



Australian Energy Market Commission

RULE DETERMINATION

National Electricity Amendment (Confidentiality Provisions for Network Connections) Rule 2009

Rule Proponent(s)

Grid Australia

Commissioners

Tamblyn
Henderson
Woodward

12 November 2009

JOHN TAMBLYN

Chairman

For and on behalf of the Australian Energy Market Commission

**RULE
CHANGE**

Inquiries

The Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

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AEMC 2009, *Confidentiality Provisions for Network Connections*, Rule Determination, 12 November 2009, Sydney

About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy, 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 policy advice covering the National Electricity Market and elements of the natural gas markets. It is a statutory authority. Our key responsibilities are to consider Rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	see AEMC
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NEO	National Electricity Objective
NSP	Network Service Provider
Rules	National Electricity Rules
SOO	Statement of Opportunities
TNSP	Transmission Network Service Provider

Summary

The Commission's determination

In relation to Grid Australia's Rule change proposal concerning confidentiality provisions for network connections, the Australian Energy Market Commission (Commission) has determined, under sections 102 and 103 of the National Electricity Law (NEL), to make this Rule determination and the National Electricity Amendment (Confidentiality Provisions for Network Connections) Rule 2009 (the Rule as made).

Summary of the Rule change proposal

On 1 April 2009, the Commission received a Rule change proposal regarding changes to Chapter 5 (Network Connection) from Grid Australia entitled "Confidentiality Provisions for Network Connections". The Rule was proposed as a non-controversial expedited Rule change.

Grid Australia contended that the following issues exist within the Rules:¹

- any information received by a Network Service Provider (NSP) as a result of a connection enquiry or application, must always be treated as confidential information, which continues to apply even if the information becomes publicly available;
- NSPs cannot disclose information to consultants to assist the NSP in processing connection enquiries and applications; and
- NSPs are unable to disclose basic information regarding connection applications that could assist connection enquirers or connection applicants.

Grid Australia considered that this prevented NSPs from sharing information between generators that would otherwise be seen as commercially standard or non-controversial. As a result, prospective connection applicants may be unaware of opportunities for more efficient co-ordinated connection options. To address these perceived problems, Grid Australia proposed the following amendments to the Rules:²

¹ Grid Australia Rule change proposal, *Proposed Rule change: confidentiality provisions clause 5.3.8*, 1 April 2009, p.2-3.

² *Ibid.* p.3.

- amend clause 5.3.8³ to allow the confidential information exclusions in clause 8.6.2⁴ to apply; and
- allow NSPs to disclose basic information regarding connection applications.

Summary of the Commission’s process

Grid Australia proposed that the Commission should consider the proposed Rule as a non-controversial Rule, to be expedited in accordance with section 96 of the NEL. However, following publication, the Commission received a written objection from the Clean Energy Council opposing expedition of the Rule change proposal.⁵ The Commission’s analysis of the written objection concluded that it is not misconceived or lacking in substance. The Commission subsequently published a notice that it will consider the relevant proposed Rule in accordance with the procedure for the making of a Rule by the AEMC under Division 3 of Part 7 of the NEL (other than section 96 of the NEL), rather than through an expedited Rule making process.

In preparing this Rule determination the Commission has:

- assessed the views of submissions received during both rounds of consultation; and
- assessed the Rule change proposal against the National Electricity Objective (NEO).⁶

Summary of the Commission’s decision for the Rule determination

The Commission’s assessment covers three issues. Two of these were raised in Grid Australia’s Rule change proposal and one was raised by a stakeholder during initial consultation.

The Commission is satisfied that the inclusion of a cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants in rule 8.6 of the Rules will contribute to achievement of the NEO. This is because the cross-reference in clause 5.3.8 of the Rules will promote efficient coordinated connection applications. Therefore, the Commission has adopted Grid Australia’s Rule change proposal to provide an explicit cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants under rule 8.6 of the Rules. The

³ Clause 5.3.8 relates to the provision and use of information for modifying or establishing a connection to a network.

⁴ Clause 8.6.2 provides for exceptions to Registered Participant’s confidentiality obligations under the Rules. These exceptions include: information generally and publicly available; disclosure to employees, officers and legal or other professional advisors; consent to disclose information.

⁵ Clean Energy Council, Objection to the expedited Rule change proposal of the Confidentiality Provisions for Network Connections, 27 May 2009.

⁶ Part 1, Section 7 of the National Electricity Law.

Rule clarifies that NSPs may disclose information in certain circumstances to Registered Participants and other persons to facilitate coordinated connection applications and enquiries. The Rule as made will include an explicit cross-reference in clauses 5.3.8(a)(2) and 5.3.8(d) to rule 8.6 of the Rules.

The Commission has not adopted Grid Australia's Rule change proposal to include a new clause that would allow NSPs to disclose basic generator information regarding the size, location, completion date, primary technology and broad function in respect of an application to connect. This is because a NSP, which will have received the information by virtue of Schedule 5.4 of the Rules, may already publish this information in certain circumstances to the extent permitted by the confidentiality exclusions to rule 8.6 under clause 8.6.2(a) (Public domain) and 8.6.2(c) (Consent). In addition, given the high likelihood that connection information will be public prior to a connection agreement, including in both AEMO's Electricity Statement of Opportunities (ESOO) and TNSPs Annual Planning Reports, there is sufficient transparency and public information available for prospective connecting generators. The Commission has therefore not agreed to include Grid Australia's proposed clause 5.3.8(c1) in the Rule as made.

