



18 July 2008

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

Dear Dr Tamblyn

**RE: Cost Allocation Arrangements for Transmission Services Rule change:
NGF Comments on Grid Australia's Alternative Rule Change Proposal**

Please accept this submission in relation to the NGF's Cost Allocation Arrangements for Transmission Services Rule change, addressing Grid Australia's alternative Rule change proposal submitted to the Commission on 11 July 2008.

The NGF is comfortable that the principles embodied in the Grid Australia Rule change proposal are largely consistent with those underlying the NGF's own Rule change proposal, and agrees with Grid Australia that it is desirable to address the treatment of replacement transmission connection assets given the practical issues associated with the replacement process. The NGF therefore supports the large majority of the suggested drafting put forward, and is grateful for the contribution of Grid Australia.

Having said this, on one important point of detail, the NGF does not agree that a connection service which is provided by an existing or committed eligible asset should cease to be treated as a prescribed transmission service merely on the basis that the service is provided under a connection agreement that is entered into after the commencement date (cf. cl.11.6.11(a)(5)(ii)). The NGF contends that connection agreements are a contractual matter between parties, and hence are expected to differ widely as to their terms, coverage, history and duration. In particular, some agreements provide indefinite duration for the connected assets whilst some are of

short term periods, requiring regular renewals with the TNSP, despite little change in the physical connected asset.

The NGF's view is that clause 11.6.11 of the existing Rules is intended to grandfather connection services provided by such assets for the life of those assets, irrespective of the term of any connection agreement pursuant to which the Transmission Network Service Provider provides connection services to the relevant Transmission Network User. This is consistent with the recognition of the fact that those assets have historically been included in the regulatory asset base and treated as prescribed for cost allocation purposes, and that it is not practical to seek to remove them from the regulatory asset base. The removal of these assets from the regulatory asset base would entail additional administrative burden and involve complex financial adjustments to ensure that the Transmission Network Service Provider does not over recover for those services as a result of having previously received regulated transmission charges for those services and then becoming entitled to receive negotiated transmission service charges for those services. In the NGF's view the grandfathering provisions of clause 11.6.11 are intended to avoid this difficulty.

The NGF is concerned to ensure that, to the extent the Grid Australia Rule change proposal seeks to address the treatment of replacement transmission connection assets, this treatment does not jeopardise the grandfathering described above that is accorded to connection services provided by existing and committed assets. However, the NGF recognises that if replacement connection assets are to be regarded as providing prescribed transmission services, then it is necessary to identify the circumstances in which the grandfathering accorded to those services (i.e. the services provided by the replacement assets) ends. One such case would be where the relevant plant is disconnected from the grid so that, when a new plant takes connection services provided by those assets (under a new connection agreement), those services are treated as negotiated transmission services.

In short, the NGF does not support the inclusion of clause 11.6.11(a)(5)(ii) because it would result in connection services provided by existing or committed eligible assets prematurely ceasing to be grandfathered. As mentioned previously, connection agreements vary widely and so this 'trigger' mechanism would be unevenly applied across the NEM to users of entry and exit services. This could create market distortions, which could compromise the efficiency of the NEM. The duration of connection agreements was not universally considered by the market and policy makers across the NEM at the time many connection agreements were put in place. This element of the alternative Rule drafting put forward by Grid Australia would result in existing connection services prematurely ceasing to be grandfathered, and

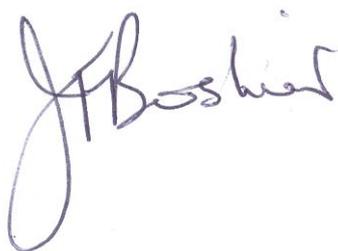
would leave affected connected parties (entry or exit services) exposed to unjustified prices increases. On this basis, the use of connection agreements as a grandfathering termination trigger is inappropriate and inconsistent with the NGF's original objectives of avoiding price shocks and promoting regulatory uncertainty.

Further, connection agreements typically deal only with the terms of connection under the Rules, and are not concerned with broader questions of asset classification for cost allocation purposes. The use of connection agreements as a condition of continued grandfathering would be entirely arbitrary and arguably discriminatory.

