁴ Clause 9.28.2(d) of the NER.

²⁵ AER, Draft decision, South Australia Draft distribution determination 2010-11 to 2014-15, 25 November 2009, p. 10.

The NECF will establish a new regime for the provision of connection services relating to distribution network augmentations, extensions and modifications. It is anticipated that the NECF legislative package will be introduced into the South Australian Parliament in the Spring Session of 2010.

To the extent possible, the Commission considers that it would be preferable to transition directly from the current South Australian connection arrangements to the new NECF connection arrangements, and to avoid new interim arrangements that would only be in place for a limited period. To avoid this eventuality, a Rule in the form of a jurisdictional derogation is required to enable the AER to apply the current arrangements in South Australia until the NECF rules relating to customer connections commence.

3.2 Rule as Made

The Rule as Made provides a jurisdictional derogation that maintains the existing arrangements in South Australia for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia, which will commence on 1 July 2010. Under the new clause 9.28.3, the Rule as Made:

- adopts the relevant provisions of the EDC and Guideline No. 13 as the arrangements for charging of connections requiring distribution network extensions, modifications or augmentations in South Australia. The relevant provisions are clauses 3.3 to 3.11 of Chapter 3 of the EDC, the provisions of Guideline No. 13, and the relevant definitions in Schedule 1 to the EDC (collectively defined in the Rule as Made as "the Electricity Distribution Code Provisions");²⁶
- requires the AER to perform and exercise the functions and powers of ESCOSA under the Electricity Distribution Code Provisions;
- requires ESCOSA not to perform or exercise any functions or powers under the Electricity Distribution Code Provisions;
- requires ETSA Utilities to comply with the Electricity Distribution Code Provisions;
- requires that any past ESCOSA distribution determination or approval under clauses 3.3 to 3.11 and Guideline No. 13 will continue to apply as the Electricity Distribution Code Provisions until the AER makes any future relevant amendments;
- specifies that the Electricity Distribution Code Provisions will prevail to the extent of any inconsistency between the Electricity Distribution Code Provisions,

²⁶ The effect of the Rule as Made is that the Electricity Distribution Code Provisions referred to in the Rule as Made operate separately to the South Australian regulatory instruments.

the NER, and the negotiating framework and the Negotiated Distribution Service Criteria (NDSC);

- requires that if the AER seeks to amend the Electricity Distribution Code Provisions it must do so in accordance with the distribution consultation procedures;
- specifies that the value of the published standard unit augmentation charge ('f') will be escalated by the CPI for the quarter ending 31 March in each financial year, based on the value of 'f' of \$135 per kVA for the quarter ending 31 March 2009;
- specifies that the discount rate, which is used in calculating the initial value of the unit cost for a network element requiring augmentation ('F') where the request for connection requires an individual evaluation, will be taken to be 8.5% per annum until the AER specifies a different discount rate or approves a different method for calculating the value of 'F'; and
- specifies that the derogation will expire on the earlier of 30 June 2015 and the date notified by the South Australian Minister in the South Australian Government Gazette as the date which the NECF relating to customer connections applies in South Australia.

In addition, the Rule as Made removes the existing jurisdictional derogation in clause 9.28.2 of the NER.

3.3 Amendments to the Proposed Rule

The Proponent provided a proposed Rule with its Rule Change Request. Below is a discussion of the differences between the Proponent's Rule and the Rule as Made.

The Proponent's Rule sought to amend the existing clause 9.28.2.²⁷ Consistent with the Commission's drafting practice, the Rule as Made includes a new derogation clause 9.28.3 and removes clause 9.28.2.

The Proponent submitted that the relevant provisions from Chapter 3 of the EDC for the current charging for connections should be clauses 3.3.5 to 3.11.²⁸ It considered that the other provisions from Chapter 3 would be contained in ETSA Utilities' negotiating framework and would be approved through the distribution determination by the AER.²⁹ The Commission has included all the provisions under clause 3.3 of the EDC because clause 3.3 operates as a single scheme. This also avoids cross referencing issues later in Chapter 3 of the EDC, and maintains the existing arrangements.

²⁷ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, pp. 8-9.

²⁸ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 5.

²⁹ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 5.

