

2 October 2009

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

Via website: www.aemc.gov.au

Dear John,

Draft Rule determination: Confidentiality provisions for network connections

1. Introduction and background

Grid Australia welcomes the opportunity to make a written submission in relation to the Commission's draft Rule determination on the confidentiality provisions for network connections.

As you are aware, on 1 April 2009 Grid Australia¹ proposed a Rule change to clause 5.3.8 which currently imposes particular confidentiality provisions on network service providers (NSPs) in relation 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.

The existing clause 5.3.8 has the effect of severely limiting NSPs' release of information relating to connections. In particular, Grid Australia explained that:

- 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.

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

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

At a time when NSPs are seen as key facilitators in delivering more efficient energy solutions in the context of Government-led climate change initiatives, Grid Australia is concerned that the current restrictions on the release of connection information are outdated and contrary to the National Electricity Objective. For that reason, Grid Australia proposed:

- amendments to clause 5.3.8(a)(2) and 5.3.8(d) to ensure that the standard and non-controversial exclusions that are set out in clause 8.6.2 also apply in relation to connection enquiries and applications. Grid Australia argued that these relatively minor amendments to clause 5.3.8 would greatly assist NSPs in providing necessary information to third parties to progress connection enquiries and applications more efficiently; and
- a new clause 5.3.8(c1) to enable NSPs to publish or disclose information regarding the size, location and proposed completion date of a network connection. To address potential confidentiality concerns, the proposed amendment only provided for this basic connection information to be disclosed after a fully compliant application to connect has been received by the NSP.

2. The AEMC's draft determination

In its draft Rule determination, the Commission concludes on page 7 that:

- It has adopted Grid Australia's Rule change proposal to provide an explicit cross-reference 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.
- The Commission has adopted the intent of part of Grid Australia's Rule change proposal such that clauses 5.3.8(a)(2) and 5.3.8(d) will include an explicit cross-reference to rule 8.6.

The AEMC, however, also stated on page 8 of its draft Rule determination that it 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. The AEMC explained its reasoning as follows:

"This is because a NSP may already publish this information by virtue of certain confidentiality exceptions under clause 8.6.2 of the Rules and given the high likelihood that connection information will be public prior to a connection agreement. Therefore, it is unnecessary to include an additional clause allowing the disclosure of basic generator information."

The AEMC expanded its reasoning on page 11 of the draft Rule determination as follows:

"The Commission considers that the relevant basic information is already published and available for prospective generators in both AEMO's Statement of Opportunities (SOO) and NSP's Annual Planning Reports. The information is published in the context of AEMO and NSP's compliance with more general obligations to publish generating 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) with respect to AEMO. And planning proposals for

future connection points in respect of NSPs under clause 5.6.2A(b)(2). 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 these annual reports. For this reason, we consider that imposing a regulatory obligation is unlikely to promote the efficient operation and 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. Therefore, we do not consider a mandatory obligation to publish basic generator information is likely to contribute to the achievement of the NEO.”

To summarise, the Commission’s draft Rule determination essentially accepts Grid Australia’s proposed Rule change, with the exception of the proposed new clause (c1), which the AEMC has rejected for the reasons outlined above.

3. Grid Australia’s comments on the draft Rule determination

Grid Australia 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. As explained in Grid Australia’s Rule change proposal, this amendment will remove an anomaly in the existing Rules which currently prevents NSPs from disclosing information relating to connection applications, even if this information is not commercially sensitive. Grid Australia notes that all submissions received by the Commission supported the proposed amendments.

Grid Australia notes that the Commission has decided not to adopt the additional clause 5.3.8(c1), which 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. As noted in section 2 above, in deciding against the adoption of the new provision, the Commission determined that:

- the new clause is unnecessary because NSPs may already publish this information by virtue of certain confidentiality exceptions under clause 8.6.2 of the Rules;
- the relevant basic information is already published and available for prospective generators in both AEMO’s Statement of Opportunities (SOO) and NSPs’ Annual Planning Reports; and
- as the basic generator information of the type proposed by Grid Australia in its Rule change proposal is already published in both these annual reports, imposing a regulatory obligation is unlikely to promote the achievement of the National Electricity Objective.

Notwithstanding the Commission’s findings, Grid Australia notes that the AER strongly supported the inclusion of the proposed clause 5.3.8(c1). The draft Rule determination correctly observed that³:

“The Australian Energy Regulator (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’. The AER also

³ AEMC, draft Rule determination, Confidentiality Provisions for Network Connections, pages 14 and 15.

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’. 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’.”

While Grid Australia accepts the AEMC’s draft decision that the publication of connection application information should not be mandated by the Rules, Grid Australia concurs with the AER’s view that NSPs have an important role to play in providing timely and accurate information to electricity market participants. In particular, there is an increasing focus on the role of NSPs in facilitating timely and efficient generation connections, especially in relation to renewable generation. It is in this broader policy context that Grid Australia sought further relaxation of the existing confidentiality provisions by proposing clause 5.3.8(c1) to provide TNSPs with the clear right to disclose such information.

Grid Australia acknowledges the views expressed by the NGF and the Clean Energy Council that “connecting parties are best placed to determine the commercial sensitivity of information”.⁴ However, Grid Australia members also have a broader responsibility to ensure that network planning and investment is efficient. Grid Australia considers that it 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 National Electricity Objective. In contrast to the views expressed by the NGF and the Clean Energy Council, Grid Australia agrees with the AER’s view that timely information provision has the potential to improve market outcomes.

Grid Australia also notes the Commission’s comments that the type of information referred to in the proposed clause 5.3.8(c1) is already published in the SOO and the APRs. In practice, Grid Australia members have observed that the type and level of information proposed to be released under clause 5.3.8(c1) is not consistently released in public documents such as the APR and SOO, due to the confidentiality restrictions under the Rules. The purpose of clause 5.3.8(c1) is to modify the coverage of the existing confidentiality provisions in the Rules to enable consistent disclosure of basic connection information for planning purposes. It would be useful to clarify this point in the Commission’s final Rule determination.

Grid Australia also observes that the concept of Network Extensions for Remote Generation (NERG) put forward in the Commission’s Review of Energy Market Frameworks in Light of Climate Change Policies will require a greater level of disclosure of connection information to facilitate timely and effective coordination of new generator connections to the network. In this regard the AEMC should consider the establishment of a provision, similar to Grid Australia’s proposed 5.3.8 (c1) within the NERG framework if this framework is to function as intended.

4. Concluding comments

Grid Australia welcomes the Commission’s acceptance that clause 5.3.8 should include a cross-reference the provisions in clause 8.6.2. This Rule change will address an important anomaly in the existing Rules.

Grid Australia notes that the Commission has not accepted the proposed clause 5.3.8(c1). In light of the AER’s comments (noted in section 3 above), Grid Australia remains of the view that

⁴ The NGF and Clean Energy Council submission, dated 19 June 2009, page 2.

the timely publication of accurate information to market participants is important in facilitating efficient market outcomes. This requirement may need further attention to ensure that the AEMC's proposed Network Extensions for Remote Generation framework functions as intended.

Grid Australia would welcome further consideration of whether the information that is referred to in clause 5.3.8(c1) can be published on a more consistent basis in the APRs. Grid Australia looks forward to further opportunities to engage with the Commission and stakeholders in the finalisation of this Rule change. In the meantime, 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