On an editorial level, the NGF also offers suggested some changes to clauses 11.6.11(c)(1) and (2) of the alternative Rule change proposal (attached). In the NGF's view clause 11.6.11(c)(1) should deal with the costs attributable to eligible assets just as clause 11.6.11(c)(2) deals with the costs attributable to assets that are not eligible assets. In this regard the NGF notes that the National Electricity Rules generally deal with the concept of 'costs' rather than 'assets' being directly attributable to the provision of services (see cl.6.15.2(3)(i), (ii), 6A.19.2(3)(i), (ii), 6A.22.3(a)(1), (2), 6A.22.4(a)(1), (2); cf cl.6A.25.2(d)). The NGF is also unsure why the commencement date of 16 November 2006 is relevant as an allocation cutoff date (refer clause 11.6.11(c)(2)(ii)(A), (B)).

The NGF is happy to facilitate any further discussion or clarification of these comments or other measures (e.g. alternative trigger events) the Commission may have under consideration to address this issue. Please contact me on 02 6243 5120 should you wish to discuss our position further.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Boshier', with a large, stylized initial 'J'.

John Boshier
Executive Director

Attachment

[Draft]

Proposed Alternative Amendments to National Electricity Rules

Part I – Ring-Fencing Arrangements for Transmission Network Service Providers

6A.21 Transmission Ring-Fencing Guidelines

[Amendments to existing Rule are underlined]

6A.21.2 Development of Transmission Ring-Fencing Guidelines

- (a) Transmission ring-fencing guidelines must be developed by the AER in consultation with the *Jurisdictional Regulators* and each *participating jurisdiction* for the accounting and functional separation of the provision of *prescribed transmission services* by *Transmission Network Service Providers* from the provision of other services by *Transmission Network Service Providers* (the '*Transmission Ring-Fencing Guidelines*').
- (b) The *Transmission Ring-Fencing Guidelines* may include, but are not limited to:
- (1) provisions defining the need for and extent of:
 - (i) legal separation of the entity through which a *Transmission Network Service Provider* provides *network services* from any other entity through which it conducts business;
 - (ii) the establishment and maintenance of consolidated and separate accounts for *prescribed transmission services* and other services provided by the *Transmission Network Service Provider*;
 - (iii) allocation of costs between *prescribed transmission services* and other services provided by the *Transmission Network Service Provider*;
 - (iv) limitations on the flow of information between the *Transmission Network Service Provider* and any other person; and

- (v) limitations on the flow of information where there is the potential for a competitive disadvantage between those parts of the *Transmission Network Service Provider's* business which provide *prescribed transmission services* and parts of the provider's business which provide any other services; and
- (2) provisions allowing the AER to add to or waive a *Transmission Network Service Provider's* obligations under the *Transmission Ring-Fencing Guidelines*.
- (c) In developing the *Transmission Ring-Fencing Guidelines*, the AER must consider, without limitation, the following matters:
- (1) the need, so far as practicable, for consistency with Federal and State regulation in each *participating jurisdiction* of ring-fencing requirements of other utility businesses; and
- (2) the need, so far as practicable, for consistency between the *Transmission Ring-Fencing Guidelines* and *Distribution Ring-Fencing Guidelines*.
- (d) In developing or amending the *Transmission Ring-Fencing Guidelines*, the AER must consult with *participating jurisdictions*, *Registered Participants*, *NEMMCO* and other *interested parties*, and such consultation must be otherwise in accordance with the *transmission consultation procedures*.
- (e) Notwithstanding paragraphs (a), (b), (c) and (d) above and clause 6A.19.2(6), the *Transmission Ring-Fencing Guidelines* must not include any provisions which deal with or require the allocation of costs as between:
- (1) *prescribed transmission services* and *negotiated transmission services*; or
- (2) *categories of prescribed transmission services*,
- in a manner which is inconsistent with the *Cost Allocation Principles* or the *Cost Allocation Guidelines*.

Amendments to Chapter 11 [Complete replacement - no mark up]

11.6 Rules consequent on making of the National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006

11.6.11 Transition to new Chapter 6A: existing prescribed connection services

Definitions

- (a) In this clause 11.6.11:
- (1) **existing asset** means an asset used in connection with a *transmission system* where the value, or a portion of the value, of that asset was included in the regulatory asset base for that *transmission system* under a revenue determination in force as at 9 February 2006.
 - (2) **committed asset** means an asset:
 - (i) that as at 9 February 2006 was committed to be constructed for use in connection with a *transmission system*; and
 - (ii) in respect of which the forecast value, or a portion of the forecast value, of that asset was included in the forecast capital expenditure for that *transmission system* under a revenue determination in force as at 9 February 2006.