The Proponent proposed that the version of the EDC that should be referenced should be the version which commenced on 1 January 2007.³⁰ The Rule as Made refers to the most recent version of the EDC immediately before the commencement date of the Rule as Made.

The Proponent proposed that the AER should be given the equivalent level of responsibility as ESCOSA in administering the relevant provisions under Chapter 3 of the EDC and Guideline No. 13. The Commission considers that an issue related to this is whether the operation of past ESCOSA determinations and approvals (e.g. under clauses 3.3.2(b), 3.3.5(b), 3.6.3(d), 3.6.4(b), 3.7 and 3.11(c) of the EDC) should be preserved, given that ESCOSA was able to review these. The Commission considers that the Rule as Made should preserve the operation of past ESCOSA determinations and approvals so that the AER does not have to redo these in order for the derogation to take effect. Also the Commission considers that the AER should be able to make its own determinations and give its own approvals under the Electricity Distribution Code Provisions from time to time. The Commission considers that this will provide the AER with an appropriate level of discretion in applying the Electricity Distribution Code Provisions, while at the same time maintaining the existing arrangements in South Australia.

With respect to any future AER review of the Electricity Distribution Code Provisions, the Commission considers that the distribution consultation procedures under the NER should apply. This will provide an appropriate framework and opportunity for consultation with stakeholders on any proposed amendments to the Electricity Distribution Code Provisions.

For the purposes of the Rule as Made, the provisions which the AER may amend are the Electricity Distribution Code Provisions being:

- clauses 3.3 to 3.11 (inclusive) of the Electricity Distribution Code as in force on 30 June 2010;
- the provisions of Guideline No. 13 as in force on 30 June 2010; and
- the definitions in Schedule 1 to the Electricity Distribution Code to the extent they are relevant,

in each case as amended from time to time.

The Rule as Made establishes that these provisions will be arrangements for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia. The Rule as Made also establishes that the AER has the ability to amend these provisions under the NER and that the AER is the only body that can amend such arrangements for South Australia. Hence, the powers of AER to do so does not depend upon any jurisdictional regulatory instruments. Any further amendments to Chapter 3 of the EDC or Guideline No. 13 by ESCOSA in the future will not affect the application of the Electricity Distribution Code Provisions as

³⁰ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 8.

provided for in the Rule as Made as these provisions operate separately to the South Australian regulatory instruments.

Under the current arrangements, ETSA Utilities has to comply with the provisions of the EDC and Guideline No. 13 by virtue of the *National Electricity (South Australia) Act 1996* (SA). The Rule as Made enables the AER to enforce non-compliance with the Electricity Distribution Code Provisions against the DNSP. This means that a failure by the DNSP to comply will constitute a breach of the NER.

The Proponent did not specify the value of the discount rate used to calculate the initial value of 'F', even though this value will cease to apply on 30 June 2010 according to Guideline No. 13.³¹ The Commission has decided that to provide certainty to ETSA Utilities and South Australian customers, the existing value of 8.5% per annum will continue unless the AER decides upon another value for the discount rate or method for calculating 'F'. The Commission considers that this would continue the existing arrangements in South Australia.

The Proponent proposed that the derogation should expire on 1 July 2015, which should allow time for the NECF rules relating to customer connections to be introduced.³² The Commission considers that to be consistent with the electricity distribution price determination regulatory period 2010-11 to 2014-15, the derogation will expire on 30 June 2015. Also, the Commission considers that to be consistent with section 89(a) of the NEL and good regulatory practice, the expiration date will also be the earlier of the commencement of the NECF rules and to 30 June 2015. To allow for an appropriate transition period to the NECF rules, the South Australian Minister will notify this date in the South Australian Government Gazette. Hence, whether the commencement date is 30 June 2015 or the date notified by the South Australian Minister on the commencement of the NECF rules, certainty will be given to stakeholders on the transition from the derogation to the NECF rules.

The Proponent submitted that notwithstanding anything to the contrary in the NER or the regulatory framework forming part of the distribution determination applying to ETSA Utilities for the regulatory period 2010-11 to 2014-15 (including the negotiating framework and the NDSC), the relevant provisions of the EDC and Guideline No. 13 should apply.³³ The Commission considers that to continue the existing arrangements in South Australia, to the extent of any inconsistency, the Electricity Distribution Code Provisions will prevail over any other provision of the NER (except the derogation), and the NDSC and negotiating framework in any distribution determination with respect to ETSA Utilities. The Commission considers this will also provide certainty to stakeholders if any inconsistency arises.

