



Government
of South Australia

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Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box A2449
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Dear Dr Tamblyn

I am writing to request that the Australian Energy Market Commission (AEMC) make a jurisdictional derogation under section 91(3) of the National Electricity Law (NEL) to extend the operation of Chapter 3 of the South Australian Electricity Distribution Code (EDC).

This proposal should be considered as non-controversial for the purposes of section 96(1)(b) of the National Electricity Law as the derogation would be in respect of South Australia only.

Clause 9.28.2 of the National Electricity Rules (NER) is a South Australian jurisdictional derogation relating to the regulation of distribution network connections. This prescribes that the Essential Services Commission of South Australia (ESCOSA) is responsible for the regulation of distribution network connections in South Australia. Electricity distribution network connections are regulated through the EDC as issued by ESCOSA. This clause expires on 1 July 2010.

The proposed derogation seeks to extend the derogation from 1 July 2010 to 30 June 2015. The derogation involves the Australian Energy Regulator's (AER) regulation regarding connection charges requiring electricity distribution network extension, modification or augmentation in South Australia. The AER will be required to retain and administer Chapter 3 of the EDC and its accompanying ESCOSA Guideline 13 in order to regulate this regime.

The proposed derogation seeks extending the derogation to 30 June 2015 or until rules are introduced following the introduction of the National Energy Customer Framework.

A description of the proposed derogation, a statement of the issues relating to the existing NER, and a discussion as to how the proposed Rule addresses those issues consistent with the National Electricity Objective is provided in Attachment A. A draft of the proposed Rule is also provided in Attachment B.

In accordance with section 91(3) of the NEL I have consulted with Ministers of the other participating jurisdictions before forwarding this request to you.

Should you have any further enquiries regarding this proposal please contact Mr Vince Duffy, Director Markets and Sustainability, Energy Division of the Department for Transport, Energy and Infrastructure on telephone 8204 1724.

Thank you for your consideration of this request.

Yours sincerely



Paul Holloway
Acting Minister for Energy

Date: 8 / 1 / 2010

ATTACHMENT A

**RULE CHANGE REQUEST TO THE AUSTRALIAN ENERGY
MARKET COMMISSION TO ENABLE THE AUSTRALIAN
ENERGY REGULATOR TO REGULATE THE CHARGING
REGIME FOR CONNECTIONS REQUIRING NETWORK
EXTENSION, MODIFICATION OR AUGMENTATION**

SUBMITTED BY THE SOUTH AUSTRALIAN MINISTER FOR ENERGY

January 2010

1. Name and address of person making the request

This request is made under section 91(3) of the National Electricity Law (NEL) by:

The Hon Patrick Conlon MP
South Australian Minister for Energy
Level 12 Roma Mitchell House
136 North Terrace
ADELAIDE SA 5000

2. Description of Proposed Rule Change

The existing Clause 9.28.2 of the National Electricity Rules (NER) is a South Australian jurisdictional derogation relating to the regulation of distribution network connections. This prescribes that the South Australian jurisdictional regulator, the Essential Services Commission of South Australia (ESCOSA), is responsible for the regulation of distribution network connections in South Australia.

This clause expires on 1 July 2010, as stated in 9.28.2(d), removing from the NER ESCOSA's responsibility for the regulation of distribution network connections. As part of the national governance framework, and following changes to the National Electricity Law (NEL) and NER, economic regulation of electricity distribution networks in South Australia was transferred to the Australian Energy Regulator (AER) from January 2008. Furthermore ESCOSA's role as South Australia's jurisdictional regulator for the purposes of the NER ceased, and the AER will now make the revenue/price determination for ETSA Utilities' 2010-2015 regulatory period and subsequent periods.

If this proposed rule change is not implemented, the AER would regulate distribution connections in accordance with provisions contained in the NER, in particular chapters 5 and 6. As discussed below, the NER lacks a number of significant regulatory requirements that are contained in the EDC.

The proposed derogation seeks extending the derogation for the 1 July 2010 – 30 June 2015 regulatory period, and constraining to the matters involving the regulation of the charging regime for connections requiring network extension, modification or augmentation to the electricity distribution network in South Australia, by the AER, through specific provisions of Chapter 3 of the EDC.

Those specific provisions are set out in sections 3.3.5 to 3.11 of the Chapter 3 of the EDC.

Any minor costs to the AER in seeking for them to administer the above provisions is substantially outweighed by the benefits to South Australian consumers by enabling the current protections for electricity consumers in South Australia to continue until a national connections framework is implemented through the Ministerial Council on Energy's (MCE) National Energy Customer Framework (NECF).

