



Australian Energy Market Commission

CONSULTATION PAPER

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

Rule Proponent(s)

South Australian Minister for Energy

18 March 2010

This consultation paper has been prepared to facilitate public consultation on the Rule change proposal and does not represent the views of the Commission or any individual Commissioner of the Australian Energy Market Commission.

**RULE
CHANGE**

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1 Introduction

On 8 January 2010, the South Australian Minister for Energy (Proponent) submitted a Rule change request to the Australian Energy Market Commission (AEMC or Commission) in relation to connection arrangements. The Rule change request is a request for a jurisdictional derogation which seeks to maintain the current arrangements in South Australia (SA) for charging of connections which trigger distribution network augmentations, extensions or modifications as contained in clauses 3.5 to 3.11 of the South Australian Electricity Distribution Code (EDC).

To implement this, the National Electricity Rules (NER) would be amended in the form of a jurisdictional derogation in Chapter 9 of the NER. This would be a derogation from the relevant provisions of chapters 5 and 6 of the NER.

This Consultation Paper has been prepared by the staff of the AEMC to facilitate public consultation on the Rule change request and does not necessarily represent the views of the AEMC or any individual Commissioner of the AEMC.

This paper:

- provides a summary of, and a background to, the SA Jurisdictional Derogation (Connections Charging) Rule change proposed by the Proponent;
- outlines the assessment framework that the Commission will use to assess this Rule change request;
- identifies a number of questions and issues to facilitate the consultation on this Rule change request; and
- sets out the process for making submissions.

2 Background

Currently, Essential Services Commission of South Australia (ESCOSA) is responsible for distribution network connections in SA under the existing jurisdictional derogation contained in clause 9.28.2 of the NER. For the charging of connections which trigger distribution network augmentations, extensions or modifications, ESCOSA applies the EDC and its accompanying guideline (Guideline 13).¹

The relevant provisions 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 appropriate formula for calculating the customer allocation for the augmentation (clause 3.6.4 of the EDC);
- a defined value for the unit augmentation charge. Currently, this value is \$135 per kVA (as of 1 July 2009). 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 customer's electrical requirements and any expected customer load growth in the short term (clause 3.7 of the EDC); and
- a formula for calculating the customer's contribution to upstream customers who have already paid for the extension (clauses 3.8 and 3.9 of the EDC).

From 1 July 2010, economic regulation of distribution network connections will be transferred from ESCOSA to the Australian Energy Regulator (AER) under the National Electricity (South Australia) Act 1996 (SA Applications Act). From that date, the AER would apply chapters 5 and 6 of the NER in relation to this, including making a distribution determination with respect to ETSA as required under clause 6.11.1 of the NER.

The objective of the National Energy Customer Framework (NECF) is to provide a national framework for the regulation of energy distribution and retail which would be regulated by the AER. This will include making amendments to the NER on the charging of connections which trigger distribution network augmentations, extensions or modifications. At the time of this Rule change process, the Ministerial Council on

¹ These documents are available from ESCOSA's website.

Energy (MCE) has indicated that a recommended final NECF legislative package is scheduled to be considered by the MCE, followed by the SA Parliament in 2010. Applications Acts in each participating jurisdiction are then expected to follow from 2011.²

On 1 July 2009, ETSA submitted a regulatory proposal to the AER for the regulatory period 1 July 2010 to 30 June 2015. ETSA had proposed to incorporate requirements under Chapter 3 of the EDC into the proposed negotiating framework³ because it considered that this related to individually negotiated services.⁴

On 25 November 2009, the AER published its draft distribution determination in relation to ETSA for the regulatory period 1 July 2010 to 30 June 2015. The AER rejected ETSA's request to include the relevant EDC provisions in its negotiating framework.⁵ It stated that ETSA's proposed inclusions "fit more logically with the purpose of the [Negotiated Distribution Service Criteria (NDSC)]" which "sets out the terms and conditions of access to negotiated distribution services, including prices and access charges".⁶ It suggested that ETSA may seek to propose changes to the NDSC related to the inclusion of the relevant EDC provisions for its consideration. Nevertheless, the AER indicated that it intends to use the EDC as a means to classify whether connections are direct control or negotiated distribution services in accordance with chapters 5 and 6 of the NER.⁷

² MCE, National Energy Customer Framework, Second Exposure Draft (NECF2), Explanatory Material, November 2009.

