

1 April 2009

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

By email: submissions@aemc.gov.au

Dear John,

Proposed Rule Change: Confidentiality Provisions Clause 5.3.8

1. Overview of Proposal

Grid Australia¹ proposes a Rule change to clause 5.3.8 to amend the existing confidentiality provisions relating to network connection enquiries and applications. Grid Australia foreshadowed this Rule change proposal in its submission² to the AEMC's Scoping Paper for its Review of Energy Market Frameworks in light of Climate Change Policies.

Grid Australia is aware that clause 5.3.8 has recently been amended as part of the AEMC's consideration of a Rule change proposal submitted by the National Generators Forum³. However, that recent Rule change only partially addresses Grid Australia's concerns and therefore Grid Australia now proposes a further minor amendment to clause 5.3.8. Grid Australia's proposed Rule change does not conflict with any aspect of the AEMC's Rule change determination of 19 February 2009.

Grid Australia considers that its proposed Rule change would contribute to the achievement of the National Electricity Objective⁴ by:

¹ Grid Australia comprises ElectraNet, Powerlink, SP AusNet, Transend and TransGrid.

² Grid Australia submission, 14 November 2008, page 8.

³ AEMC Rule Determination in relation to Confidentiality Arrangements in Respect of Information Required for Power System Studies, 19th February 2009.

⁴ The National Electricity Objective (NEO) is stated in section 7 of the National Electricity Law (NEL) where the object 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;
- (b) the reliability, safety and security of the national electricity system."

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

These outcomes will deliver benefits to consumers in terms of price, quality, reliability and security of supply. The proposed Rule change will therefore promote the achievement of the National Electricity Objective.

Grid Australia considers that the costs of promoting these benefits will not be significant. In particular, the proposed Rule change is focused on addressing an anomaly in the drafting of clause 5.3.8, thereby improving the connection enquiry process. These improvements can be achieved without causing any material increases in costs to network service providers or connection applicants.

The Rule change proposal is non-controversial because it:

- 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 National Electricity Objective.

For these reasons, Grid Australia requests that this Rule change proposal is expedited in accordance with section 96 of the National Electricity Law, subject to the receipt of written objections. The subject of this Rule change proposal falls within the matters on which the AEMC is permitted to make changes to the Rules.

2. Explanation of the matter to be addressed by the Rule change

Clause 5.3.8 is a specific confidentiality obligation with respect to connections under chapter 5 and does not contain any cross-reference to the generic confidentiality carve-out provisions in the Rules, which are set out in clauses 8.6.1 and 8.6.2. Importantly, clause 8.6.2 allows certain categories of information to be disclosed to third parties, including:

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

The above exclusions would ordinarily be seen as standard confidentiality carve-out provisions in typical commercial arrangements. However, clause 5.3.8 does not contain any cross-reference to clause 8.6.2, so it does not allow the exclusions set out in clause 8.6.2 to apply in relation to connection enquiries and applications. As a result, clause 5.3.8 has a number of consequences (noted below) that Grid Australia wishes to address through this Rule change proposal:

- any information received by a NSP as a result of a connection enquiry or application, without limitation in time, must always be treated as confidential and these confidentiality requirements continue to apply even if the relevant information becomes publicly available, creating an administrative overhead for NSPs;

- a NSP cannot disclose any information to consultants to assist the NSP in processing connection enquiries and applications creating additional resourcing issues for NSPs and potential backlogs for connection applicants; and
- NSPs are unable to disclose basic information regarding connection applications that could assist connection enquirers or connection applicants. 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.

In light of the above concerns, Grid Australia considers that it is appropriate to amend the existing Rules to:

- remove the anomalous drafting in clause 5.3.8, so that it allows the confidential information exclusions in clause 8.6.2 to apply to connection enquires and applications; and
- allow NSPs to disclose basic information regarding connection applications, such as: size; location; completion date; primary technology (e.g. gas turbine, coal fired, wind generator); and broad function (e.g. base load generator, peaking generator or load).

Grid Australia is aware that the AEMC's Rule change determination of 19 February 2009 enables NEMMCO to disclose information to Registered Participants and Intending Registered Participants through a Releasable User Guide. Whilst Grid Australia supports this initiative, Grid Australia also considers that it is non-controversial that NSPs should be allowed to disclose basic information about connection applications as part of their planning role.

3. Potential impact of the change on those likely to be affected

The proposed Rule change would resolve an anomaly in the existing Rules that precludes NSPs from engaging consultants to assist in processing connection enquiries or applications, and which also prevents NSPs from publishing non-confidential information that could assist prospective connection applications. As noted earlier, the anomaly arises principally because there is no cross-reference between clause 5.3.8 and the 'carve out' provisions in clause 8.6.2.