The derogation will extend until 2015 or until rules are introduced following the introduction of the NECF.

3. Statement of Issues Addressed By Proposed Rule Change

The issue being addressed by this proposed rule change relates to the expiration of clause 9.28.2 on 1 July 2010. Following this date the responsibility for regulation of distribution network connections in South Australia will transfer to the AER, which would be required to regulate distribution connections in accordance with provisions contained in the NER, in particular Chapter 5 (and Chapter 6).

It was initially intended that the expiration of clause 9.28.2 would coincide with the commencement of ETSA Utilities next regulatory period, 2010 – 2015, and that rules developed from the NECF would have been introduced, allowing ETSA Utilities to incorporate the new network connection national obligations into their regulatory proposal.

The MCE is currently developing the NECF that will include a national framework for electricity distribution network connection and electricity distribution capital contribution arrangements.

As the NECF will not be introduced by 30 June 2010, the proposed rule change does not seek to impose the South Australian derogation indefinitely, but extend it, in order to meet its original purpose of ensuring customers continue to benefit from the provisions contained in the EDC, until similar such provisions are introduced by way of the NECF.

Specifically, in regards to connection service charges and capital contributions regarding new or modifying existing connections requiring network extension and/or augmentation to a distribution network, the current provisions within the NER lack a number of the mechanisms contained in EDC to protect the interest of consumers and facilitate their connections to distribution networks.

The South Australian jurisdictional arrangements in Chapter 3 of the EDC contain specific provisions for calculating a customer's contributions for establishing new or modifying existing connections that require augmentations or extensions.

The specific provisions set out in sections 3.3.5 to 3.11 from Chapter 3 of the EDC are an important revenue component of ETSA Utilities regulatory distribution Determination for the period 2010 – 2015 and provides certainty for businesses and customers wishing to connect to the electricity distribution network.

Notwithstanding anything contrary in the NER or the regulatory framework being part of the distribution Determination, ETSA Utilities Negotiating Framework will contain the process and timeframes that will apply in relation to connection services. These arrangements are modelled on similar provisions contained in sections 2 and 3.1 to 3.3.4 (except section 3.2 Planning and Reporting – which is not relevant to this derogation) of the EDC and will be approved through the regulatory Determination by the AER.

Importantly, the specific provisions (sections 3.3.5 to 3.11) in Chapter 3 of the EDC provide that ETSA Utilities is allowed to charge for such connections provided that the offer is based on the most efficient and technically feasible solution. Additionally it states that a customer in such a situation may issue a call for tenders for the design and construction of the new assets and provides various requirements on

ETSA Utilities to expedite this process. The formulae used for calculating the capital contribution payment utilises a standard unit augmentation charge 'f' (in \$ per kVA), in which its value is to be escalated by the AER each year, by the March all cities CPI index.

4. How Approved Rule Change Contributes to the Achievement of the National Electricity Objective

The National Electricity Objective states:

The objective of this Law 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 regulatory requirements currently imposed on electricity distribution network operators in South Australia through the EDC, promote efficient investment in relation to distribution network connections as well as promoting the long term interest of consumers. This is achieved through a number of requirements for connection to and supply from the electricity 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 derogation for South Australia will ensure that the long term interests of South Australian consumers of electricity continue to be served through jurisdictional regulation, until such time as similar provisions for regulation of distribution network connections are introduced into the NER.

5. Expected Benefits and Costs from Proposed Rule Change

The proposed rule change will ensure that the current requirements to protect consumers and streamline the distribution network connection process, remain in place in South Australia until such time as similar provisions are incorporated into the NER, following completion of the NECF.

Any minor costs to the AER in seeking for them to administer the specific provisions of Chapter 3 of the EDC is substantially outweighed by the benefits to South Australian consumers by enabling the current protections for electricity consumers in South Australia to continue until rules for a national connections framework are introduced following the introduction of the National Energy Customer Framework.

6. Jurisdictional derogations

Section 89 of the NEL provides that, in making a jurisdictional derogation, the Australian Energy Market Commission (AEMC) must have regard to whether:

- (a) the derogation provides for the orderly transfer of the regulation of the electricity industry under jurisdictional legislation to regulation under the national electricity legislation;*
- (b) the derogation continues existing regulatory arrangements in a participating jurisdiction and the Minister of the relevant jurisdiction has notified the AEMC in writing that he or she considers it necessary and appropriate that the existing regulatory arrangements continue; or*

(c) the derogation is necessary to exempt, on an ongoing basis, generating, transmission or distribution systems or facilities from complying with technical standards in the Rules because those systems or facilities, by reason of their design or construction, are unable to comply with those standards.

