

12 November 2008

Mr John Tamblyn
Chairman
Australian Energy Market Commission
Level 5, 201 Elizabeth Street
Sydney NSW 2000

By email: submissions@aemc.gov.au

Dear John,

Cost Allocation Arrangements for Transmission Services – Supplementary Response to Draft Rule Determination

On 10 October 2008, Grid Australia made a submission commenting on the Commission's draft Rule determination on cost allocation arrangements for transmission services. In this submission Grid Australia largely supported the draft Rule determination subject to a number of amendments required to address practical implementation issues. The submission also addressed transitional or consequential provisions to be included in the amending Rule.

Grid Australia has now given further consideration to the draft Rule determination in the light of feedback received from the AEMC concerning Grid Australia's submission and the issues and questions raised by the National Generators Forum (NGF) and the AER in their submissions in relation to the draft Rule determination.

The attached supplementary response proposes a simplified form of new clause 11.6.23 (transitional provisions) and proposes further refinements to the drafting of clause 11.6.11 which address a number of the issues that have been raised in submissions.

Grid Australia would welcome the opportunity to clarify and discuss any aspect of this supplementary response with the Commission or its staff.

Yours sincerely,



Rainer Korte
Chairman
Regulatory Managers Group

Cost Allocation Arrangements for Transmission Services

Supplementary response to AEMC Draft Rule Determination

12 November 2008

1. Introduction

1.1 Grid Australia has now had an opportunity to consider:

- (a) the feedback received from the AEMC concerning Grid Australia's response to the AEMC Draft Rule Determination (and, in particular, the AEMC's questions and comments concerning proposed clause 11.6.23); and
- (b) the issues and questions raised in other submissions which the AEMC has received in relation to its Draft Rule Determination.

1.2 Grid Australia would now like to propose a simplified form of new clause 11.6.23 for consideration by the AEMC prior to the issue of its final Rule Determination.

1.3 Grid Australia would also like to suggest some further refinements to the drafting of clause 11.6.11 which have come to the attention of Grid Australia and its advisers during the redrafting of proposed new clause 11.6.23 and its consideration of the other submissions received by the AEMC.

1.4 This supplementary response is not intended to be a comprehensive response to each of the issues raised in the other submissions received by the AEMC. Rather, Grid Australia has limited its comments to the specific drafting changes outlined below.

2. Clause 6A.21.2 –Development of Transmission Ring-Fencing Guidelines

2.1 Clause 6A.21.2(a) defines the proposed scope of the *Transmission Ring-Fencing Guidelines*.

2.2 This scope is defined by reference to the separation of the provision of *prescribed transmission services* from the provision of other services (i.e. *negotiated transmission services* and *non-regulated transmission services*).

2.3 Upon reviewing new clause 6A.21.2(e) it appears that sub-paragraph (2) is inconsistent with clause 6A.21.2(a) and should be deleted because the allocation of costs as between *categories of prescribed transmission services* is outside the scope of the *Transmission Ring-Fencing Guidelines*.

2.4 If sub-paragraph (2) is retained, then new clause 6A.21.2(e) should also refer to the *Pricing Principles for Prescribed Transmission Services* and the *pricing methodology guidelines*. However, as already highlighted this is not preferred because the scope of the *Transmission Ring-Fencing Guidelines* is not about the allocation of costs between *categories of prescribed transmission services*.

3. Clause 11.6.11(a) – eligible asset

3.1 During our further consideration of clause 11.6.11(c) it became apparent that the references to *Transmission Network User* and *Transmission Network Users* in the definition of 'eligible asset' should probably exclude another *Network Service Provider*.

3.2 Whilst paragraph (4) of the definition of 'prescribed connection service' would exclude *network to network connection services* from the scope of prescribed connection services, any existing assets or replacement assets which are wholly and exclusively

used to provide *connection services* to another *Network Service Provider* would still be classified as 'eligible assets' for the purposes of clause 11.6.11.

- 3.3 This would seem to go beyond what was originally intended by the AEMC and the general principle that only eligible assets can be used to provide prescribed connection services.
- 3.4 Grid Australia suggests that the words '*... (other than another Network Service Provider)*' be added after the words '*Transmission Network Users*' at the end of paragraphs (1) and (2) of the definition of 'eligible asset'.

4. **Clause 11.6.11(a) – existing assets**

- 4.1 Grid Australia agrees with the amendment proposed by the NGF to sub-paragraph (2) of the definition of 'existing assets'.
- 4.2 Grid Australia also considers that the final line of the first paragraph of the definition of 'existing asset' should be amended to read '*... for that transmission system under an existing revenue determination in force as at 9 February 2006.*'.
- 4.3 This amendment picks up the term 'existing revenue determination' defined in clause 11.6.1. This definition is used to distinguish between a revenue determination made under old Chapter 6 and a *revenue determination* made under new Chapter 6A.