³¹ See clause 3.6.4.1 of the EDC and section 2.8 of Guideline No. 13.

³² Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 7.

³³ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, pp. 5, 8.

3.4 Civil Penalties

The Rule as Made does not amend any Rules that are currently classified as civil penalty provisions under the National Electricity (South Australia) Regulations. The Commission has not recommended to the MCE that any of the proposed amendments in the Rule as Made be classified as civil penalty provisions as the Rule as Made relates to a jurisdictional derogation. The nature of the amendments in the Rule as Made is to continue with the existing arrangements in South Australia.

4 Commission's assessment approach

This chapter describes the approach that the Commission has taken to assess the Rule Change Request in accordance with the requirements set out in the NEL (and explained in Chapter 2).

In assessing any Rule change request against the NEL criteria, the first step is to consider the counterfactual arrangements against which the proposed Rule is compared. In the present case, the counterfactual would be:

- the expiry of the existing derogation;
- incorporation of the relevant content of the EDC and Guideline No. 13 into ETSA Utilities' NDSC; and
- negotiation of charging for connections requiring distribution network extensions, modifications or augmentations in South Australia.

In this context, the Commission has considered the following issues:

- the impact on efficiency of continuing existing arrangements in South Australia - a new connection charging regime from the existing arrangements in South Australia may increase costs and effort (in the form of establishing a new process in the interim before the NECF rules relating to customer connections commence); and
- the impact on certainty of continuing existing arrangements in South Australia - a new connection charging regime may create uncertainty for South Australian customers who may defer connections until the NECF rules relating to customer connections are introduced.

The Commission has not assessed the policy merits of clauses 3.3 to 3.11 of the EDC and Guideline No. 13 as an arrangement for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia.

5 Impact on efficiency of continuing existing arrangements in South Australia

5.1 Proponent's view

The Proponent submits that:³⁴

“As the NECF will not be introduced by 30 June 2010, the proposed rule change does not seek to impose the South Australian derogation indefinitely, but extend it, in order to meet its original purpose of ensuring customers continue to benefit from the provisions contained in the EDC, until similar such provisions are introduced by way of the NECF.”

It also states that:³⁵

“Any minor costs to the AER in seeking for them to administer the specific provisions of Chapter 3 of the EDC is substantially outweighed by the benefits to South Australian consumers by enabling the current protections for electricity consumers in South Australia to continue until rules for a national connections framework are introduced following the introduction of the National Energy Customer Framework.”

5.2 Stakeholder views

Origin Energy stated that:³⁶

“Origin considers that extending the current arrangements for SA connection charging provisions covered in this derogation is the least disruptive option for the market. We prefer this approach when compared to applying a new interim charging regime from 1 July 2010 until the National Energy Consumer Framework take effect.

...

Despite the challenges with the current arrangements, introducing new charging arrangements for an interim period may give rise to new problems for little short term benefit. We therefore support extending the derogation until the NECF commences.”

³⁴ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 5.

³⁵ Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 6.

³⁶ Origin Energy, Submission on the Rule Change Request, 14 April 2010, p. 1.

5.3 Commission's analysis

In considering the issue of whether the existing arrangements in South Australia should continue, the Commission has considered the impact on efficiency if the proposed derogation was not made. This involved considering the requirements under the relevant provisions of chapters 5 and 6 of the NER that would apply if the proposed derogation was not made and how different it would be to the existing requirements in South Australia.

On 25 November 2009, the AER published its draft decision on the distribution determination in relation to ETSA Utilities for the regulatory period 1 July 2010 to 30 June 2015. Here, it explained its draft approach to charging for connections requiring distribution network extensions, modifications or augmentations in South Australia in accordance to chapters 5 and 6 of the NER. The AER proposes to classify such services as either direct control or negotiated distribution services.³⁷ If the quality or reliability standard is within the level required by the NER, the EDC or any other applicable regulatory instrument, and no financial contribution is required under the EDC, then the service would be classified as a direct control service. If the quality or reliability standard is higher or lower than the level required by the NER, the EDC or any other applicable regulatory instrument, and a financial contribution is required under the EDC, then the service would be a negotiated distribution service. If the connection service is classified as a negotiated distribution service, the charges to be paid and the terms and conditions for these would be subject to negotiation between ETSA Utilities and its customers in accordance to chapters 5 and 6 of the NER.