The Commission has not adopted Hill Michael's proposal to allow the disclosure of data and information by NSPs directly to consultants. This is because consultants may obtain information with the consent of Registered Participants who provided the relevant information under clause 8.6.2(c) of the Rules where appropriate. The Commission has therefore not agreed to include Hill Michael's proposed clause 5.3.8(c2) in the Rule as made.

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1 Grid Australia Rule change proposal

This chapter sets out:

- a description of the Grid Australia Rule change proposal, including how Grid Australia considers its proposal will promote the National Electricity Objective (NEO); and
- the Commission's Rule making process for this Rule change proposal, as a result of receipt of a written objection from the Clean Energy Council.

1.1 The Rule change proposal

On 1 April 2009, the Commission received a Rule change proposal regarding changes to Chapter 5 (Network Connection) from Grid Australia entitled "Confidentiality Provisions for Network Connections". Grid Australia proposed that the Commission should consider the proposed Rule as a non-controversial Rule.

Grid Australia notes that it foreshadowed the Rule change proposal in its submission to the Australian Energy Market Commission's (AEMC's) Scoping Paper for its Review of the Energy Market Frameworks in light of Climate Change Policies.⁷

1.2 Summary of the Grid Australia Rule change proposal

1.2.1 Intent of the Rule change proposal

Grid Australia contends that the following issues exist within the Rules:⁸

- any information received by an NSP as a result of a connection enquiry or application, must always be treated as confidential information, which continues to apply even if the information becomes publicly available;
- NSPs cannot disclose information to consultants to assist the NSP in processing connection enquiries and applications; and
- NSPs are unable to disclose basic information regarding connection applications that could assist connection enquirers or connection applicants.

⁷ AEMC 2009, Review of Energy Market Frameworks in light of Climate Change Policies: Final Report, September 2009, Sydney

⁸ Grid Australia Rule change proposal, *Proposed Rule change: confidentiality provisions clause 5.3.8*, 1 April 2009, p.2-3.

To address these issues, Grid Australia proposed the following amendments to the Rules:⁹

- amend clause 5.3.8¹⁰ to allow the confidential information exclusions in clause 8.6.2¹¹ to apply; and
- allow NSPs to disclose basic generator information regarding connection applications.

1.2.2 Rationale for the Rule change

Grid Australia considered that in the future, the number of small-scale generators seeking connection may increase. With this increase there may be merit in providing for a more coordinated connection application process. Accordingly, Grid Australia considers that the coordinated consideration of applications at a single connection point has advantages from a network planning perspective, as well as on an efficiency and timeliness basis. Grid Australia contends this is because the potentially complex interactions between numerous generator connections could be studied as a single scenario at the time of connection.

Clause 8.6.2 of the Rules provides for the circumstances when an NSP can disclose certain information. Clause 5.3.8, which relates to the treatment of information for modifying or establishing a connection, does not explicitly refer to the exceptions contained in clause 8.6.2. Grid Australia considers the following exceptions that are included in clause 8.6.2 to be relevant:¹²

- information in the public domain;
- information provided to an employee, advisor or consultant; and
- information where consent is given to release the information.

Grid Australia consider that the absence of a reference to these exceptions precludes NSPs from sharing information between generators that would otherwise be seen as commercially standard or non-controversial. Providing an explicit reference in the Rules to clause 8.6.2 would, in Grid Australia's opinion, overcome this information barrier.

At present, clause 5.3.8 does not explicitly allow NSPs to disclose information provided by a connecting party to other potential connecting parties. Grid Australia proposes to allow for some information to be published through a new clause

⁹ Ibid. p.3.

¹⁰ Clause 5.3.8 relates to the provision and use of information for modifying or establishing a connection to a network.

¹¹ Clause 8.6.2 provides for exceptions to Registered Participant's confidentiality obligations under the Rules. These exceptions include: information generally and publicly available; disclosure to employees, officers and legal or other professional advisors; consent to disclose information.

¹² Grid Australia Rule change proposal, *Proposed Rule change: confidentiality provisions clause 5.3.8*, 1 April 2009, p.2.

5.3.8(c1). This clause would enable NSPs to publish or disclose information regarding the size, location and proposed completion date of a network connection, once a fully compliant application to connect has been received.

1.2.3 Proponents assessment in relation to the NEO

Grid Australia considers that its Rule change proposal would contribute to the achievement of the NEO by:¹³

- improving the efficiency of the connection application process, which will benefit connection applicants and allow more efficient use of NSP resources; and
- assisting NSPs in their planning role by clarifying that non-confidential information regarding new connections can be provided to third parties.

Grid Australia considers that the above outcomes will deliver benefits to customers in terms of price, quality, reliability and security of supply, therefore, promoting the achievement of the NEO.

