Dedicated Connection Assets Rule Change

Response to AEMC's Draft Determination (ERC0294)

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Energy Networks Australia

Contents

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Key messages

- The overall intent of the draft determination – to restore the NEM processes at connection points and enable Transmission Network Service Providers (TNSPs) to maintain system strength – is supported by Energy Networks Australia (ENA).
- However, the proposed framework as drafted by the Australian Energy Market Commission (AEMC) is unworkable, principally because a number of roles and responsibilities have been inappropriately attributed to the primary TNSPs. Revisions to the draft Rule are required in order to facilitate efficient connection to and use of designated network assets and thereby deliver improved outcomes for customers.
- As the proposed framework is unworkable, the AEMC should pause the Dedicated Connection Asset (DCA) Rule change and include an additional formal step in its consultation process before issuing its final Rule. It is essential that the AEMC takes the extra time warranted for such an important NEM Rule change to ensure that the Rule is fit for purpose and does not lead to unintended consequences or unworkable arrangements.
- A key concern relates to the special access arrangements, where the following improvements are needed to ensure that the framework is workable:
  - the designated network asset owner should be responsible for administering some aspects of the access regime, not the primary TNSP;
  - the Rules should clearly define the cost sharing arrangements between the designated network asset owner and connecting parties, and not require the primary TNSP to manage the transfer of funds between these parties;
  - the access policy principles should be embedded in the Rules, not in a separate policy approved by the Australian Energy Regulator (AER); and
  - the arrangements for designated network assets should not undermine the core transmission investment and planning arrangements, which underpin the prudent and efficient provision of transmission services.[1]
- The draft determination imposes significant additional obligations on the primary TNSPs, including the requirement to:
  - operate and maintain a third party's network; and
  - provide connection and dedicated network asset (DNA) services on a network designed, constructed and owned by a third party.

  These obligations represent a significant departure from the current arrangements and create significant exposure for the primary TNSPs in relation to the non-performance of counterparties and their assets. The final Rule must provide greater clarity on the roles and responsibilities of the various parties

[1] It is unforeseen difficulties with the AEMC's 2017 Transmission Connection and Planning Arrangements (TCAPA) Rule change that led to the Dedicated Connection Asset Rule change.

and provide cost recovery arrangements that recognise the primary TNSPs' risks and potential liabilities.

- The final Rule should provide a comprehensive description of the flow of funds and services, including the cost sharing arrangements. The Rule should also clarify the ownership and payment arrangements in relation to secondary assets, including communication and system protection. These assets will need to be integrated into and with the shared transmission network and as such specified and operated by the primary TNSP, and the associated costs will need to be recovered through charges to the DNA owner for DNA services.
- The removal of the $10 million threshold for contestable funded network assets (previously Identified User Shared Assets) is not supported. The proposed change will require substantially more information to be prepared for the connection applicant at the applicant's cost, in circumstances where the value of that information is likely to be negligible.
- The draft determination incorrectly suggests that 'funded augmentations' can be assumed to be contestable and therefore integrated with the proposed definition of 'funded network assets'. The concepts of 'funded augmentations' and 'funded network assets' must not be integrated.
- The proposal for TNSPs to be responsible for allocating intra-regional settlements residues to designated network asset owners is not supported. AEMO is best placed to make these payments (or recover negative residues) from the designated network asset owners. In addition, the draft Rule relating to the calculation of marginal loss factors (MLFs) needs to be amended to clarify that AEMO should be responsible for calculating MLFs.
- The savings and transitional provisions should clarify arrangements for each potential situation, including large DCA connection enquiries and connections that may arise prior to the commencement of the new Rule. The proposed 6 months period between the publication of the new Rule and its commencement is supported. This period will allow the TNSPs sufficient time to update their processes and supporting documentation to reflect the final Rule.
- A table of issues listed by clause, with detailed comments and drafting suggestions is included in Attachment 2. ENA welcomes the opportunity to work through these issues with the AEMC to deliver an outcome consistent with the intent of the draft Rule, which ENA supports.

1. Introduction

Energy Networks Australia (ENA) welcomes the opportunity to lodge this submission in response to the AEMC's draft determination on the Dedicated Connection Asset Rule change.[2] ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

ENA's focus in this submission is to ensure that electricity customers obtain the benefits from properly functioning arrangements for designated network assets. The remainder of this submission addresses the following aspects of the draft determination:

- **Access Regime** – ensuring that the dedicated network owner is responsible for access to the DNA it owns and that the proposed framework is workable.
- **New obligations, risks and cost recovery** – identifying and managing the risks arising from the new framework.
- **Flow of services and funds** – ensuring that the flow of services and funds are clearly defined.
- **Contestability threshold** – eliminating the unintended consequences from the proposal to remove the $10 million threshold.
- **Implications for funded augmentations** – clarifying that 'funded augmentations' cannot be assumed to be contestable, as suggested by the draft determination.
- **Marginal loss factors and intra-regional settlements residues** – ensuring the arrangements are drafted correctly and responsibilities properly allocated.
- **Savings and transitional provisions** – ensuring that likely eventualities are addressed so that the new arrangements work smoothly.
- **Further engagement** – explaining the need for a further formal step in the AEMC's consultation process.