For the purpose of this definition, an asset is, and is only, to be taken to be committed to be constructed if it satisfied the criteria which a project needed to satisfy to be a “committed project” for the purpose of the *regulatory test* in force as at 9 February 2006.

- (3) **replacement asset** means:
 - (i) an asset which replaces an existing asset or a committed asset after 9 February 2006; or
 - (ii) an asset which replaces an asset referred to clause 11.6.11(a)(3)(i) after 9 February 2006,

For the purpose of this definition, an asset will be treated as replacing another asset even if it provides an increased or different functionality to the asset it replaces provided that the increased or different functionality was not requested by the relevant *Transmission Network User*.

- (4) **eligible asset** means:

- (i) an existing asset which was wholly and exclusively used by a *Transmission Network Service Provider* to provide a *connection service* to a *Transmission Network User* or a group of *Transmission Network Users* at a *connection point* immediately before the commencement date;
- (ii) a committed asset which is wholly and exclusively used by a *Transmission Network Service Provider* (when it is first commissioned after 9 February 2006) to provide a *connection service* to a *Transmission Network User* or a group of *Transmission Network Users* at a *connection point*; and
- (iii) a replacement asset which is wholly and exclusively used after the commencement date by a *Transmission Network Service Provider* to continue providing a *connection service* to a *Transmission Network User* or a group of *Transmission Network Users* at a *connection point*,

and excludes an existing asset, a committed asset or a replacement asset to the extent that it ceases to be used after the commencement date to provide a *connection service* to a *Transmission Network User* or a group of *Transmission Network Users* at a *connection point*.

- (5) **prescribed connection services** means a *connection service* provided on or after the commencement date in respect of which, and to the extent that, the following criteria continue to be satisfied:
 - (i) the relevant service is provided using eligible assets;
 - (ii) the relevant service is being provided under a *connection agreement* which was first entered into before the commencement date; and
 - (iii) but for this clause 11.6.11, the service would not otherwise be a *prescribed transmission service* for the purposes of new Chapter 6A.

Prescribed transmission services

- (b) References to *prescribed transmission services* in new Chapter 6A include prescribed connection services under this clause 11.6.11 and, where a service is a *prescribed transmission service* by virtue of the operation of this clause 11.6.11, that service is taken not to be a *negotiated transmission service*.

Interaction with new Chapter 6A

- (c) For the purposes of new Chapter 6A:
 - (1) the costs of *transmission system* assets that from time to time may be treated as:
 - (i) directly attributable to the provision of a prescribed connection service; or

- (ii) incurred in providing a prescribed connection service,
are limited to the costs of the eligible assets which provide the prescribed connection service;
- (2) any costs:
 - (i) in relation to an existing asset, a committed asset or a replacement asset (or any portion of an existing asset, a committed asset or a replacement asset), that is not an eligible asset; and
 - (ii) which but for this clause 11.6.11 would:
 - (A) have been allocated under new Chapter 6A to *prescribed entry services* or *prescribed exit services*; or
 - (B) be required to be allocated to *negotiated transmission services* under new Chapter 6A,

must instead be treated as costs that are directly attributable to the provision of, or are incurred in providing, *prescribed TUOS services*; and.
- (3) the *stand-alone amount* for *prescribed TUOS services* is taken to include any portion of the costs referred to in clause 11.6.11(c)(2) that has not been allocated under clause 6A.23.2(d)(1).

Amendment to Part D of Chapter 6A – Negotiated Transmission Services

Clause 6A.9.2 - Determination of terms and conditions of access for negotiated transmission services

Add a new clause 6A.9.2(c):

- (c) For the purposes of the *Rules*, a *negotiated transmission service* is only to be taken to be provided by a *Transmission Network Service Provider* to a *Transmission Network User* if the *terms and conditions of access* of the service have been negotiated between the provider and the person in accordance with the requirements of Chapters 4, 5 and this Chapter 6A of the *Rules*.