1.2.4 Costs, benefits and impacts of the Rule change proposal

Grid Australia considers that its Rule change proposal has the following costs and benefits:¹⁴

Costs:

The proposed Rule change will not impose any costs, as no particular industry sector or market participant will be disadvantaged.

Benefits:

- the proposed Rule change resolves an anomaly in the existing Rules that precludes NSPs from engaging consultants to assist in processing connection enquiries and which also prevents NSPs from publishing non-confidential information that could assist prospective connection applications;
- would add a specific cross-reference in the Rules between clause 5.3.8 and the 'carve out' provisions for dealing with confidential information under clause 8.6.2; and
- the beneficiaries of the proposed Rule change will principally be connection applicants and customers, as efficiency improvements in processing connections will ultimately result in better services and lower costs.

¹³ Ibid.

¹⁴ Ibid. p.4.

1.3 Consultation process

1.3.1 Rationale for expedited Rule making process

Grid Australia proposed that the Commission should consider the proposed Rule as a non-controversial Rule because it:¹⁵

- “removes an anomaly in the existing Rules which currently prevents NSPs from disclosing information relating to connection applications, even though such information is not commercially sensitive; and
- delivers outcomes that are consistent with the NEO”.

1.3.2 Consultation on the Rule change proposal

On 14 May 2009, the Commission published a notice, under sections 95 and 96 of the NEL, of its intention to consider the proposed Rule as a non-controversial Rule, subject to any written objections, and to seek consultation on Grid Australia’s Rule change proposal. On 27 May 2009, a written objection to expedition of the Rule change proposal was received from the Clean Energy Council. Following that objection, the Commission published notice under section 96(5) of the NEL that it will consider the relevant proposed Rule in accordance with the procedure for the making of a Rule by the AEMC under Division 3 of Part 7 of the NEL (other than section 96 of the NEL), rather than through an expedited Rule making process.¹⁶ The closing date for submissions in relation to the proposed Rule closed on 12 June 2009.

Four submissions were received by the Commission from stakeholders during a first round of consultation on Grid Australia’s Rule change proposal. The submissions were from:

- Australian Energy Market Operator (AEMO);
- Australian Energy Regulator (AER);
- Hill Michael; and
- National Generators Forum (NGF) and Clean Energy Council (joint submission)

The issues identified by stakeholders in submissions and the Commission’s responses are discussed in Appendix A of this Rule determination.

On 20 August 2009, the Commission gave notice under section 99 of the NEL of the making of the draft Rule determination and its related draft Rule. The draft Rule determination provided the Commission’s reasoning for adopting or not adopting each aspect of Grid Australia’s Rule change proposal. Consultation on the draft Rule determination closed on 2 October 2009.

¹⁵ Ibid.

¹⁶ See section 1.3.3 for the Commission’s analysis of the written objection.

The Commission received three submissions from stakeholders during consultation on its draft Rule determination. These submissions were from:

- AEMO;
- the Clean Energy Council; and
- Grid Australia.

The issues identified by stakeholders in second round submissions and the Commission's responses are also discussed in Appendix A of this Rule determination.

1.3.3 Assessment of the expedited rule making process under section 96 of the NEL

As indicated in section 1.3.2, the Commission received a written objection to the expedited Rule making process from the Clean Energy Council. Following receipt of a written objection to the expedited Rule making process, the Commission must under section 96 of the NEL, assess whether, in its opinion, the reasons set out in the objection are misconceived or lacking in substance. On completion of this analysis the Commission must either:

- if it is of the opinion that the reasons given in the written objection are misconceived or lacking in substance, make a decision to that effect and give the person its reasons, in writing, for that decision without delay (in accordance with section 96(4) of the NEL); or
- if it is of the opinion that the reasons given in the written objection are not misconceived or lacking in substance, publish a notice under section 96(5) of the NEL to the effect that it will make the relevant Rule in accordance with Part 7, Division 3 – the Rule making process (other than section 96 of the NEL).

The Commission determined that the written objection received from the Clean Energy Council was not misconceived or lacking in substance. The Commission considered that issues surrounding the timing of disclosure and the nature of the information to be disclosed required further consultation. On 4 June 2009, the Commission published notice under section 96(5) of the NEL that it will consider the relevant proposed Rule in accordance with the procedure for the making of a Rule by the AEMC under Division 3 of Part 7 of the NEL (other than section 96 of the NEL), rather than through an expedited Rule making process.

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2 Rule determination

This chapter sets out:

- the Commission's Rule determination;
- the Commission's power to make the Rule;
- any relevant Ministerial Council of Energy (MCE) statements of policy principles;
- the Rule making test and the NEO; and
- a summary of the differences between the proposed Rule, the draft Rule and the final Rule.

2.1 Commission's Rule determination

The Commission has determined to make this Rule determination and the Rule change proposal with amendments (the National Electricity Amendment (Confidentiality Provisions for Network Connections) Rule 2009) (the Rule as made) under sections 102 and 103 of the NEL.