In the Attachments to this submission, we provide further detailed comments on the contracting structure and the draft Rule, including a number of drafting suggestions. While these drafting suggestions are intended to assist the AEMC in relation to some (but not all) of the identified issues, ENA's position is that a further round of formal consultation is required before the Rule can be finalised.

2. Access regime

Currently, the Rules require that a Dedicated Connection Asset Service Provider (DCASP), i.e. the DCA owner, must prepare, maintain and publish within 30 days of an asset being classified as a large dedicated connection asset under Chapter 2, an

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2 AEMC, National Electricity Amendment (Connection To Dedicated Connection Assets) Rule, Draft Determination, 26 November 2020.

access policy on its website to provide a framework for applicants to obtain access to large DCA services. While the draft Rule maintains the application of a special third party access regime for designated network assets, it now requires that the primary TNSP should be responsible for designing and administering the access regime for each specific designated network asset, rather than the asset dedicated network owner. This change is inappropriate and creates a number of difficulties that make the proposed arrangements unworkable:

- Firstly, the dedicated network owner is best placed to administer access arrangements for the asset that it owns. The actual cost of constructing designated network assets is commercially sensitive information that should not be provided to the primary TNSP. Even if this information could be provided to the primary TNSP on a ring-fenced basis, thereby addressing the competition issues, the primary TNSP would be unable to verify the accuracy of the cost information provided.
- Secondly, the draft Rule provides no details regarding the process for cost sharing, other than indicating that the arrangements will be specified in the access policy, which is to be developed by the primary TNSP.[3] This is a significant gap in the draft Rule, as the primary TNSP will have no information regarding the cost of the designated network assets if these assets are owned by a third party, having been designed and constructed by that party.
- Thirdly, the draft Rule means that the primary TNSP is likely to become party to negotiations and therefore potentially disputes between connecting parties and designated network asset owners.[4] These disputes may relate to the available capacity of a designated network asset or the application of the cost sharing arrangements. It is not clear why the primary TNSP should be party to such negotiations and disputes, or whether it would have access to the information required to engage in those negotiations or meaningfully participate in the dispute resolution process.

Given the above observations, ENA's position is that the draft Rule relating to the access regime for designated network assets is unworkable. While the primary TNSP may be responsible for operating and maintaining the designated network assets and managing some aspects of the process for connecting facilities to the designated connection asset (for example, assessing and approving proposed access standards and undertaking system strength impact assessments), it does not follow that the primary TNSP should be responsible for designing and administering other aspects of the access regime. Instead, the responsibility for designing and administering the other aspects of the access regime and, in particular, the cost sharing and contracted capacity arrangements should lie with the designated network asset owner, not the primary TNSP. This approach would be consistent with the existing Rules provisions

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3 Clause 5.2A8(c)(4).

4 Clause 5.5.1(b).

that require the DCASP to design and administer the access regime in relation to its dedicated connection asset.

In addition to the central issue of which party should be responsible for the access regime, ENA is concerned that key elements of the access regime are not defined in the draft Rule. For example, it is unclear whether one connecting party is able to reserve network capacity and thereby restrict or deny access to future connection applicants.

Instead of mandating a defined access regime, the draft Rule envisages each primary TNSP developing its own access regime for each dedicated network asset, conducting stakeholder consultation and obtaining AER approval. ENA's position is that this access design and approval process is unnecessarily protracted and resource intensive. Instead, it would be strongly preferable for the final Rule to define the required elements of the access regime that must be included in the access policy, as these are framework issues of the kind that the AEMC is best placed to resolve.

The final Rule must also ensure that the arrangements for designated network assets do not undermine the core prescribed transmission planning and investment framework, which has been developed and refined over many years. This framework, which now incorporates AEMO's ISP, is the principal means for promoting the National Electricity Objective by delivering prudent and efficient investment in and use of transmission networks. The TNSPs' planning approach also includes extensive community engagement to obtain a social licence for transmission developments – a feature that is more or less absent from third party transmission developments.