³ See clauses 6.7.3 and 6.7.5(a) of the NER for the requirements relating to negotiating framework.

⁴ ETSA Utilities, Regulatory Proposal 2010-2015, 1 July 2009, p.50.

⁵ AER's draft distribution determination for ETSA Utilities for the period 1 July 2010 to 30 June 2015, 25 November 2009, p. 35.

⁶ AER's draft distribution determination for ETSA Utilities for the period 1 July 2010 to 30 June 2015, 25 November 2009, p. 35.

⁷ AER's draft distribution determination for ETSA Utilities for the period 1 July 2010 to 30 June 2015, 25 November 2009, p. 10.

3 Details of the Rule Change Request

3.1 Rule change request

The Rule change request from the Proponent proposes to:⁸

- maintain the procedures for charging of connections which trigger distribution network augmentations, extensions or modifications as set out in clauses 3.3.5 to 3.11 of Chapter 3 of the EDC and its Guideline 13;
- be consistent with the SA Applications Act by requiring the AER to administer the relevant provisions of the EDC and Guideline 13; and
- require the AER to only use the defined value for unit charge of augmentation, which would be used to derive the customer allocation for the augmentation under Chapter 3 of the EDC.

In its Rule change request, the Proponent provides its rationale for the Rule change. It states that if the existing arrangements are not maintained in SA, the AER would regulate connection service charges in accordance to the relevant provisions under chapters 5 and 6 of the NER. It considers that these provisions lack a number of mechanisms to protect the interests of consumers and facilitate their connections to distribution networks. The Proponent is of the view that if the proposed derogation was made it would:⁹

- continue to protect consumers in SA;
- streamline the distribution network connection process; and
- provide efficient investment in relation to distribution network connections by providing requirements for connection to and supply from the distribution network, such as the obligation to connect, procedures for calculating capital contributions and a pro-forma standard contract setting out terms and conditions.

The Rule change request seeks to apply the derogation until 30 June 2015 or when the NECF rules are introduced. Although the proposed Rule does not explicitly reference the implementation of the NECF we note that it may be possible that the SA Government will include transitional provisions into the relevant legislation at the time of the NECF implementation to conclude the proposed derogation.

The Proponent has consulted with Ministers of the other participating jurisdictions in accordance to section 91(3) of the National Electricity Law (NEL) before submitting this proposal to the Commission. The Proponent has also notified the Commission in writing that it considers it necessary and appropriate for the existing regulatory

⁸ South Australian Minister for Energy Rule change request, 8 January 2010

⁹ South Australian Minister for Energy Rule change request, 8 January 2010

arrangements to continue as a derogation in accordance to section 89(b) of the NEL. We note that the Rule change request is seeking two variations to the existing arrangements:

- the value for the standard unit charge of augmentation in the EDC would be fixed to \$135 per kVA as of 1 July 2009, which would be escalated each year by the March all cities Consumer Price Index (CPI); and
- the AER would be responsible for administering the charging process under the EDC.

The Proponent's Rule change request does include a proposed Rule.

3.2 Rule change process

The Proponent requests that the Rule change request be treated as non-controversial and assessed under the expedited Rule change process provided for in section 96 of the NEL. The Commission considers that the Rule change request is a request for a non-controversial Rule in accordance to section 96 of the NEL. The Commission is required to publish a notice under sections 95 and 96 of the NEL stating that this Rule change request will be assessed following an expedited Rule change process (subject to written objections) as it is a non-controversial Rule. Under the expedited Rule change process, stakeholders have two weeks after the publication of the notice under section 96 of the NEL to object to this Rule change request being expedited. Objections need to contain reasoning as to why the stakeholder considers that the Rule change request should not be expedited and will be assessed by the Commission in accordance with section 96 of the NEL.