The Commission has adopted Grid Australia's Rule change proposal to:

- provide an explicit cross-reference in clause 5.3.8 of the Rules to the general confidentiality obligations on Registered Participants under rule 8.6 of the Rules. This would clarify that NSPs may disclose information in certain circumstances to Registered Participants and other persons to facilitate coordinated connection applications and enquiries.
- This intention has been captured by including an explicit cross-reference to rule 8.6 in clauses 5.3.8(a)(2) and 5.3.8(d).

The Commission has not adopted Grid Australia's Rule change proposal to:

- include a new clause that would allow NSPs to disclose basic generator information regarding the size, location, completion date, primary technology and broad function in respect of an application to connect. This is because a NSP may already publish this information in certain circumstances by virtue of the confidentiality exceptions to rule 8.6 under clauses 8.6.2(a) (Public domain) and 8.6.2(c) (Consent) of the Rules. There is also a high likelihood that connection information will already be public prior to a connection agreement. Therefore, it is unnecessary to include an additional clause allowing the disclosure of basic generator information.
- include Grid Australia's proposed clause 5.3.8(c1) in the Rule as made.

The Commission has not adopted Hill Michael's proposal to:

- allow the disclosure of data and information by NSPs directly to consultants, as it could lead to the disclosure of a Registered Participants confidential information without their consent.
- include Hill Michael's proposed clause 5.3.8(c2) in the Rule as made.

2.2 Commission's considerations

In making this Rule determination, the Commission has taken into account:

- the Commission's powers under the NEL to make the Rule;
- the proponent's Rule proposal and proposed Rule;
- any relevant MCE statements of policy principles;
- submissions received on Grid Australia's Rule change proposal and proposed Rule;
- submissions received on the Commission's draft Rule determination and draft Rule; and
- the Commission's analysis as to whether the proposed Rule will, or is likely to contribute to the NEO.

2.3 Commission's power to make the Rule

The subject matters about which the Commission may make Rules are set out in section 34 of the NEL and more specifically item 35 in Schedule 1 to the NEL. The proposed Rule falls within the subject matters that the Commission may make Rules about, under section 34 of the NEL, because it relates to the regulation of:

- the operation of the national electricity market (as it relates to the Rules for network connection of generating plant); and
- the activities of persons (including Registered Participants) participating in the national electricity market or involved in the operation of the national electricity system (as it relates to the disclosure of information by NSPs to market participants).

The proposed Rule is also within matters set out in Schedule 1 to the NEL as it relates to confidential information held by Registered Participants, the AER, the Commission, AEMO and other persons or bodies conferred a function, or exercising power or right, or on whom an obligation is imposed, under the Rules, and the manner and circumstances in which that information may be disclosed under item 35 of Schedule 1 to the NEL.

The Commission is therefore satisfied that the proposed Rule is a matter about which the Commission may make a Rule.

2.4 Any relevant MCE statements of policy principles

The NEL requires the Commission to have regard to any relevant MCE statements of policy principles in applying the Rule making test. The Commission notes that currently there are no relevant MCE statements of policy principles that relate to the issues contained in Grid Australia's Rule change proposal.

2.5 Recent amendments to the Rules regarding confidential information

During the transition of NEMMCO to AEMO on 1 July 2009, a number of amendments were made to the Rules and the NEL by the MCE.¹⁷ Specifically, there were significant amendments in respect of the confidentiality obligations in the Rules under rule 8.6. Those amendments that directly relate to this Rule change proposal included:

- Amending clause 8.6.1(a) to remove the confidentiality obligations on AEMO from the Rules and adding them to the NEL;
- Amending clause 8.6.2(a)(**public domain**) to remove reference to 'Recipient's' and replacing it with 'Registered Participant's' (as it is defined in Chapter 10 of the Rules); and
- Amending clause 8.6.2(b)(**employees and advisors**) to remove reference to 'Recipient's' and 'Recipient's Disclosee' and replacing it with 'Registered Participant's' and 'Registered Participant's Disclosee'.

2.6 The Commission's approach and decision making framework

In preparing this Rule determination the Commission has:

- assessed the views of submissions received; and
- assessed the Rule change proposal against the NEO.

In assessing Grid Australia's Rule change proposal against the NEO, the Commission has also informed its decision by considering the following factors:

1. the likely effect of the proposal on the efficiency of investment;
2. the likely effects of the proposal on the activities of Registered Participants in regards to operation in the market; and
3. whether the proposal is consistent with the principles of good regulatory practice.

¹⁷ National Electricity (*Australian Energy Market Operator*) Amendment Rules 2009, 1 July 2009.

2.7 The Rule making test and the National Electricity Objective

The Commission, in accordance with section 88(1) of the NEL, may only make a Rule if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the NEO.

The NEO, as set out in section 7 of the NEL 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.

The NEO is founded on the concepts of economic efficiency (including productive, allocative and dynamic efficiencies), good regulatory practice (which refers to the means by which regulatory arrangements are designed and operated) as well as reliability, safety and security priorities.

The Commission considers that the addition of an explicit cross-reference in clause 5.3.8 of the Rules to the to the general confidentiality obligations on Registered Participants under rule 8.6 of the Rules would promote efficient coordination of connection applicants by:

- clarifying that NSPs may disclose information in certain circumstances so that Registered Participants and other persons may facilitate coordinated connection applications and enquiries; and
- clarifying that NSPs may share information when planning and developing multiple connection applications so that they will be able to propose, and develop, coordinated connection solutions.