5. **Clause 11.6.11(a) – Prescribed Connection Service**

- 5.1 There is a problem with the definition of 'prescribed connection service' as currently proposed in the Draft Rule Determination that needs to be addressed.
- 5.2 A particular aspect of this problem has already been raised by the AER in its submission to the AEMC concerning the Draft Rule Determination.
- 5.3 In general terms, the date in respect of which the assessment is made under this definition can not be the day before each *regulatory control period* commences. The relevant assessment needs to be made in relation to each *Transmission Network Service Provider* with reference to a day which is just before the due date for submission of that *Transmission Network Service Provider's Revenue Proposal*.
- 5.4 In this way, the relevant *Transmission Network Service Provider* and the AER know which services will be prescribed connection services for the purposes of the *transmission determination* process for the relevant *regulatory control period*.
- 5.5 Grid Australia suggests that the first paragraph of the definition of 'prescribed connection service' should be amended to read as follows:

*'...means, for a regulatory control period commencing ~~occurring~~ after the commencement date (including anything which is required to be done under Chapter 6A in relation to that regulatory control period prior to the commencement of that regulatory control period), a connection service provided by a *Transmission Network Service Provider* on or after the commencement date in respect of which the following criteria are satisfied immediately before the Revenue Proposal submission date for the start of that regulatory control period:'*

- 5.6 The following new definition would also then need to be inserted in clause 11.6.11(a):

'Revenue proposal submission date means in relation to a *regulatory control period* and a *Transmission Network Service Provider*, the earlier of:

- (1) the date upon which that *Transmission Network Service Provider* submits a *Revenue Proposal* to the *AER* for that *regulatory control period*; and
- (2) the last date upon which that *Transmission Network Service Provider* is required to submit a *Revenue Proposal* to the *AER* for that *regulatory control period* under clause 6A.10.1(a).'

5.7 The words in brackets have been added to make it clear that a number of the processes under new Chapter 6A which relate to a *regulatory control period* are completed prior to the commencement of the relevant *regulatory control period*. These words could be removed if the AEMC was satisfied that by defining the term 'prescribed connection service' for a *regulatory control period* it was clear that this term would apply for all purposes related to that *regulatory control period* regardless of whether the relevant process took place before or after the commencement of the *regulatory control period*.

5.8 If this assessment was made with reference to the day before the commencement of the relevant *regulatory control period* (as would be required under the draft Rule determination), then the *revenue determination* for that *regulatory control period* would not be able to take into account any prescribed connection services.

6. **Clause 11.6.11(c) – Interaction with New Chapter 6A**

6.1 Grid Australia has no issues with the amendments proposed to clause 11.6.11(c)(1) by the NGF.

6.2 However, Grid Australia has found it difficult to follow the NGF's reasoning for the redrafting of clause 11.6.11(c)(2) and considers that the proposed changes are overcomplicated and unnecessary.

6.3 Upon reviewing sub-paragraph (2) for the purposes of considering the amendments proposed by the NGF, Grid Australia has identified that the draft Rule determination drafting of clause 11.6.11(c) could be further simplified in the manner set out below.

6.4 Grid Australia also considers that this simplified version of sub-paragraph (2) addresses what Grid Australia understands to be the NGF's concerns in relation to the original words used in sub-paragraph (2).

6.5 Grid Australia suggests that sub-paragraph (2) should be amended to read as follows:

- '(2) any costs (other than the costs referred to in clause 11.6.11(c)(1)):
- (i) relating to the provision of a prescribed connection service¹, including the cost of an existing asset or a replacement asset, or any portion of an existing asset or a replacement asset that is not an eligible asset (other than as a result of the operation of clause 11.6.11(d)); and
 - (ii) which but for this clause 11.6.11 would be allocated under new Chapter 6A to the provision of that prescribed connection service,
- must instead be treated as costs that are directly attributable to the provision of, or incurred in providing, *prescribed TUOS services* and, to avoid doubt, any services provided by those assets which would

¹ These words are required to ensure that costs relating to say a *network to network connection service* are not allocated to *prescribed TUOS services*.

otherwise be *negotiated transmission services* are taken to be *prescribed TUOS Services*; and'

7. **Clause 11.6.11(d)**

7.1 Consistent with our suggested amendment to the definition of 'prescribed connection service' the first paragraph of clause 11.6.11(d) should be amended by replacing the words 'at the start of' with the words 'in relation to' in the first line.

8. **Proposed amendment to clause S6A.2.3**

8.1 The NGF has suggested the inclusion of a new sub-clause at the end of clause S6A.2.3(b).

8.2 Grid Australia does not agree with the inclusion of this new sub-clause and considers that the proposed inclusion is unnecessary and inconsistent with one of the fundamental principles underlying the Draft Rule Determination (i.e. a *negotiated transmission service* can only be created following a request from a *Transmission Network User* and an agreement between that *Transmission Network User* and the relevant *Transmission Network Service Provider*).

8.3 However, this does not mean that:

- (a) the relevant *Transmission Network Service Provider* can not agree with a *Transmission Network User* to provide a *negotiated transmission service* or a *non-regulated transmission service* using this asset; or
- (b) the relevant *Transmission Network Service Provider* should be prevented from applying a charge for providing a *negotiated transmission service* or a *non-regulated transmission service* using this asset which has been requested by the *Transmission Network User*.