In this context, it is important that designated network assets are understood to be special arrangements relating to radial networks at the periphery of the shared transmission network. While these arrangements are incidental to the core transmission planning and investment framework, ENA considers it essential that designated network asset owners are subject to specific obligations under the Rules to ensure that the framework operates as intended. This approach will promote confidence amongst stakeholders and participants that the essential services provided by contestable transmission assets are subject to an appropriate level of regulatory oversight.

ENA also notes that the provision of contestable transmission services will not have the same protections for connected parties as those provided on the shared transmission network. As explained in the next section, the proposed framework should reflect an understanding of the inherent risks in third party provision of transmission services to ensure that these risks are appropriately managed. In addition to addressing these framework issues, ENA considers that the AEMC should highlight the risks for connecting parties in the event that performance issues arise in relation to the designated network assets or their asset owners.

3. New obligations, risks and cost recovery

ENA supports the overall direction of the draft Rule which allows connections to designated network assets to be treated in the same way as any other connection to the primary TNSP's transmission network. However, it must also be recognised that the draft Rule is a radical departure from the current arrangements because primary TNSPs will be required to provide access and services on networks that are designed, constructed and owned by third parties. In a number of respects, the draft Rule does not capture and address the risks that arise from the third party ownership. For example:

- The definition of DNA services does not recognise that the primary TNSP's role is limited to the operation and maintenance of the designated network assets. The primary TNSP must not be responsible for performance of the designated network assets, as these assets have been designed and constructed by a third party.
- The draft Rule makes no distinction between connection services provided by a TNSP on a designated network asset and connection services provided on the TNSP's shared network. In practice, the primary TNSP is exposed to significant risks in relation to connections to designated network assets, as these depend on the performance of a third party's assets. The connection agreements should make it clear that the primary TNSP is not liable for any failure in relation to the designated network asset or the failure of the asset owner to comply with its obligations.
- The effective operation of the framework envisaged by the draft Rule depends on the owners of designated network assets complying with the applicable access policy and ensuring that failed assets are replaced in a timely manner. However, the draft Rule imposes no obligations on the owners of designated network assets, apart from the requirement to enter into a network operating agreement with the primary TNSP.
- The draft Rule does not establish obligations on the connecting parties in relation to the application of the access policy or the cost sharing arrangements. It is evident, however, that the regime cannot operate as intended unless the connected parties are required to comply with the applicable access regime and the cost sharing arrangements.

The overall effect of the draft Rule is to create significant risk exposure for primary TNSPs in relation to the non-performance of counterparties and their assets, by failing to specify obligations that apply to the owners of designated network assets and connecting parties.

As detailed in this submission and Attachment 2, ENA proposes a number of changes to the draft Rule to ensure that the roles and responsibilities of the respective parties in the provision of DNA services and connection services are fully articulated and allocated appropriately. These proposed changes will benefit all parties by avoiding

confusion and uncertainty, and by promoting efficient investment in and use of designated network assets, consistent with the NEO.

In relation to cost recovery, the draft Rule sets out negotiating principles which include, amongst other things, the principle that the price for a designated network asset service should "enable the primary TNSP to recover the efficient costs of complying with all regulatory obligations or requirements associated with the provision of the designated network asset service."[5] In addition, the principles also allow for the price to cover 'at least' the avoided cost of providing DNA services, but no more than the standalone cost.[6]

ENA supports these cost recovery principles, noting that they reflect well accepted economic concepts[7] and are consistent with the National Electricity Law (NEL).[8] In addition, ENA considers that the negotiating principles should recognise that the price for DNA services should be commensurate with the commercial risk in providing those services. This principle, which is also consistent with the NEL,[9] will clarify that if the primary TNSP is exposed to commercial risks in the provision of DNA services, it is appropriate for these risks to be reflected in the price of those services.

4. Flow of services and funds

As explained in the previous sections, ENA is concerned that the draft Rule has significant gaps in terms of identifying the appropriate roles and responsibilities of the relevant parties. These gaps are also reflected in a lack of clarity regarding the services that are being provided and the associated flow of funds. ENA considers it essential to articulate the flow of services and funds to ensure that the proposed framework is workable and that unintended consequences are avoided.

A related benefit from articulating the flow of services and funds is that it provides a cross-check that each relevant party has access to the information required to fulfil its obligations. For example, in relation to the access regime the arrangements in the draft Rule are unworkable because the cost information required to apply the cost sharing arrangements is held by the designated network owner, rather than the primary TNSP. As already noted, this observation illustrates why the designated network owner should be responsible for administering this aspect of the access regime, rather than the primary TNSP.