The above efficiency improvements will result in lower overall costs for market participants and therefore promote the efficient operation of the National Electricity Market (NEM). This will subsequently contribute to the achievement of the NEO for the long term interests of consumers of electricity with respect to more efficient electricity prices.

The Commission is not satisfied that Grid Australia's proposed new clause 5.3.8(c1) will contribute to the achievement of the NEO. This is because, basic generator information of the type proposed by Grid Australia in its Rule change proposal is already published in both AEMO's Electricity Statement of Opportunities (ESOO)¹⁸ and NSP's Annual Planning Reports. Therefore, an obligation on NSPs to publish the information is not necessary. For this reason, the Commission considers that imposing a regulatory obligation is unlikely to promote the efficient operation and

¹⁸ Since publication of the draft determination, AEMO has published the 2009 Electricity Statement of Opportunities (ESOO), which will replace the previous Statement of Opportunities (SOO)

use of NSP resources for the long term interests of consumers of electricity with respect to the reliability, safety and security of the national electricity system.

The Commission considers that the disclosure of information directly from NSPs to consultants, as proposed by Hill Michael, would not contribute to the achievement of the NEO, because it could inadvertently lead to the disclosure of Registered Participants confidential information without their consent. This may weaken the confidence of generators who wish to invest in the market, which may adversely impact the reliability, safety and security of the national electricity system.

Further information on how each issue analysed by the Commission contributes to achievement of the NEO is provided in Appendix A.

2.8 Differences between the proposed Rule, the draft Rule and the Rule as made

In making the Rule as made, the Commission has adopted some aspects of Grid Australia's proposed Rule change with minor amendments.

The substantive difference between Grid Australia's Rule change proposal and the Rule as determined by the Commission is that an obligation has not been placed on NSPs to allow the disclosure of basic generator information. This is due to the cross-reference to the confidentiality exceptions already permitting disclosure under the Rules in certain circumstances.

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A Commission's assessment of the proposed Rule change

This Appendix sets out the Commission's assessment and analysis of the issues raised in the Rule change proposal. It includes consideration of stakeholder submissions received in response to Grid Australia's Rule change proposal and the Commission's draft Rule determination.

Structure of this chapter

The Commission's assessment covers three issues. Two were raised in Grid Australia's Rule change proposal and the third was raised by a stakeholder during initial consultation. The issues being considered are:

1. a cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants under rule 8.6 of the Rules;
2. allowing NSPs to disclose basic generator information regarding an application to connection; and
3. the addition of provisions in the Rules that allow NSPs to disclose data and information in respect of connection applications directly to consultants.

Structure of sections

The following five sections of this chapter each cover an issue listed above. Each section includes:

- a description of the issue under investigation;
- the Commission's analysis, including a discussion of stakeholder views;
- the Commission's assessment for the draft Rule and its associated draft Rule determination;
- discussion of stakeholder views in response to the draft Rule determination; and
- the Commission's Rule determination and how the change will be given effect in the Rules.

A.1 Cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions in the Rules

Grid Australia's proposal

As indicated in Grid Australia's Rule change proposal, clause 5.3.8 is a specific confidentiality obligation with respect to connections under chapter 5 of the Rules. It however, does not contain any cross-reference to the confidentiality exceptions under clause 8.6.2. Specifically, Grid Australia raised concern that there is no cross-

reference in clause 5.3.8 of the Rules to clause 8.6.2 that allows certain categories of information to be disclosed to third parties, including:¹⁹

- information that is generally and publicly available;
- information provided to an employee, advisor or consultant; and
- information where consent is given to release the information.

Grid Australia considered that these exceptions would ordinarily be seen as “standard confidentiality exceptions in typical commercial arrangements”.²⁰ However, under the Rules, Grid Australia considers that “any information received by an NSP as a result of a connection enquiry or application, without limitation in time, must always be treated as confidential”.²¹ These requirements continue to apply even if the relevant information becomes publicly available. Grid Australia also indicated that an NSP is unable to disclose any information to consultants to assist that NSP in processing connection enquiries and applications.

To overcome these issues, Grid Australia suggested the addition of a cross-reference in clauses 5.3.8(a)(2) and 5.3.8(d) to clause 8.6.2 to allow the confidentiality exceptions to apply to connection enquiries and applications.

The Commission’s draft Rule determination including analysis of first round submissions

The Commission agreed with Grid Australia that a cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants in rule 8.6 of the Rules could facilitate more efficient generator connection outcomes. This will clarify the circumstances when NSPs are able to disseminate information to coordinate generator connections at a single connection point. The Commission therefore adopted Grid Australia’s Rule change proposal to provide an explicit cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants in rule 8.6 of the Rules.

