

5 November 2020

Ms Merryn York
Acting Chair
Australian Energy Market Commission
Level 15
60 Castlereagh Street
Sydney 2000

Lodged on-line: www.aemc.gov.au

Dear Merryn

Consultation Paper – Prudent Discounts in an Adoptive Jurisdiction (ERC0317)

AusNet Services is pleased to have the opportunity to make a submission in response to the Commission's consultation paper on this rule change request.

The proposal focuses only on the TNSP processes for considering a customer application for a prudent discount of transmission changes in Victoria. Victoria is the only jurisdiction to have adopted the adoptive jurisdiction provisions (i.e. the provisions authorising AEMO to exercise the declared network functions in relation to the Declared Transmission System). Consequently, the TNSP functions are divided between the provider of shared network services in Victoria (AEMO) and the network operators (DTSOs, including AusNet Services). The prudent discounting process as modified in an adoptive jurisdiction seeks to maintain the obligations and rights applicable to AEMO and the DTSOs such that, collectively, they are equivalent to the obligations applicable to the single TNSPs in the other NEM jurisdictions.

With shared TNSP accountabilities there is necessarily a high level of interdependency between AEMO and AusNet Services, the majority network operator in Victoria, to fulfil the totality of the jurisdictional TNSP functions. There is significant collaboration between AEMO and AusNet Services in the regular provision of transmission services, for example, in the conduct of joint planning. In relation to the consideration and negotiation of prudent discount applications, AusNet Services supports the voluntary creation of guidelines that describe the procedure and expectations of interaction between AEMO and a DTSO in response to a request for a prudent discount. This would benefit the process itself, including by ensuring information required to make and consider the application is available to the relevant party, and to provide greater transparency and confidence to the applicant.

The amendments proposed by the rule change request would be unnecessary if guidelines are produced and, in any event, are unlikely to improve the clarity of the process. The proposals are instead likely to increase complexity and weaken accountabilities in the Victorian arrangements. On balance, we conclude that an alternative process improvement, in the nature of the guidelines described in the preceding paragraph, would better advance the process and better align with the existing division of responsibilities established in the National Electricity Law and Rules for adoptive jurisdictions.

Our detailed response to the Commission's consultation paper is attached. We would be pleased to respond to any queries arising in your review. Please contact me on adrian.hill@ausnetservices.com.au if we can provide further assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adrian Hill', with a stylized, cursive script.

Adrian Hill
General Manager External Affairs

**Prudent Discounts in an Adoptive Jurisdiction (ERC0317)
AusNet Services Detailed Response to Consultation Paper**

This attachment expands on our letter.

Qn N°	Question	Response
1	ISSUES RAISED IN THE RULE CHANGE REQUEST	
1.1	What are stakeholders' views on the issues raised by the proponent?	<p>AusNet Services supports amendments to the Rules where the changes improve the effectiveness and efficiency of the operation of the market and, more generally, the achievement of the National Electricity Objective. However, in the case of this rule change proposal, we are concerned there is a misalignment between the issue sought to be addressed and the solution proposed in response.</p> <p>In all jurisdictions, the TNSP that plans and procures asset services for the efficient level of network services, and sets network usage prices, is the party responsible for negotiating a prudent discount with an applicant. This is the correct assignment of the accountability.</p> <p>In an adoptive jurisdiction, i.e. Victoria, the Law and the Rules make AEMO accountable for these functions. However, there is considerable interdependency between AEMO and DTSOs to fulfil the full TNSP function, and in relation to the negotiation of prudent discounting, it is feasible that information held by the DTSO may facilitate the negotiation. We acknowledge that an applicant negotiating with AEMO may believe the involvement of a third party retards their access to necessary information, although given the collaborative working relationships that exist between AEMO and AusNet Services we believe this can only be a perception.</p> <p>It is not clear to AusNet Services how drawing DTSOs into the negotiations between AEMO and a transmission user seeking a prudent discount will improve the process in Victoria. In our view, there are more effective ways to improve its operation in Victoria, which we outline in our response to Question 2.4.</p>
	To what extent are outcomes under the arrangements that apply in Victoria likely to differ from those in other jurisdictions?	<p>It is not apparent that the outcomes in Victoria differ from other jurisdictions under the current arrangements. The Rules ensure that for an adoptive jurisdiction, the full function of the TNSP is captured in the process that applies in all other jurisdictions. However, if the amendments proposed by the rule change request are made, the prudent discount process in Victoria (and in any jurisdiction that subsequently becomes an adoptive jurisdiction) will be more administratively burdensome for AEMO and the DTSO, more complex for the transmission customer, and therefore more expensive and time-consuming for all parties, than in other NEM jurisdictions.</p>
1.2	What do stakeholders consider would be the appropriate role for the DTSO in the prudent discount process in Victoria, particularly in regards to negotiating with transmission	<p>The Rules clearly state that AEMO is to have carriage of the negotiations with the transmission user and is the single point of accountability. Clause S6A.4.2(k)3, which would not be amended by the proposed rule change, directs that the power to grant a prudent discount vests solely in AEMO "to the exclusion of the relevant <i>declared transmission system operator</i>". It is important for the cohesiveness and efficacy of prudent discount negotiations in Victoria that AEMO remains the single point of accountability.</p>