ENA also notes that the flow of funds relating to connection services and contributions to the cost of the designated network asset appear to be conflated in

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5 Schedule 5.12, clause 2.

6 Schedule 5.12, clause 1.

7 Baumol, Panzar and Willig (1982), Contestable Markets and the Theory of Industry Structure.

8 National Electricity Law, section 7A Revenue and Pricing Principles.

9 Section 7A, subparagraph 5.

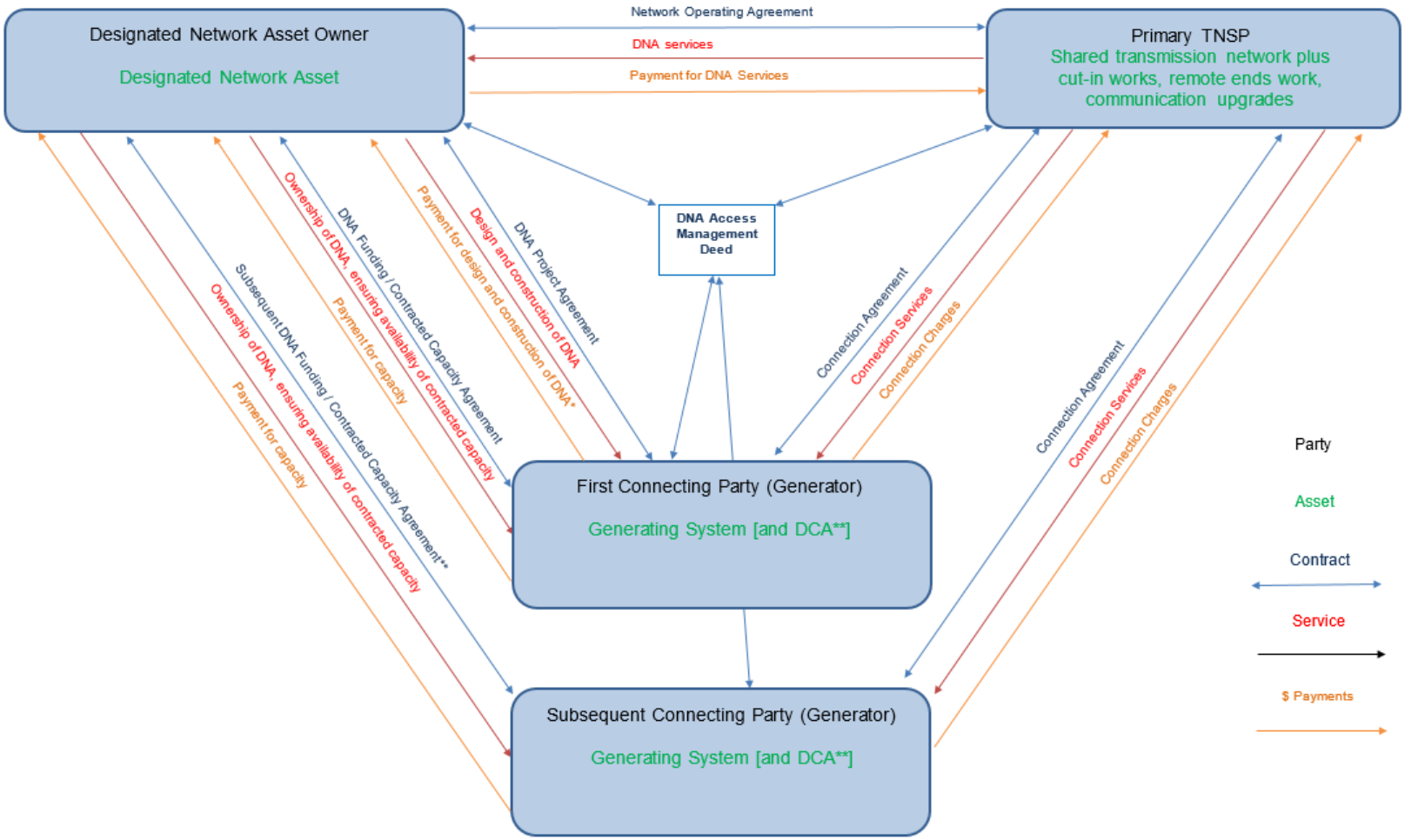
the draft Rule. In particular, the draft Rule requires the primary TNSP to distribute to the designated network asset owner 'any relevant amounts' the primary TNSP has collected from connection applicants for connection to the designated network asset in accordance with the access policy.[10] However, payments made by the connection applicant to the primary TNSP will relate to costs incurred by the primary TNSP with respect to that connection (for example, application fees, network studies, required cut-in works and remote ends work, etc.) and should be retained by the TNSP, rather than being distributed to the owner of the designated network assets.