The Commission considered that a cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants in rule 8.6 of the Rules was likely to contribute to the achievement of the NEO by facilitating more efficient generator connection outcomes in the NEM. It would also provide investment certainty for generators by maintaining the protection of their proprietary and confidential information. Generator connections are efficient when they occur at their lowest efficient cost. The provision of network services involves potentially large economies of scale. Achieving economies of scale enables network assets to be delivered closer to their lowest efficient cost. In the context of multiple generator connections, when these can be coordinated, there is

¹⁹ Grid Australia’s Rule change proposal, “*Confidentiality Provisions Clause 5.3.8*”, 1 April 2009, p.2.

²⁰ Ibid.

²¹ Ibid.

scope for economies of scale to be achieved. In the case of the Grid Australia Rule change proposal, coordination can be obtained by:

- clarifying that NSPs may disclose information in certain circumstances so that Registered Participants and other persons may facilitate coordinated connection applications and enquiries; and
- clarifying that NSPs may share information in certain circumstances when planning and developing multiple connection applications so that they will be able to propose, and develop, coordinated connection solutions.

The above efficiency improvements will result in lower overall costs for market participants. This will subsequently contribute to the achievement of the NEO for the long term interests of consumers of electricity with respect to more efficient electricity prices.

The AER was broadly supportive of Grid Australia's proposal and referred to a submission that it submitted to the AEMC's climate change review. In that submission, the AER noted that "publishing details of connection applications would improve efficiency in the network planning process".²² The AER also indicated that publication of this information would "create transparency for all applicants considering connecting to the transmission network and allow connection applicants to arrange joint processing of their applications".²³ In summary, the AER agreed that Grid Australia's Rule change proposal has the "potential to improve market outcomes by creating greater transparency and efficiency in the network planning process".²⁴

Other submissions did not comment directly on this issue. However, AEMO suggested alternative drafting of one of the clauses that was adopted by the Commission.²⁵

The Commission's analysis of second round submissions

The Commission notes all stakeholder submissions affirmed support for the Commission's draft Rule determination that a cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants in rule 8.6 of the Rules could facilitate more efficient generator connection outcomes. AEMO considers that "the inclusion of a cross-reference to the confidentiality exceptions to the general obligations in clause 5.3.8 of the Rules provides a reasonable solution to the problem identified by Grid Australia

²² Australian Energy Regulator, Submission on "Review of Energy Market Frameworks in light of Climate Change Policies - 1st Interim Report", 23 February 2009, p.8.

²³ Ibid.

²⁴ Australian Energy Regulator, Submission on Grid Australia's Rule change proposal, 12 June 2009, p.2.

²⁵ Australian Energy Market Operator, Submission on Grid Australia's Rule change proposal, 12 June 2009, p.1.

and that it would correct an identified anomaly in the Rules”.²⁶ Similarly, Grid Australia states in its submission that it “welcomes the Commission’s finding that clause 5.3.8 should be amended to include a cross-reference to the provisions in clause 8.6.2”.²⁷

The Commission’s Rule determination

Based on our previous analysis, and support given in submissions, the Commission’s assessment of Grid Australia’s proposal as set out in the draft Rule determination is unchanged. That is, the inclusion of a cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants in rule 8.6 of the Rules will contribute to achievement of the NEO by promoting efficient coordinated connection applications.

The Rule as made will include an explicit cross-reference in clauses 5.3.8(a)(2) and 5.3.8(d) to rule 8.6 of the Rules.

A.2 Allow NSPs to disclose basic generator information regarding connection applications

Grid Australia’s proposal

Grid Australia contended that due to the confidentiality provisions outlined in section A.1.1 above, NSPs are unable to disclose basic information regarding connection applications that could assist connection enquirers or connection applicants. Grid Australia notes that as a result, “prospective connection applicants may be unaware of opportunities to reduce connection charges for connection services by combining with others at the same location or alternative locations, or by otherwise benefiting from economies of scale for connection services at particular connection locations”.²⁸

To overcome this issue, Grid Australia proposed the addition of a new clause as described in its Rule change proposal as new clause 5.3.8(c1). The purpose of the clause would be to allow NSPs to disclose basic information regarding connection applications. Grid Australia proposed that this information include: “size; location; completion date; primary technology (coal, gas wind etc); and broad function (base-load generator, peaking generator or load)”.²⁹ Under Grid Australia’s proposed Rule, an NSP would have the discretion to disclose this information following finalisation of an application to connect with the generator.

²⁶ Australian Energy Market Operator, Submission on the Commission’s draft Rule determination, 2 October 2009, p.1.

²⁷ Grid Australia, Submission on the Commission’s draft Rule determination, 2 October 2009, p.3.

²⁸ Ibid. at p.3.

²⁹ Ibid.

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As the Commission proposed to make an explicit cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants in rule 8.6 of the Rules, the Commission considered it unnecessary to include Grid Australia's proposed new clause. This is because the cross-reference in clause 5.3.8 of the Rules to rule 8.6 is adequate to clarify that NSPs may disclose information in certain circumstances to Registered Participants and other persons to facilitate coordinated connection applications and enquiries.

The Commission subsequently did not adopt Grid Australia's Rule change proposal to allow NSPs to disclose basic generator information regarding the size, location, completion date, primary technology and broad function in respect of an application to connect.