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	customers and providing them with relevant information?	<p>The DTSO's role is supportive. Its involvement is as a party that provides input to AEMO to facilitate the primary negotiations between AEMO and the transmission customer. This role should remain unchanged.</p> <p>There are strong contractual ties, obligations and interdependencies between AEMO and the DTSO. For AEMO to fulfil its obligations, including to negotiate the prudent discount, it may require access to information held by the DTSO, for its analysis. Similarly, the applicant may require access to this information for its analysis. The flow of information should be via AEMO, which is conducting the negotiation, and knows what information it holds and what is held only by the DTSO (or can determine this scope with the proponent). This helps to maintain confidentiality, in particular because the negotiations necessarily require AEMO and the applicant to discuss key commercial information that is confidential to those parties and not known to the DTSO i.e. the terms and conditions in the applicant's connection agreement.</p> <p>We note that there is no specific obligation in the prudent discount provisions applicable to all jurisdictions, requiring the provision of information to the applicant. The sole and relevant obligation is for TNSPs to negotiate in good faith.</p> <p>The specific provisions applicable to participants in the DTS framework applies to DTSOs, in their support of AEMO carrying out its functions. This may include the provision of information requested by AEMO for the purposes of the prudent discount negotiation.</p>
1.3	Are there any other issues relevant to this rule change request that the Commission should consider?	<p>We encourage the Commission to have regard to the divergences that will arise between the prudent discount framework that applies in Victoria and the framework that operates in the remainder of the NEM in deciding whether the Rules need to be changed. Even though there are differences between Victoria as an adoptive jurisdiction and other NEM jurisdictions in the way the Rules apply, national consistency should be maintained to the greatest extent possible and divergence permitted only where there is a compelling policy reason. This is specifically the case where new obligations on DTSOs are being considered (such as the obligation to provide written reasons where a discount is not granted).</p>
2	THE PROPOSED SOLUTIONS	
2.1	Do the proposed solutions effectively and efficiently address the issues raised in the rule change request?	<p>In our view the proposed changes, as a whole, are unlikely to improve the effectiveness of the arrangements. They are inconsistent with underlying principles of the DTS framework that applies in an adoptive jurisdiction, they would confuse accountabilities and, in relation to the operation of the prudent discount negotiation, would compromise its effectiveness. Creating an arrangement where effectively two parties are negotiating the same matter with the customer will not be helpful in progressing an orderly, effective, and good faith negotiation and will undermine the efficiency of the prudent discount arrangements.</p> <p>The proposal includes a new obligation to explain any refusal to agree to a discount. In principle, a negotiation conducted in good faith should leave the applicant party with an understanding of the TNSP's reasoning for declining to agree to a prudent discount. There does not appear to be a need for spelling out more specific elements of 'good faith'. Incorporating a specific provision requiring reasons be provided risks conflating public and private law concepts by imposing a public law obligation (to provide reasons) on private entities. Beyond</p>

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		this, if such an obligation is necessary for a TNSP in an adoptive jurisdiction, it holds that it is equally applicable in all other jurisdictions and the proposed changes should be made to clause 6A.26.1.
	Do the proposed rule changes add an appropriate level of clarity?	We have addressed this question in answering the previous question. In summary, we consider the proposals diminish clarity, and there are preferable alternative solutions.
2.2	Would it be appropriate to place an obligation on DTSOs to negotiate with customers in good faith, and would explicit obligations to provide information be required in addition to this?	For the reasons discussed above, an obligation on the DTSO to negotiate directly with customers is not appropriate. The current arrangement, whereby DTSOs' participation in the process is via AEMO, should be maintained. As explained above, explicit obligations to provide information are unnecessary because they are already captured by the obligation to negotiate in good faith.
2.3	Do stakeholders consider it appropriate for the prudent discount framework in adoptive jurisdictions to include obligations which do not have equivalents in the arrangements applied in other jurisdictions?	We do not consider there is any policy or operational basis for there to be differences between the prudent discount framework in an adoptive jurisdiction and the remainder of the NEM.
2.4	Do stakeholders support any alternative solutions that could better address the identified issues?	Transmission users wishing to apply for a prudent discount would be assisted by better understanding the process and the respective roles, obligations and accountabilities of AEMO and the DTSO in that process. Increasing transparency can be readily achieved by documenting these matters, for example, in a set of agreed principles, a guideline or procedure, or in a memorandum of understanding between AEMO and the DTSOs. We consider this can be accomplished without the need for amendments to the Rules. This was the approach adopted in the Transmission Connection and Planning Arrangements rule change (ERC0192), which introduced a specific obligation (clause 5.14.1(b)) requiring all relevant parties in the adoptive jurisdiction to contribute to the joint planning process. This obligation highlighted the need for the parties to co-operate to ensure, amongst other things, effective integration of AEMO's Victorian network augmentation planning and AusNet Services' asset management planning. To facilitate this, AEMO and AusNet Services voluntarily and cooperatively developed a Statement of Agreed Principles setting out their shared understanding of each party's roles and responsibilities when conducting joint planning. AusNet Services considers that preparing a similar statement for the prudent discount mechanism is preferable to amending the Rules. A statement will improve transparency by describing the process and describing AEMO's and the DTSOs' roles and responsibilities. This will increase AEMO's and the DTSOs' accountability and facilitate informed participation by prospective applicants. AusNet Services confirms its willingness and commitment to work with AEMO to prepare such a statement. We consider this approach is a rational outworking of the existing obligations and that it is unnecessary for it to be made an obligation in the Rules.

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3	Assessment Framework	
3.1	Is the assessment framework appropriate for considering the rule change request?	We support the AEMC's proposed principles as the relevant considerations for the review.
3.2	Are there other relevant considerations that should be included in the assessment framework?	As noted in our response to Questions 1.1 and 1.3 above, we consider the need to maintain national consistency unless there is a justifiable basis for divergence is a relevant consideration.