Evidently, it is necessary to distinguish between the payment of connection charges, which should be retained by the primary TNSP, and the connecting party's contribution to the cost of the designated network assets, which should be subject to the cost sharing arrangements and paid directly to the DNA owner. In the figure below, we have set out a proposed flow of services and funds, consistent with the intent of the draft Rule. This analysis reveals that a number of gaps exist in the arrangements proposed in the draft Rule that would make the arrangements unworkable.

ENA's proposed approach establishes contractual relationships between the owner of the designated network assets and the connecting parties, and a tripartite DNA access management deed which must accord with the access policy principles set out in the Rules. As discussed in the previous section, these contractual relationships are necessary to ensure that the access and cost sharing arrangements operate as intended. A table describing the contractual arrangements is included in Attachment 1.

10 Clause 5.2A7(e)(7)(i).

ENA's proposed flow of services and funds



A further issue arises in relation to the arrangements for Identified User Shared Assets (IUSAs). In particular, we note that similar cost sharing principles should apply to these assets as apply to designated network assets. The absence of these arrangements for IUSAs in the draft Rule appears to be an oversight that may undermine efficient outcomes for connecting parties and, ultimately, electricity customers.

In addition to the matters already raised, the Rule should also clarify the ownership and payment arrangements in relation to secondary assets, including communication and system protection. These assets must integrate and inter-operate with the shared transmission network and will need to be specified and operated by the primary TNSP, and the associated costs will need to be recovered through charges for DNA services.

5. Contestability threshold

The draft Rule removes the $10 million 'monetary' limb from the contestability threshold that currently applies to IUSAs and maintains only the 'separability' limb. The AEMC explains that the main justification for removing the monetary limb is that it will promote the broader application of the cost sharing arrangements. In particular, the AEMC argues that maintaining the monetary threshold would mean that, where the total cost is:

- $10 million or less, such that the service must be provided as a negotiated transmission service, all costs related to that asset, including the costs for detailed design, construction and ownership, could be shared when a subsequent party seeks to connect to the asset.
- greater than $10 million, such that many of the services (detailed design, construction and ownership) are non-regulated transmission services and can be provided on a contestable basis, only the costs for cut-in works, functional specification and operating and maintenance could be shared when a subsequent party seeks to connect to the asset.[11]

Based on the above analysis, the AEMC concluded that the existing arrangements are deficient because they impose a cost sharing mechanism that applies only to low cost assets, but not to higher cost assets.

ENA does not agree with the AEMC's reasoning for removing the $10 million threshold. Firstly, it is not necessary to link the cost sharing arrangements to the service classification. Instead, cost sharing arrangements can be mandated through the access policy, which could be binding on the connecting parties and the designated network asset owner. In fact, this appears to be the intention of the draft

11 AEMC, National Electricity Amendment (Connection To Dedicated Connection Assets) Rule, Draft Determination, 26 November 2020, page 98.

Rule, although the cost sharing arrangements are not fully articulated.[12] Secondly, even if the AEMC's reasoning were correct, the removal of the threshold would have the opposite to the desired effect, as it would increase (not reduce) the number of services that were defined as non-regulated.

A relevant consideration in relation to the removal of the $10 million threshold is the impact on the information that the TNSP is required to provide to connecting parties. In particular, clause 5.3.3(9)(i) requires the TNSP to provide the technical parameters for contestable funded network assets 'with sufficient detail to enable the connection applicant to obtain binding tenders for the provision of detailed design, construction and ownership services'. The proposed removal of the $10 million threshold would mean that this information must be provided in relation to any contestable funded network asset.

In practice, however, a connection applicant is highly unlikely to seek competitive tenders for small value projects. As a result, connection applicants will obtain no benefit from the information provided, but incur the costs and inconvenience of the TNSPs' additional time in preparing it.

ENA therefore considers that the $10 million threshold should be reinstated to recognise that there is a minimum value below which competitive tendering is unlikely to be worthwhile. As already noted, the reinstatement of the threshold should have no bearing on the cost sharing arrangements, which need to be described more fully in the final Rule.

6. Implications for funded augmentations

In its draft determination, the AEMC notes the similarity between the concept of a 'funded network asset' and the existing framework for 'funded augmentations' in the Rules. The draft determination suggests that the two concepts could be integrated so that 'funded augmentations' would be subject to the same contestability arrangements as 'funded network assets', and invites feedback from stakeholders on this suggestion.[13]

ENA notes that the Rules define 'funded augmentation' as 'a transmission network augmentation for which the TNSP is not entitled to receive a charge pursuant to Chapter 6A.' Therefore, a 'funded augmentation' may include a shared network augmentation if it is partly or fully funded by a market participant or Government through a capital contribution. Given this possibility, it would be inappropriate to integrate the concepts of 'funded network assets' and 'funded augmentations', as

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12 Clause 5.2A.7 sets out provisions that apply to funded network assets, which include arrangements for cost sharing in accordance with the access policy in clause 5.2A.7(e).