When connection information is public, the cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions would clarify that NSPs may disclose or publish basic generator connection information. Given the high likelihood that connection information will be public prior to a connection agreement; it was considered unnecessary to include an additional clause allowing the disclosure of basic generator information. Therefore, generators should be aware of opportunities to reduce connection charges for connection services.

Discussions held with Grid Australia and AEMO indicated that basic generator information is often publicly available before the 'connection enquiry' is lodged with an NSP. Therefore, the Commission understands there is a high likelihood the information is publicly available before a connection agreement is signed, which is when Grid Australia proposed to disclose the information.

Basic information about future generator connections is also published and available for potential connecting generators. Information relating to new generation projects is published annually in both AEMO's ESOO and NSPs annual planning reports. In the ESOO, future generation projects are divided into three categories, proposed, advanced and committed projects.³⁰ For all three categories, information regarding the company/operator, project name, fuel type, region, commissioning date and in some instances size are provided.³¹ The Commission noted that this information is broadly consistent with the information contained in Grid Australia's Rule change proposal.

The view of the AER was also consistent with that of the Commission. The AER indicated in its submission that it is "unlikely that there will be any commercial

³⁰ Generation projects are assessed by AEMO against five criteria: site – acquired land for the construction of the project; major components – contracts for the supply and construction of major plant or equipment; planning consents – obtained all required planning and construction approvals and licenses; finance – financing arrangements finalized and contracts executed; and construction date – firm date has been set for it to commence. A project that meets all five criteria is termed committed project and a project that meets three criteria is termed an advanced project.

³¹ For examples of the information published by AEMO on proposed generator projects see, http://www.aemo.com.au/data/gendata_prop.shtml

sensitivity surrounding this information. The applicant would have sought town planning and environmental approvals for the project and the intentions of the connecting applicant are likely to have been made known through the ESOO process for the purpose of the reserve assessments".³² That is, the information was likely to be publicly available.

Risk of disclosing commercially sensitive information

A joint submission from the NGF and the Clean Energy Council contended that depending on the timing, publication of the information could lead to the disclosure of commercially sensitive information. Consequently, the disclosure of this information may undermine a generator's potential 'first mover' competitive advantage.

Despite there being a high likelihood of the information already being public, the Commission agreed that a generator may lose their 'first mover' advantage if it was not generally and publicly available. However, the confidentiality exceptions require consent to disclose the information if it is not already public. This would protect the commercial interests of generators, but allow coordination where consent has been granted.

Mandatory publication requirement

The AER submission proposed that the disclosure of basic generator information by NSPs be made mandatory. The AER notes that "a mandatory requirement on NSPs to publish the details of connection applications would be unlikely to have an adverse impact on the market".³³

The Commission considered that the relevant basic information is already published and available for prospective generators in both AEMO's ESOO and NSP's Annual Planning Reports. Therefore, a mandatory requirement on NSPs to publish basic information would not improve outcomes.

The information sought to be published by Grid Australia is published in the context of AEMO and NSP's compliance with more general obligations to publish generating capabilities. With respect to AEMO, this includes the capabilities of existing generating units and generating units for which formal commitments have been made for construction or installation under clause 3.13.3(q)(2), or any updates to this information under clause 3.13.3(r). Planning proposals for future connection points in respect of NSPs are outlined under clause 5.6.2A(b)(2) of the Rules. An obligation on NSPs to publish the information is not necessary. Basic generator information of the type proposed by Grid Australia in its Rule change proposal is already published in both AEMO's and NSPs annual reports. Given the information is already widely available, the Commission considered that imposing a regulatory obligation was unlikely to promote the efficient operation and use of NSP resources for the long

³² AER, Submission on Grid Australia's Rule change proposal, 12 June 2009, p.2.

³³ Ibid.

term interests of consumers of electricity with respect to the reliability, safety and security of the national electricity system. Therefore, the Commission did not consider a mandatory obligation to publish basic generator information was likely to contribute to the achievement of the NEO.

The Commission's analysis of second round submissions

Submissions from AEMO and Grid Australia made reference to this issue. This section identifies and analyses the three issues in which stakeholders sought further clarification from the Commission.

AEMO contends that the purpose of Grid Australia's new clause 5.3.8(c1), is to "address issues related to the efficient processing of connection applications".³⁴ AEMO's submission indicated that there are benefits to increasing the accessibility of basic generator information. Specifically, AEMO stated that "Rule amendments to increase the accessibility of basic generator information regarding proposed connection points, would increase opportunities for proponents to proceed with coordinated or jointly processed connection applications".³⁵

The Commission agrees that generators require information so they are aware of other prospective projects where there may be opportunities to co-ordinate connection agreements. As previously noted, the Commission considers that the appropriate information is already published in both the ESOO and Annual Planning Reports. In addition, by virtue of the cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants under rule 8.6, the basic generator information that NSPs collect under Schedule 5.4 may be published in certain circumstances as NSPs see fit. The Commission also notes that generators have a commercial incentive to seek information regarding the developments of their competitors. That is, generators are best placed to facilitate co-ordinated and/or jointly processed connection applications.