The proposed derogation is consistent with the concepts described in paragraph (b) of section 89. As discussed above, the proposed derogation seeks to extend the derogation for the 1 July 2010 – 30 June 2015 regulatory period, or until rules are introduced following the introduction of the National Energy Customer Framework.

7. Expiry Date

In accordance with section 92(3) of the NEL, the proposed derogation should expire on 30 June 2015.

8. Proposed Rule Change should be treated as Non-controversial by the AEMC

The current South Australian derogation will expire before the introduction of changes relating to the NECF, which means that the benefits and protections provided to South Australian consumers through the derogation will be removed.

The proposed rule change seeks to ensure that the benefits afforded by the EDC are maintained until the NECF is agreed to and associated rules introduced. This rule change is consistent with the intent of the original clause for the South Australian derogation, and merely ensures that the changing of circumstances not envisaged when the initial rules were established do not disadvantage South Australian consumers.

For these reasons this rule change proposal should be considered as non-controversial for the purposes of section 96(1)(b) of the NEL.

9. Proposed Rule Change

The proposed amendment is provided in Attachment 1.

Proposed Rule Change

9.28.2 Regulation of charging regime for connections requiring network extension, modification or augmentation ~~Distribution Network Connection~~

(a) Notwithstanding anything to the contrary in the *Rules* or the regulatory framework forming part of the distribution determination applying to ETSA Utilities for the regulatory period 2010-11 to 2014-15, including the Negotiating Framework and the Negotiated Distribution Service Criteria (**NDSC**), the regulation of the charging for access, ~~the Jurisdictional Regulator appointed for South Australia is responsible for the regulation of access~~ in respect of any *distribution network* situated in South Australia concerning:

- i) *connection*;
- (ii) modification of a *connection*;
- (iii) *augmentation*.;
- ~~(iv) provision of *network services* and *distribution use of system services*;~~
- ~~(v) modification of the provision of *network services* and *distribution use of system services*.~~

is to be determined by the AER in accordance with the regime set out in sections 3.3.5 to 3.11 of Chapter 3 "Chapter 3 "Connections Requiring Network Extension and/or Augmentation" of the Electricity Distribution Code (**Chapter 3 of the Code**) and the relevant accompanying sections of the Electricity Guideline No.13 "Application of Chapter 3 of the Electricity Distribution Code" (**the Guideline**) issued by the Essential Services Commission of South Australia (**ESCOSA**). The AER is to retain and administer the relevant sections from these two ESCOSA documents, the versions dated 1 January 2007 and 1 July 2005 respectively.

~~(b) For the purpose of clause 5.3.6(c), any question as to the fairness and reasonableness of an offer to *connect* in relation to a *distribution network* situated in South Australia is to be decided by the *Jurisdictional Regulator* on the basis of the opinion of the *Jurisdictional Regulator* as to the fairness and reasonableness of the offer.~~

(b) For the purposes of this clause 9.28.2, where there are specific references to the "Commission" in Chapter 3 of the Code or the Guideline they are to be read as being references to the AER.

(c) If:

~~(1) a dispute arises between or involving two or more *Registered Participants* in respect of:~~

~~(i) access to;~~

~~(ii) *connection* to;~~

~~(iii) use of; or~~

~~(iv) *distribution network service* pricing for,~~

~~a *distribution network* situated in South Australia; and~~

~~(2) the dispute is not resolved by agreement of the parties in dispute within 5 business days (or such other period as the parties agree to be an acceptable period) after the dispute first arose, then the matter in dispute must be referred by the parties in dispute to the Jurisdictional Regulator to act as the Adviser. If the Jurisdictional Regulator thinks it appropriate, it may also act as the dispute resolution panel under the dispute resolution procedures set out in Chapter 8, provided that, if the Jurisdictional Regulator elects to act as both the Adviser and the dispute resolution panel, it must make such arrangements as are necessary to ensure that, in carrying out its functions as the dispute resolution panel, no party may be adversely affected by the Jurisdictional Regulator having previously acted as the Adviser. If the Jurisdictional Regulator is unable or unwilling to make such arrangements, then it must appoint a dispute resolution panel in accordance with the Adviser's functions in Chapter 8.~~

(c) For the purposes of clause 3.6.4.1 of Chapter 3 of the Code and clause 2.7 of the Guideline, the AER is to escalate the value of 'f' each year, by the March all cities CPI index. As of 1 July 2009 the value of 'f' was \$135 per kVA.

(d) This clause expires on 1 July 2015.