13 AEMC, National Electricity Amendment (Connection To Dedicated Connection Assets) Rule, Draft Determination, 26 November 2020, page 97.

suggested by the draft determination, because funded augmentations are not necessarily contestable.

As an aside, the existing definition of 'funded augmentation' should be amended to exclude 'funded network assets'. Otherwise, the current definition will inadvertently capture designated network assets and require Rule 5.18 to be applied, which relates to the construction of funded augmentations. ENA does not believe that it is the intention of the draft determination for Rule 5.18 to apply to designated network assets, and therefore the definition of 'funded augmentation' should be amended.

7. Marginal loss factors and intra-regional settlement residues

Under the current arrangements, AEMO determines a single marginal loss factor at all NEM transmission network connection points. For DCAs, all parties connected to the same dedicated connection asset are settled using that marginal loss factor value irrespective of how remote the connection point is from the transmission network connection point.

The AEMC's draft determination noted that stakeholders generally agreed that marginal loss factors for connected parties should be calculated individually for each party at a new metered connection point at the remote end of the designated network asset. As the draft Rule allows for connection to a designated network asset to be treated in the same way as a connection to the shared transmission network, this approach allows the marginal loss factors to be calculated for each connected party, consistent with feedback from stakeholders.

The draft determination explains that AEMO would calculate an intra-regional transmission loss factor, by using the marginal methodology, at each connection point located on a designated network assets for use in dispatch and settlement, as it would for all other transmission network connection points. However, in order to isolate the settlements residue that accrue on a designated network asset, AEMO would also be required to calculate a loss factor at the boundary point between the designated network asset and the shared transmission network.

The draft determination further explains that the primary TNSP would be required to separate out the residues associated with designated network assets from the broader pool of regional residues. For the purpose of allocating the residues, the primary TNSP would be required to develop an agreed residue allocation methodology under its standard Network Operating Agreement for the purpose of distributing any residues accruing on a designated network asset to the designated network asset owners. The draft determination notes that the primary TNSP will receive

compensation for the administration of these monetary flows, consistent with Principle 2 of S5.12 (i.e. as a negotiated service).[14]

ENA notes that while a Coordinating Network Service Provider is required to allocate intra-regional settlements residue to the TNSPs in its region as part of its transmission pricing methodology, we do not accept that this role should be extended to designated network assets.

As designated network assets do not provide prescribed transmission services, ENA considers it more appropriate that AEMO (rather than the primary TNSP) is responsible for attributing intra-regional settlements residue to the owners of the designated network assets. The subsequent allocation of these intra-regional settlements residue to the connected parties is a matter that should be addressed in the contractual arrangements between the owners of the designated network assets and the connected parties (as noted in the draft determination). ENA's proposed approach recognises that no purpose is served in requiring the primary TNSP to be responsible for allocating settlements residues to designated network owners.

As an aside, ENA also notes that Schedule 5.6, Part B states that the Network Operating Agreement must include provisions relating to:

> ***(h)*** *[...] metering arrangements at the boundary point to facilitate the calculation of electricity energy losses over the designated network asset.*

This draft provisions should be amended to clarify that AEMO is responsible for calculating marginal loss factors.

8. Savings and transitional provisions

The draft determination sets out savings and transitional provisions, which include grandfathering arrangements.

One aspect of these provisions is the proposed 6 month period between the publication date and commencement date for the new Rule. While the draft determination suggests that this period is required principally for TNSPs to develop the access regime. As set out in section 2 of this paper, ENA's position is that the responsibility for the access regime and the cost sharing arrangements should sit with the dedicated network asset owner, not the primary TNSP. ENA notes that six months should be sufficient for a dedicated network owner to develop an access regime for the asset it owns. Notwithstanding this, there are numerous other aspects of the new framework that will require time for the primary TNSP to implement. Our assessment is that 6 months is the minimum acceptable timeframe, noting that the new Rule means that:

- TNSPs will need to review and update their internal systems, procedures and/or standard documentation; and

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14 AEMC, National Electricity Amendment (Connection To Dedicated Connection Assets) Rule, Draft Determination, 26 November 2020, pages 73 and 74.

» TNSPs will need to update their Network Operating Agreements.