While ETSA Utilities may attempt to use certain provisions of the EDC as a basis for negotiation under the AER's draft approach, there would be no guarantee that the substance of the EDC provisions would be ultimately agreed upon between ETSA Utilities and the customer.³⁸ Customers could seek to negotiate different terms and conditions. ETSA Utilities would need to put in place new systems and procedures to support these negotiations for the provision of these services. This will require effort and cost on the part of ETSA Utilities (and the AER). This is different to the current arrangements in South Australia where the process has already been established and prescribed without requiring negotiation.

With respect to negotiation costs arising from the AER's draft approach, ETSA Utilities provided similar comments in its revised regulatory proposal to the AER:

- "the AER's amendments to the Negotiating Framework and associated processes will have a marked effect on the administrative requirements imposed upon ETSA Utilities";

³⁷ AER, Draft decision, South Australia Draft distribution determination 2010-11 to 2014-15, 25 November 2009, p. 10.

³⁸ With the proposed derogation, it would be clear that charges related to a negotiated distribution service would be based on clauses 3.3 to 3.11 under the EDC and Guideline No. 13 and applied by the AER.

- "the AER's proposed amendments to the Negotiating Framework will significantly impact on the resources required to negotiate the provision of a negotiated distribution service. The major impact of this change is expected to be in negotiating the provision of new, non-standard or upgraded connection services";
- "ETSA Utilities will require additional capital expenditure to accommodate the increased resources required to negotiate these distribution services under the Negotiating Framework"; and
- "it is difficult to determine the additional resource requirement under a negotiation regime versus ETSA Utilities' previously clearly specified regime".³⁹

It is expected that the NECF will include a regime for charging for connections requiring distribution network extensions, modifications or augmentations in South Australia. It is also anticipated that the NECF will commence within the next regulatory control period. On this basis, any new approach developed to support negotiations around the charging for such connections prior to the establishment of the NECF rules will be an interim measure.

Origin Energy also submitted that continuing the existing arrangements until the commencement of the NECF rules would be "the least disruptive option for the market".⁴⁰ To do so otherwise, "may give rise to new problems for little short term benefit".⁴¹

5.4 Conclusion

Given the timetable for the introduction of the NECF, establishing new procedures and systems would be administratively and operationally inefficient and not in the long term interests of consumers with respect to the price of supply of electricity. This is on the basis that the NECF rules (including new arrangements for distribution network connection and capital contribution arrangements) will be introduced as currently scheduled by the MCE. By contrast, the continuation of existing arrangements in South Australia would be more efficient as ETSA Utilities would not be required to do anything different to the existing process, although there would be minor costs to the AER in administering an already established process.

The Commission concludes that maintaining the existing arrangements in South Australia will likely provide administrative and operational efficiencies for ETSA Utilities and the AER.

³⁹ ETSA Utilities, Revised Regulatory Proposal 2010–2015, 14 January 2010, p. 28.

⁴⁰ Origin Energy, Submission on the Rule Change Request, 14 April 2010, p. 1.

⁴¹ Origin Energy, Submission on the Rule Change Request, 14 April 2010, p. 1.

6 Impact on certainty of continuing existing arrangements in South Australia

6.1 Proponent's view

The Proponent states that:⁴²

“Specifically, in regards to connection service charges and capital contributions regarding new or modifying existing connections requiring network extension and/or augmentation to a distribution network, the current provisions within the NER lack a number of the mechanisms contained in EDC to protect the interest of consumers and facilitate their connections to distribution networks.

The South Australian jurisdictional arrangements in Chapter 3 of the EDC contain specific provisions for calculating a customer’s contributions for establishing new or modifying existing connections that require augmentations or extensions.

The specific provisions set out in sections 3.3.5 to 3.11 from Chapter 3 of the EDC are an important revenue component of ETSA Utilities regulatory distribution Determination for the period 2010 – 2015 and provides certainty for businesses and customers wishing to connect to the electricity distribution network.”

