

12 June 2014



Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Ref: ERC0158

Consultation Paper - National Electricity Amendment (Connecting Embedded Generators under Chapter 5A) Rule 2014

Dear Mr Pierce,

Thank you for the opportunity for the Energy Networks Association (ENA) to provide feedback on the Australian Energy Market Commission (AEMC) consultation paper regarding amendments to Chapter 5A of the National Electricity Rules (NER) as proposed by the Clean Energy Council (CEC).

By way of background, the Energy Networks Association (ENA) is the national industry association representing the businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia. ENA members own assets valued at over \$100 billion in energy network infrastructure.

ENA recognises the significant role that embedded generation will play in the future of Australia's energy mix and the need to manage the integration of embedded generation into networks in a transparent, fair and cost-reflective manner. ENA members also understand that project proponents, especially those without experience in the energy sector, can be frustrated by what they see as complicated connection processes. ENA supports, in principle, proposals that could assist to clarify requirements or improve communication between networks and proponents. However, it should be recognised that Chapter 5A has only been in effect for a limited time and we question whether there is any evidence that these very recent set of new rules and procedures are not working to achieve the National Energy Objectives in their current form. Furthermore, ENA has several significant concerns with the proposed rule changes by the CEC, that have the potential to further complicate the process and create unnecessary compliance and cost burdens for network businesses and customers.

The rule changes proposed by the CEC appear to seek to establish a new negotiated connection framework within Chapter 5A as opposed to providing an opportunity to use the rules developed under the Chapter 5 approved on 17 April 2014. However, it should be noted that each connection point in the network is unique, thus it is likely that the majority of non-basic connections will be negotiated connections. Whether a proposed new connection is 1 MW or 20 MW, in a constrained part of the network a rigorous assessment process for the connection will require reasonable time to undertake the technical analysis required given the high potential to impact on other network users. On this basis, ENA generally considers that the process under Chapter 5A should reflect the processes under Chapter 5 of the NER to support general alignment with the processes for embedded generator connections between 30kW and 30MW.

The ENA suggests that the proposed rule change reflects a list of aspirations for the proponent's cause rather than a carefully balanced set of regulatory arrangements directed towards the achievement of the National Electricity Objective (NEO). Sections of the drafting lack clarity or undermine the structure of the

current regulatory framework where obligations are placed on parties that are subject to enforcement processes, whilst in other areas the framework was hard to follow and did not correspond with the structure of the Chapter.

Key Considerations

1. Structure and timing of the negotiated connected process

ENA has specific concerns around the consequences of the proposed rule change on the structure and timeframes of the negotiated connection process. Specifically, ENA is concerned that:

- a) the proposal that the connection application is deemed to have been accepted if the DNSP does not respond within 65 business days; and
- b) the proposal that the DNSP provides an embedded generator connection applicant with access to their legal personnel.

Timeframes for response by DNSPs

ENA does not support in its current form the proposal by the CEC that the connection application by the embedded generator proponent is deemed to have been accepted if the DNSP does not acknowledge or accept/reject the proposal within the stipulated timeframe in the CEC proposal. Such a rule creates the potential for operational hazards, where connection approval is deemed implicit rather than explicit, with consequences for the legal responsibilities of parties under the current regulatory framework. Network studies and analyses, consultation with other impacted DNSPs and customers, or other issues may be required to be investigated by the DNSP which could take significantly longer period than that suggested by CEC. The connection assessment process plays an essential role in ensuring the safety, quality and reliability of the electricity network to other users and the proposed timeframes will not be universally appropriate to allow necessary studies or investigations. Smaller installations may still feature their own complexities, necessitating timeframes which reflect those in Chapter 5 of the NER. ENA considers that timeframes should be negotiated and be able to be extended with the agreement of both parties.

Legal personnel access

It is inappropriate and impractical that DNSPs should be required to provide access to legal personnel for the purposes of negotiation regarding the terms and conditions of an offer. The legal advisers of the DNSP's can not assist or advise the connection applicant as there would be a unmanageable conflict of interest, as a DNSP lawyer would owe its duties to the DNSP as the client. In these situations it is difficult to see the reasonable benefits of this proposal.

This would not only be impractical due to the position of conflict facing the legal counsel but may also constrain the ability of DNSPs to retain access to legal advisers as they see fit. The NER is not the appropriate instrument for this issue to be regulated.

2. Information requirements

ENA considers that Chapter 5A provides considerable guidance regarding the connection process. The DNSP must publish connection process information on its website and ensure connection offers are made within stipulated timeframes. ENA member's experience indicates that delays generally arise when the distribution business is not provided with sufficient information to assess an application and make a complete offer.

In the consultation paper, it is proposed that DNSPs would be obliged to provide a register of generating plant. Given the constant evolution of technology, with new products coming to market or updated versions of existing plant, any published register would need constant monitoring and updating to ensure accuracy and unbiased treatment of proponents.

If the AEMC is contemplating requiring DNSPs to ensure a similar provision to the current requirements in Chapter 5 for information for negotiated connections under Chapter 5A, then it would be beneficial for the timeframe requirements be reduced given the rate of technical advancement and obsolescence in the industry and to reduce the burden of maintaining such a list, by only providing a register for connections greater than 1MW.

Any published register of plant would need to be heavily qualified to take into account the location specific and technical considerations that need to be given to each embedded generation connection which could limit some of the benefits of the register. ENA considers that the effort and costs required to develop and maintain such a register, would heavily outweigh any potential benefits for connection applicants.

Finally, ENA observes that the CEC is seeking all information exchanged between the embedded generation proponent and the DNSP, as part of the negotiation process to be treated as confidential information for the purposes of the NER. If the AEMC is considering requiring the DNSPs to provide a register of generating plant, then it would be important for the AEMC to set out which issues it considers are not confidential following a connection. It may not therefore be practical to publish such a register.