While the draft determination provides an extensive discussion of the savings and transitional provisions, in the following important respects the proposed Rule does not address the following situations:

» No process is set out for how an existing DCA would transition to the new framework for designated network assets, even though there is currently a large DCA connected to ElectraNet's network and numerous grandfathered DCAs on other networks;[15]

» No process is set out if the existing DCA does not meet the standards that apply to the shared transmission network;

» No transitional arrangements are specified for connection enquiries in respect of large dedicated connection assets that are made prior to the commencement date for the new Rule; and

» No process is set out for how a dedicated network asset may, in future, be reclassified as part of the shared transmission network, noting that this is a possible future development that may provide the most efficient outcome for customers.

We discuss each of these cases briefly in turn:

» In relation to the existing DCAs, the draft determination notes that complexities are likely to arise in transitioning to the new framework, including the requirement to comply with the network performance requirements under Schedule 5.1. Given the potential benefit of the new framework, ENA considers it appropriate for the Rules to provide guidance on the steps involved in the transition process.

» In relation to existing DCAs that does not meet shared transmission network standards, the ENA position is that the PTNSP should have the NER right to refuse to convert a *dedicated connection asset* into part of its *transmission network* if the *dedicated connection asset* does not meet the standards that apply to the shared *transmission network*.

» In relation to connection enquiries prior to the commencement date for the new Rule, ENA considers this to be a significant transitional issue. As the commencement date is to be 6 months after the publication of the new Rule, there is a strong possibility that new connection enquiries for large dedicated connection assets will occur prior to the commencement date. The absence of transitional arrangements to address this situation creates uncertainty for prospective connection applicants and primary TNSPs.

» In relation to the future reclassification of a dedicated network asset as part of the shared transmission network, ENA considers it likely that in some cases such a reclassification will provide the most efficient option for meeting the demand for prescribed transmission services. To facilitate this outcome, the proposed Rule

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15 This is contrary to the comment in the draft determination that as no large DCAs currently exist, there are no savings and transitional arrangements provided in respect of large DCAs (page 113).

change should clarify the process and the responsibilities and obligations of each relevant party. For example, the option to purchase the designated network asset could be extended to cover this circumstance and the price should be fair and reasonable.

ENA's position is that the above gaps in the savings and transitional provisions should be addressed. In addition, given the complexity of these provisions, it is essential that further formal consultation is undertaken prior to the publication of the final Rule. This concern is especially relevant, as the TCAPA Rule determination introduced a number of unintended consequences that have led to this Rule change.

9. Further engagement

While ENA supports the overall direction of the draft Rule, it is evident that significant changes to the current drafting will be required to ensure that the arrangements are workable and do not have any unintended consequences. In the Attachment 2 to this submission, ENA has developed drafting suggestions in relation to some (but not all) of the identified issues, which should assist the AEMC.

Given the extent of the required changes to the draft Rule and the complexity of the issues arising, however, ENA strongly supports the inclusion of an additional formal step in the AEMC's consultation process prior to the publication of the final Rule. ENA looks forward to continuing to work with the AEMC to ensure that the final Rule delivers the best possible outcome for customers by promoting efficient investment in and use of designated network assets in accordance with the NEO.

Attachment 1: Indicative contractual arrangements for third party designated network assets

The following table sets out some of the issues that are likely to be dealt with in each of the contracts between the DNA Owner, PTNSP and connecting parties:

Agreement	Parties	Indicative Services / Scope
DNA Project Agreement	• DNA Owner • First connecting party	• Design, construct and commission the *designated network asset* in accordance with PTNSP's functional specifications and other requirements of the *Network Operating Agreement* *** Note** that some terms dealing with the charges to recover the cost of designing and constructing the *designated network asset* may be contained in this agreement or the DNA Funding/Contracted Capacity Agreement or both. • Subsequent connecting party may have a Project Agreement with the DNA Owner (or another party) for the work required to *connect* the subsequent connecting party's facility to the *designated network asset*.
DNA Funding / Contracted Capacity Agreement	• DNA Owner • First connecting party	• Ownership of *designated network asset* • Commitment to make contracted capacity available subject to agreed adjustments / carve outs • Charges payable by first connecting party to DNA Owner on account of the cost of design, construction and ownership plus associated long term (e.g. 30 year) support obligations • Obligations to fund non-routine replacements (e.g. the charge could include an allowance for replacement risk which is used by the DNA Owner to fund replacements when (if) they occur during agreed term or the first connecting party could agree to fund replacements as and when they arise) • Agreement to permit future access to *designated network asset* in accordance with DNA Owner's *access policy* and DNA Access Management Deed plus associated land access rights • Decommissioning obligations and funding requirements • Step-in rights during construction and operation • Consequences of default and termination