The second issue under consideration was identified by Grid Australia in its submission. Grid Australia implies there is a trade-off between the commercial interests of connecting generators and broader market benefits. Grid Australia states that the disclosure of basic generator information is a "matter of policy to determine the appropriate balance between the protection of a particular party's commercial interests and the broader achievement of the NEO".³⁶

As noted previously, the Commission considers that there are legitimate commercial reasons for some connection information to be maintained in confidence. In particular, to protect a generators 'first mover' advantage. Therefore, under these circumstances the Commission does not consider it appropriate that a NSP disclose

³⁴ Australian Energy Market Operator, Submission on the Commission's draft Rule determination, 2 October 2009, p.1.

³⁵ Ibid.

³⁶ Grid Australia, Submission on the Commission's draft Rule determination, 2 October 2009, p.4.

or publish information that has a legitimate claim of confidentiality. Thus the Commission considers it appropriate that the Rules based confidentiality arrangements under rule 8.6 apply in relation to the disclosure and/or publication of connection information. This is primarily because failure to maintain adequate protection may weaken the confidence of generators who wish to invest in the market, which could adversely impact the reliability, safety and security of the national electricity system.

The third issue was also raised by Grid Australia. Grid Australia notes that the new clause 5.3.8(c1) would enable consistent disclosure of basic connection information for planning purposes.³⁷ However, the Commission understands that the lack of consistency in the ESOO is primarily as a result of the restrictions on the disclosure of confidential information. That is, AEMO may only publish information that is publicly available. As noted above, the Commission considers that these restrictions are important for maintaining investor confidence in the NEM. Therefore, the Commission considers that had the new clause 5.3.8(c1) been added to the Rules, the Rules based confidentiality arrangements would still need to apply. As a result, the ability to publish consistent information would still be limited by confidentiality concerns.

The Commission's Rule determination

The Commission has maintained the view that it is unnecessary to include Grid Australia's proposed new clause 5.3.8(c1). The Commission still maintains that the cross-reference in clause 5.3.8 of the Rules to rule 8.6 is adequate to clarify that NSPs may disclose information in certain circumstances to Registered Participants and other persons to facilitate coordinated connection applications and enquiries.

The Commission therefore has not agreed to the inclusion of Grid Australia's proposed clause 5.3.8(c1) in the Rule as made.

A.3 Disclosure of information to consultants

Proposed amendment from Hill Michael

Hill Michael noted in its submission that "access to critical data is an area which creates a bottleneck in the connection process for intending participants and internally within the NSPs".³⁸ The submission further contended that this issue would become more apparent as a greater number of generators connect directly to DNSPs, which are less resourced relative to TNSPs.

To overcome the bottlenecks that arise at the preliminary studies stage of the connection process, Hill Michael considered amending Grid Australia's Rule change proposal. Specifically, amendments that extend to "include provisions to allow 'acceptable consultants', to access data on behalf of current participants and

³⁷ Ibid.

³⁸ Hill Michael, Submission on Grid Australia's Rule change proposal, 12 June 2009, p.2.

intending participants of the NEM, subject to necessary confidentiality agreements being set up...".³⁹ The amendment would be achieved by inclusion of a new clause 5.3.8(c2), allowing NSPs to disclose data and information to consultants acceptable to the disclosing NSP.

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The Commission did not agree with the inclusion of an amendment that allowed the disclosure of data and information by NSPs directly to consultants. This is because consultants can obtain the information through Registered Participants by consent under clause 8.6.2(c) of the Rules.

The Commission did not adopt Hill Michael's proposal to allow the disclosure of data and information by NSPs directly to consultants.

The Commission considered that consultants should only have access to the data and information in respect of an application to connect, if it is in support of a Registered Participant's activities. This ensured the appropriate use of the information and ensured confidential information was adequately maintained.

In addition, by virtue of the inclusion of the cross-reference in clause 5.3.8 of the Rules to the confidentiality exceptions to the general confidentiality obligations on Registered Participants under rule 8.6, the Commission considered that the data and information provided under rule 5.3 may be disclosed by a Registered Participant to consultants engaged in respect of their connection application. This arises because the confidentiality exceptions explicitly allow Registered Participants to disclose information to their advisors and/or consultants given the likelihood that connection information will be public prior to a connection agreement. This does not preclude NSPs disclosing information to consultants engaged by them in accordance with their obligations under the Rules.

In addition, the Commission considered that the disclosure of information directly from NSPs to consultants other than in accordance with rule 8.6 of the Rules, would not contribute to the achievement of the NEO. This is because it may inadvertently lead to the disclosure of a Registered Participants confidential information. This may weaken the confidence of generators who wish to invest in the market, which may adversely impact the reliability, safety and security of the national electricity system. For this reason, the Commission considered the proposal was unlikely to contribute to achievement of the NEO.

The Commission's Rule determination

Given that none of the submissions received by the Commission on its draft Rule determination provided further information on this issue, the Commission's

³⁹ Ibid.

assessment of Hill Michael's proposal as set out in the draft Rule determination is unchanged.

The Commission has therefore, not adopted Hill Michael's proposal to allow the disclosure of data and information by NSPs directly to consultants.

The Commission has subsequently not agreed to include Hill Michael's proposed clause 5.3.8(c2) in the Rule as made.