3. Power transfer capability of the network

The CEC suggests the current provisions relating to a DNSP's responsibility to provide connection applicants with relevant, timely and accurate power transfer capability information are ineffective and provide unnecessary risk due to lack of information or unanticipated changes to the level of energy they may export to the network.

ENA does not support the position of the CEC. Currently DNSPs provide solutions which incorporate the full range of power transfer capability to the network, subject to negotiation. DNSPs currently provide the detailed technical requirements of power transfer capability for small, medium and parallel embedded generators on their websites (refer to Customer Standard for Small to Medium Scale Embedded Generation and Customer Standard for Parallel Embedded Generation via Inverters).

For example, Energex's response to embedded generation applications provides solutions which incorporate the full range of power transfer capability to the network. Further, final connection agreements contain detailed schedules for generating system specifications and technical requirements which encompass power transfer capability.

The level of power transfer capabilities should be an issue that is subject to negotiation, as there are genuine reasons why DNSPs may not be able to accommodate the commercial objectives of the embedded generator proponent. DNSPs must be given the opportunity to evaluate the appropriateness of the proposed connection in terms of the threats to the supply of services to other network users and the risks to the safety, security and reliability of the network. The current regulatory framework already provides guidance for the negotiation which facilitates options and choice to the proponent while meeting network operational requirements and principles of cost-reflectivity.

4. Fees and charges

ENA does not support the CEC's proposal to prevent DNSPs from charging a fee to cover the cost for the provision of information, the negotiation and capital expenditure costs. By precluding reasonable cost recovery, the consequence of the rule change would effectively be a cost transfer from connection proponents to other networks users, thereby increasing their costs.

Negotiation Application Charges

Even though a DNSP is required to maintain and supply standard technical connection information, it should be acknowledged that this information may often require significant alteration when being applied to individual negotiated connection applications. These changes can be resource intensive and are largely dependent on the level of technical complexity of the application. Therefore, ENA suggests it is reasonable to be able to charge the user of the service for the service.

Additionally, ENA does not support the CEC's proposal to prevent a DNSP from charging a fee to cover the costs of negotiation and processing a negotiated connection application until the applicant has been advised by the DNSP that the relevant application is complete.

ENA would support a reasonable application charge being incurred by the applicant relative to the complexity of the proposal to augment the existing distribution network for their embedded generation needs. It should be noted that the more complex the engineering requirements behind a proposal, the greater the impact on network resources required to assist an applicant to complete a connection application.

Forecast Load Growth

It is noted that the CEC is proposing to amend NER clause 5A.E.1(c)(4) to exempt embedded generator connection applicants from being charged costs for forecast load growth. ENA does not support altering this clause. If the connection applicant has an issue about paying for forecast load growth then the DNSP and connection applicant are able to negotiate a contract for the current load requirements. In these instances, the connection applicant carries the risk if the current load requirements agreed to prove inadequate in the future, in which case the generator would need to re-negotiate the terms of connection. We suggest that this would not be an efficient outcome for the majority of connection applicants, and in reality, it is in the interest of both the DNSP and connection applicant to accommodate load growth to avoid a situation where the embedded generator would be curtailed due to load constraints and potential impacts to other customers. We consider that the current arrangement represents the most suitable mechanism to offset the risks to the existing customers while minimising the administrative burden.

Capital Expenditure Charge

During the Chapter 5 rule change process, the AEMC determined that embedded generators should not be exempt from paying for augmentation to the shared network. ENA supports that the AEMC be consistent in applying that position to the Chapter 5A rule change request.

ENA supports the CEC's proposal to limit connection costs that DNSPs can charge Embedded Generators connection proponents based on the information initially provided by the DNSP. However, it should be noted that although quotations should be firm, variations may be agreed between the DNSP and applicant as a project progresses.

5. Embedded generator liability to a DNSP

ENA does not support the CEC's proposal to amend Part B of Schedule 5.1 of Chapter 5A to include limitations on the embedded generators liability to the DNSPs network. ENA supports that the liability of an embedded generator to a DNSP should remain a commercial matter to be negotiated between the parties, rather than prescribed in the NER.

This is principally because the proposed rule does not account for the costs that will arise if DNSPs are obliged to carry some risk. If the proposed change to liability did proceed, this risk will require to be managed, through self or third party insurance or other means, increasing network costs. These increased network costs would eventually be borne by all network customers, the majority of which will not obtain any benefit from the embedded generator's connection to the network. It is unreasonable to expect the DNSP and its other customers to cover repair costs to the shared network resulting from damage caused by the action or inaction of the Embedded Generator. Such an outcome does not provide appropriate incentives to the connecting generator.

There is no assessment or support for the proposal included in the CEC submission which demonstrates that the NEO will be enhanced by the suggested rule change. It may be that in a specific negotiation for a proposed connection, with proper analysis, it is appropriate for the embedded generator's liability to be limited. However, prescribed regulation to that end is not justified.

6. Dispute resolution

ENA considers that progressing dispute resolution through the existing mechanisms under Chapter 5A appears to be sufficient to facilitate the resolution of a wide range of disputes that may arise between a DNSP and a connection applicant. ENA members question the value of the new proposed amendments under Part G of Chapter 5A.

ENA suggest that any changes to the Chapter 5A dispute resolution process should be consistent with Chapter 5 by using Chapter 8 of the NER.

Submission Questions

ENA would welcome the opportunity to consult further with the AEMC in relation to this submission regarding the drafting amendments to Chapter 5A.

If you have any questions or wish to discuss this matter further, please contact Stuart Johnston on 02 6272 1513.

Yours sincerely,



John Bradley
Chief Executive Officer