The expedited Rule change process also provides a four week consultation process on the content of the Rule change request. Following this, a final Rule determination must be published no later than six weeks after the publication of the section 95 notice unless an objection to the expedited Rule change process is lodged, and the objection is, in the Commission's opinion, not misconceived or lacking in substance. As a consequence of the expedited Rule change process, the consultation time frames and processes for the assessment of this Rule change request are different to the standard (non-expedited) Rule change process.

4 Assessment Framework

The Commission's assessment of this Rule change request must consider whether the proposed Rule promotes the National Electricity Objective (NEO) as set out under section 7 of the NEL. Also as the matter relates to the charging of connections, the Commission is required to take into account the revenue and pricing principles¹⁰ under section 88B of the NEL. The Commission is also required to have regard to matters in relation to the making of jurisdictional derogations identified in section 89 of the NEL.

The assessment is proposed to include evaluating and comparing the cost and benefits against the NEO of maintaining the existing arrangements in SA under the EDC compared to the counterfactual of the derogation not being made. In this case, the appropriate counterfactual is for the relevant provisions of chapters 5 and 6 of the NER to apply. These arrangements will differ depending on whether the connection service is classified by the AER as a direct control or a negotiated distribution service. For a negotiated distribution service, the DNSP would negotiate in good faith the access terms and conditions, including with respect to charges for connections, in accordance with the requirements of rule 5.5 and Chapter 6 of the NER (under the negotiation framework and the NDSC).¹¹ Both the negotiation framework and the NDSC are approved by the AER as part of its distribution determination.¹²

The comparison between the current arrangements under the NER and the proposed Rule may consider:

- administrative efficiencies in maintaining the existing arrangements in SA - an overly different connection charging regime from the existing arrangements in SA may increase costs (in the form of establishing a new process in the interim before the NECF);¹³
- impact on current and future customers in SA - if the proposed derogation was not made, SA consumers may need to individually negotiate with ETSA on the terms and conditions, and ETSA may seek to recover connection costs via Distribution Use Of Service (DUOS) charges; and
- impact on connections and investment - small SA consumers may defer connections due to potential uncertainty which may mean a reduction in connections and investment.

¹⁰ This is contained in section 7A of the NEL.

¹¹ AER's draft distribution determination for ETSA Utilities for the period 1 July 2010 to 30 June 2015, 25 November 2009, p. 35.

¹² Clauses 6.7.3, 6.7.4, 6.7.5(a) of the NER.

¹³ We note that ESCOSA is currently undertaking a review of the EDC: Electricity Distribution Service Standards 2010 to 2015 - Review of Regulatory Instruments. However, we do not consider this will affect this Rule change request as the reference to the current version of the EDC (EDC/07, commencement date on 1 January 2010) would remain unchanged.

The assessment would not include a determination on whether the relevant provisions in the EDC would be the most efficient arrangement for charging of connections. This would be outside the scope of the proposed derogation to review because the proposed derogation seeks to continue an existing regulatory arrangement in SA in accordance to section 89 of the NEL. Also, the appropriate arrangements are being developed under the NECF review conducted by the MCE.

5 Issues for Consultation

Taking into consideration the assessment framework and potential requirements to implement the proposed Rule change, we have identified a number of issues for consultation that appear to be relevant to this Rule change request.

These issues outlined below are provided for guidance. Stakeholders are encouraged to comment on these issues as well as any other aspect of the Rule change request or this paper including the proposed framework.

5.1 Impacts of maintaining the existing arrangements in SA

Maintaining the existing arrangements in SA for charging of connections which require augmentations, extensions or modifications may have a positive impact on SA consumers and ETSA. However, there may be a minor negative impact on the AER.

The positive impacts from the Rule change request may be a reduction in the need for SA consumers to negotiate with ETSA on the terms and conditions in relation to augmenting, extending or modifying connections. This, in turn, may reduce the negotiation costs to ETSA and SA consumers.

We note that once the NECF has commenced, there may be a period of transition from one process to another. If the proposed derogation is not made, a new set of arrangements would apply from 1 July 2010 until the commencement of the NECF. This could create uncertainty to ETSA and SA consumers and may result in SA consumers deferring connections until the NECF has commenced, and consequently have a negative impact on investment in such connections.