Grid Australia considers that the beneficiaries of this change will principally be connection applicants and consumers, as efficiency improvements in processing connections will ultimately result in better services and lower costs. Importantly, no particular industry sector or market participant will be disadvantaged by the proposed Rule change.

4. Draft of the Rule change proposal

Grid Australia's draft Rule change is attached to this letter in accordance with the AEMC's publication titled Guidelines for proponents: Preparing a Rule change proposal, dated January 2008.

5. Explanation of how the proposed Rule addresses the issues raised

The proposed Rule change removes the current drafting anomaly under which exclusions to the confidentiality provisions in clause 8.6.2 are not cross-referenced in clause 5.3.8. The proposed amendments to clause 5.3.8(a)(2) and 5.3.8(d) ensure that the commercially standard and non-controversial exclusions that are set out in clause 8.6.2 also apply in relation to connection enquires and applications. These relatively minor amendments to clause 5.3.8 will greatly assist

NSPs in providing necessary information to third parties to progress connection enquiries and applications more efficiently.

A new clause 5.3.8(c1) is proposed to enable network service providers to publish or disclose information regarding the size, location and proposed completion date of a network connection. The amendment would only allow this basic connection information to be disclosed if a fully compliant *application to connect* has been received by the network service provider. Furthermore, both the connection applicant and prospective applicants could potentially benefit if more efficient connection solutions are obtained as a result of this information disclosure.

6. Expected benefits and costs of the proposed change

The effects of the proposed Rule change are:

- to ensure that connection enquiries and applications are processed efficiently; and
- to clarify the current confidentiality provisions, which are unintentionally highly restrictive.

Therefore, Grid Australia considers that the expected benefits of the proposed Rule change are significant, while there are no material increases in costs arising from the implementation of the proposed Rule.

For the reasons set out in this proposal, Grid Australia strongly commends the proposed Rule change to the AEMC and to stakeholders.

Grid Australia looks forward to further opportunities to engage with the AEMC and stakeholders in the finalisation of this Rule change proposal. As noted above, Grid Australia's draft proposed Rule change is attached to this letter. If you require any further information, please do not hesitate to contact me on 08 8404 7983.

Yours sincerely,



Rainer Korte
Chairman
Grid Australia Regulatory Managers Group

RULE CHANGE PROPOSAL

Grid Australia's draft Rule change proposal is set out below:

5.3.8 Provision and use of information

- (a) The data and information provided under this rule 5.3 is *confidential information* and must:
- (1) be prepared, given and used in good faith; and
 - (2) not be disclosed or made available by the recipient to a third party except as set out in clause 3.13.3, [clause 8.6.2](#) or this clause 5.3.8.
- (b) The data and information to be provided under this rule 5.3 may be shared between a *Network Service Provider* and *NEMMCO* for the purpose of enabling:
- (1) the *Network Service Provider* to advise *NEMMCO* of *ancillary services* or similar services described in clause 3.11.3(j); and
 - (2) either party to:
 - (i) assess the effect of a proposed *facility* or proposed alteration to *generating plant* (as the case may be) on:
 - (A) the performance of the *power system*; or
 - (B) another proposed *facility* or another proposed alteration;
 - (ii) assess proposed *negotiated access standards*; or
 - (iii) determine the extent of any required *augmentation* or *extension*.
- (c) A *Network Service Provider* may disclose the data and information to be provided under this rule 5.3 to another *Network Service Provider* if the *Network Service Provider* considers the information or data is materially relevant to that provider for *connection*.
- [\(c1\) A *Network Service Provider* may publish or disclose information regarding the size, location, completion date, primary technology \(e.g. gas turbine, coal fired, wind generator\) and broad function \(e.g. base load generator, peaking generator or load\) of a *network connection*, providing that an *application to connect* in relation to that *network connection* has been received by the *Network Service Provider* in accordance with clause 5.3.4 and clause 5.3.4A.](#)
- (d) A person intending to disclose information under paragraphs (b) and (c) must first advise the relevant *Connection Applicant* of the extent of the disclosure, [unless the information may be disclosed by virtue of clause 8.6.2](#).
- (e) If a *Connection Applicant* or *Network Service Provider* becomes aware of any material change to any information contained in or relevant to an *application to connect*, it must promptly notify the other party in writing of that change.
- (f) A *Registered Participant* must, within 5 *business days* of becoming aware that any information provided to *NEMMCO* in relation to a *performance standard* or other information of a kind required to be provided to *NEMMCO* under clause 5.3.7 is incorrect, advise *NEMMCO* of the correct information.