6.2 Stakeholder views

The National Generators Forum (NGF) stated that:⁴³

“The NGF supports the proposed extension to the connections charging provisions in this SA jurisdictional derogation. The NGF considers that extending the existing arrangements is a preferred transition to the new distribution network connection and capital contribution arrangements proposed under the National Energy Customer Framework (NECF). To put in place a new charging regime for this interim period is likely to introduce unnecessary uncertainty for the market.”

6.3 Commission's analysis

In considering the issue of whether the existing arrangements in South Australia should continue, the Commission also considered the impact on certainty if the derogation was not made. This involved considering the level of prescription in the

⁴² Acting South Australian Minister for Energy, Rule Change Request, 8 January 2010, p. 5.

⁴³ NGF, Submission on the Rule Change Request, 15 April 2010, p. 1.

provisions of the EDC and NER, and the potential behaviour of customers in South Australia if the derogation was not made.

Clauses 3.3 to 3.11 of Chapter 3 of the EDC set out the procedures for calculating and allocating costs of the connection assets, extension and augmentation that connection applicants must contribute to.⁴⁴ This is more prescriptive and hence provides more clarity and certainty to customers regarding how request for connections and charges will be treated than the regime under chapters 5 and 6 of the NER. Given that this is the current arrangement in South Australia, a change in the level of prescription in such an approach before the NECF rules relating to customer connections are implemented would create significant uncertainty to both ETSA Utilities and South Australian customers on what the terms and conditions would be in relation to connections requiring distribution network extensions, modifications or augmentations in South Australia. This may also affect ETSA Utilities' ability to forecast customer contributions in determining Distribution Use Of System (DUOS) charges. To avoid such uncertainty and the possible risk of becoming subject to unfavourable connection terms and charges compared to either the current South Australian connection arrangements or the forthcoming NECF rules, South Australian customers may defer connections until the NECF rules relating to customer connections are implemented. This, in turn, may lead to both inefficient investment and inefficient use of the existing network.

6.4 Conclusion

The proposed derogation is a more prescriptive charging regime than the regime under chapters 5 and 6 of the NER. Given that this is the current approach in South Australia, a change in the level of prescription in such an approach before the NECF rules relating to customer connections are implemented would create uncertainty to both ETSA Utilities and South Australian customers on what the terms and conditions would be in relation to augmenting, extending or modifying connections. This may result in increased negotiation costs to ETSA Utilities and South Australian customers. To avoid such uncertainty, South Australian customers may defer connections until the NECF rules relating to customer connections are implemented. This, in turn, may lead to inefficient investment and inefficient use of the existing network, and would not be in the long term interests of consumers with respect to the price of supply of electricity.

The Commission concludes that the proposed derogation continues to provide certainty in the process to customers in South Australia until the implementation of the NECF rules relating to customer connections.

⁴⁴ See section 1.4.2.

Abbreviations

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Commission	See AEMC
CPI	Consumer Price Index
DNSP	Distribution Network Service Provider
DUOS	Distribution Use Of System
EDC	Electricity Distribution Code
ESCOSA	Essential Services Commission of South Australia
MCE	Ministerial Council on Energy
NDSC	Negotiated Distribution Service Criteria
NECF	National Energy Customer Framework
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NGF	National Generators Forum
Proponent	Acting South Australian Minister for Energy

A Summary of issues raised in submissions

Stakeholder	Issue	AEMC response
Origin Energy	Origin Energy supports extending the derogation until the NECF commences, but notes: "In our experience, some of the distribution augmentation costs charged can be beyond those reasonably attributable to a new or expanding connection. In one case, the proposed charges included augmentation work to bring elements of the distribution system up to the jurisdictional standard. Origin believes this is not the intent of the provisions in the SA Electricity Distribution Code (EDC)". However, it also notes that the NECF will hopefully address these issues and "introducing new charging arrangements for an interim period may give rise to new problems for little short term benefit".	The Commission notes Origin Energy's support for the Rule Change Request to extend the derogation until the NECF commences.
NGF	The NGF supports extending the derogation until the NECF commences. It considers that this is a preferred transition towards the NECF. Otherwise, it considers that a new interim process would introduce unnecessary uncertainty to the NEM.	The Commission notes the NGF's support for the Rule Change Request to extend the derogation until the NECF commences.