8.4 Once again, the critical issue here is that a *negotiated transmission service* can only be created following a request from a *Transmission Network User* and an agreement between that *Transmission Network User* and the relevant *Transmission Network Service Provider*.

8.5 This is exactly what would happen under clause 11.6.11(d). That is:

- (a) the *Transmission Network User* would request a change in the relevant prescribed connection service;
- (b) the parties would then negotiate the new terms which would apply to the provision of that altered service once it ceases to be a prescribed connection service; and
- (c) one of the terms which would have to be agreed would be the charge payable for the provision of that service.

9. **Clause 11.6.23 – Simplified Version**

9.1 Attached is a simplified marked up version of new clause 11.6.23.

9.2 Under this version the reopening process has been consolidated into 2 clauses. One dealing with reopening prior to the issue of a final decision under *Rule 6A.13* and the other dealing with the reopening of an existing *revenue determination*.

- 9.3 This approach has been adopted because Chapter 6A already contains a process for reopening a *revenue determination* and it was considered preferable to use this process if possible.
- 9.4 Please note that the words in brackets at the end of clause 11.6.23(b)(ii) are probably not strictly necessary. However, it was considered preferable to retain those words at this stage to make it clear that clause 11.6.23(b) does not give a *Transmission Network Service Provider* a general right to reopen one of these processes.
- 9.5 It has also been made clear in clause 11.6.23(d) that a *Transmission Network Service Provider* can only exercise this right in relation to its *revenue determination* for the first *regulatory control period* after the Amending Rule 2008.
- 9.6 Finally, clause 11.6.23(e) has been included to address some concerns which have been expressed by the *AER* in relation to the intended operation of clause 11.6.11 and clause 11.6.23. However, Grid Australia considers that paragraph (e) is not required because this would be the effect of clause 33 of Schedule 2 to the *National Electricity Law* in any event.

11.6.23 Transitional provision on substitution of new clause 11.6.11

(a) In this clause 11.6.23:

Amending Rule 2008 means the National Electricity Amendment (Cost Allocation Arrangements for Transmission Services) Rule 2008;

Amending Rule 2008 commencement date means the date on which the Amending Rule 2008 commences operation;

Clause 11.6.11 related requirement means any procedure, process or other requirement under new Chapter 6A (other than the reopening of an existing *revenue determination* under clause 6A.7.1):

- (i) in respect of which the AER has either made or has commenced the process for making, a determination or decision during the period from the commencement date to the Amending Rule 2008 commencement date; and
- (ii) which ~~depended~~depends on or was or is affected by, (in whole or in part), the application of clause 11.6.11 during that period; and

new clause 11.6.11 means clause 11.6.11 as substituted by the Amending Rule 2008.

(b) Notwithstanding anything to the contrary in this Rule 11.6 or in new Chapter 6A (including any ~~guidelines~~guideline or ~~models~~model referred to in new Chapter 6A), a *Transmission Network Service Provider* will be entitled during the 40 *business day* period following the Amending Rule 2008 commencement date to:

- (i) request the AER to make a new determination or decision concerning a Clause 11.6.11 related requirement; and
- (ii) submit or resubmit any amended, revised, additional or updated proposal, methodology or other information in support of that request, (to the extent that any previously submitted proposal, methodology or other information in relation to that Clause 11.6.11 related requirement may have been different if new clause 11.6.11 had applied at the time it was originally prepared and submitted to the AER).

(c) Upon receipt of a request from a *Transmission Network Service Provider* under clause 11.6.23(b), the AER must:

- (i) consider the revised proposal, methodology or other information; and
- (ii) make a new determination or decision (~~within~~before the earlier of the date being 30 business days ~~or~~after receipt of that request and the date upon which the AER issues a final decision in relation to that *Transmission Network Service Provider* under Rule 6A.13) based on:
 - (A) ~~the any~~ amended, revised, new or updated proposal, methodology or other information which is submitted by a *Transmission Network Service Provider* under clause 11.6.23(b)(ii);
 - (B) the relevant Clause 11.6.11 related requirement; and
 - (C) the *transmission service* classification under new clause 11.6.11.

(d) Despite clause 6A.7.1(a) (1) to (7) inclusive, the making of Amending Rule 2008 will ~~in respect of a Transmission Network Service Provider in relation to the revenue determination for the first regulatory control period of that provider commencing after,~~ in relation to any revenue determination which:

- (i) is made by the AER during the period from the commencement date to the Amending Rule 2008 commencement date; or
- (ii) results from a final decision issued by the AER under Rule 6A.13 during the period from the commencement date to the Amending Rule 2008 commencement date.

be deemed to be an event which satisfies each of the matters referred to in clause 6A.7.1(a).

(e) For the avoidance of doubt:

- (i) nothing in this clause 11.6.23 will operate to change the classification of a *transmission service* in ~~respect of~~ relation to the provision of ~~the~~ that *transmission service* prior to the Amending Rule 2008 Commencement Date; and
- (ii) any change in the classification of a *transmission service* under new clause 11.6.11 will only operate ~~only~~ in respect of the provision of ~~the~~ that *transmission service* on or after the Amending Rule 2008 Commencement Date.