Cost allocation principles could also be better dealt with under the relevant provisions of the EDC rather than the NER. Otherwise, there may be a risk that connection costs would need to be recovered via DUOS charges which may not be as cost reflective.

A negative impact in maintaining the existing arrangements in SA may be the administration costs to the AER. However, these costs may be minor, given that the process has already been established under the EDC.

5.2 Application of Chapter 3 of the EDC by the AER

If the Rule was made, it would result in the application of the relevant provisions of Chapter 3 of the EDC by the AER.

If the relevant requirements of Chapter 3 of the EDC are maintained for SA, it would need to be ensured that any requirements placed on the AER are consistent with its existing functions. Where there are inconsistencies in the EDC, one option would be to omit or amend these in the final Rule. Nevertheless, any omissions or amendments would need to ensure that these are not material changes to maintaining the existing arrangements for SA.

The proposed requirements which would be placed on the AER under clauses 3.3.5 to 3.11 of the EDC are listed in Appendix A.

5.3 Interaction between the proposed derogation and the overall AER revenue determination under chapters 5 and 6 of the NER

As the proposed derogation from the Proponent intends to maintain the existing arrangements for SA, it would need to be ensured that there be consistency with the outcomes of the AER's approach in its distribution determination for ETSA.

6 Lodging a Submission

Stakeholders are required to lodge objections relating to the expedited Rule change process to the Commission by 1 April 2010. Submissions on the content of the Rule change request are to be lodged to the Commission by 15 April 2010. Written objections and submissions are to be lodged online or by mail in accordance with the following requirements.

Where practicable, submissions should be prepared in accordance with the Commission's Guidelines for making written submissions on Rule change requests.¹⁴ The Commission publishes all submissions on its website subject to a claim of confidentiality.

All enquiries on this project should be addressed to Charles Hoang on (02) 8296 7800.

6.1 Lodging a submission electronically

Electronic submissions must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code ["ERC0101"]. The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Upon receipt of the electronic submission, the Commission will issue a confirmation email. If this confirmation email is not received within 3 business days, it is the submitter's responsibility to ensure the submission has been delivered successfully.

6.2 Lodging a submission by mail

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. The submission should be sent by mail to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

or by Fax to (02) 8296 7899.

The envelope must be clearly marked with the project reference code: ERC0101.

Except in circumstances where the submission has been received electronically, upon receipt of the hardcopy submission the Commission will issue a confirmation letter.

If this confirmation letter is not received within 3 business days, it is the submitter's responsibility to ensure successful delivery of the submission has occurred.

¹⁴ This guideline is available on the Commission's website.

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 Service
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
NEO	National Electricity Objective
NER	National Electricity Rules
Proponent	South Australian Minister for Energy
SA	South Australia
SA Applications Act	National Electricity (South Australia) Act 1996

A Proposed requirements for the AER under the EDC

Proposed requirements that would be placed on the AER under clauses 3.3.5 to 3.11 of the EDC are summarised in the following table.

Table A.1 Requirements for the AER under the EDC

EDC clause number	Requirement for the AER
3.3.5(b)	Can approve the amount for the fee that has to be paid or agreed to be paid by the user for the DNSP to prepare the specifications.
3.6.2	Can issue any written instructions or guidance from time to time relating to the interpretation and detailed application of clause 3.6 of the EDC [customer's allocation of augmentation] that the DNSP must comply with.
3.6.3(d)	Has the option to determine the augmentation allowance. Otherwise, the augmentation allowance is 90kVA, except where the customer is in a location supplied through a 19kV SWER line, where the allowance is 25kVA.
3.6.4	Has the option to determine whether an individual evaluation is required.
3.6.4.2	Can approve from time to time the method for calculating "F" which is the unit cost for network element "I" requiring augmentation.
3.6.5	Can approve the value of 5% of substation capacity under design conditions for each substation from the information that it receives from the DNSP on an annual basis.
3.7	Can determine from time to time "Z" which is the fixed component of the rebate (as at the date of the EDC, \$1200 for establishment of a new connection, and 0 for modification of an existing connection).
3.11(c)	Can approve from time to time the detailed arrangements relating to specific types of developments that the DNSP will comply with.