Subsequent DNA Funding / Contracted Capacity Agreement	• DNA Owner • Subsequent connecting party	• Design, construction and ownership of any required changes / additions to the *designated network asset* to accommodate the *connection* of the subsequent connecting party's facility • Charges payable by subsequent connecting party to DNA Owner representing an appropriate allocation of the original charges between the first and subsequent connecting party plus any additional costs that relate solely to the subsequent connecting party as per DNA Owner's *access policy* and the DNA Access Management Deed • Same obligations as for the initial DNA Asset Funding Agreement except with adjustments to appropriately share and account for future costs and obligations • Requirement to become a party to the DNA Access Management Deed
Connection Agreement	• PTNSP • First connecting party • PTNSP • Subsequent connecting party	In addition to applicable conditions listed in Part A of Schedule 5.6: • Design, construction and ownership of assets that PTNSP is required to construct to enable connection to the shared *transmission network* (i.e. cut-in works, remote ends works, *system strength connection works*, *funded augmentation*, other non-contestable *funded network asset* components. Some PTNSPs use a separate Project Agreement rather than include these terms in the *connection agreement*. • Impose obligations on connecting party to ensure *designated network asset* satisfies required (shared *transmission network*) standards • Operation and maintenance of *designated network asset* in accordance with *Network Operating Agreement* requirements • Provision of *entry services* (including access standards) subject to DNA Owners compliance with *Network Operating Agreement* obligations • Connection charges payable by first / subsequent connection party to PTNSP and payment conditions • Agreement to permit future access to *designated network asset* in accordance with DNA Owner's *access policy* and DNA Access Management Deed • Guarantee obligations in the event DNA Owner fails to comply with *Network Operating Agreement* ** **Note –** There may be a separate *connection agreement* between the PTNSP and each of the connecting party and third party owner of the *dedicated connection assets* or one *connection agreement* covering both parties

DNA Access Management Deed	• PTNSP • DNA Owner • First connecting party • Subsequent connecting party	• There needs to be one deed which all parties must sign up to • This deed will govern common rights and obligations across all of the parties and will assist with the management of the *designated network asset* until it is permanently disconnected from the shared *transmission network* and the shared *transmission network* has been reinstated and the *designated network asset* decommissioned and removed • Many of the obligations from the other documents will need to be reflected in this deed and overtime this deed may become the sole location for those obligations (e.g. requirement to give access and allocate/adjust charges) • Co-ordination of operations, maintenance and operating protocols - regulating interface/interaction issues • Supporting overall liability arrangements • Supporting default and step in arrangements • Extension of term and adjustments if a connecting party proposes to decommission a facility but other connecting parties wish to remain connected • Dismantling of the *designated network asset*, option to acquire, cost recovery
Network Operating Agreement	• DNA Owner • PTNSP	• Defining the DNA Services (e.g. routine maintenance, operation consistent with shared *transmission network*, maintenance of spares, emergency asset step in and replacement, standard of care to apply to PTNSP in providing operation and maintenance services) and conditions to transfer operational control of the *designated network asset* to PTNSP. • Scope of obligations and carve outs relating to DNA Services • Charges payable by DNA Owner for DNA Services. Adjustments for subsequent connecting parties. PTNSP has no involvement in flow of funds between connecting party and DNA Owner. • Obligation for DNA Owner to fund rectification of defects and replacements not caused by PTNSP breach • Other matters listed in clause 5.2A.7(e) other than paragraph (7). • DNA Owner obliged to comply with DNA Access Management Deed and DNA Owner's *access policy* • Indemnity from DNA Owner to support the fact that *designated network asset* will be deemed to form part of the PTNSP's *transmission network*

Attachment 2 - Table of comments and suggested amendments

Glossary

Set out below are definitions for the acronyms used in this Table.

DCASP	*Dedicated Connection Asset Service Provider*
DNA Owner	The owner of the *designated network asset*.
IUSA Owner	The owner of the *identified user shared asset*.
NOA	Network operating agreement.
PTNSP	*Primary Transmission Network Service Provider*

Rule	Issue	Comment
2.5.1A	The DCASP clauses have been removed rather than redrafted to apply relevant	The *Rules* should impose regulatory obligations (and accountabilities) directly on the DNA Owner. The *AER* should have the enforcement role in relation to those direct obligations. For example, see comments in relation to clauses 5.2.7 and 5.1.2(g).

	obligations to the DNA Owner.	
3.6.2B(c)(2)	*AEMO* calculates the *boundary point loss factor* but PTNSP is required to calculate the *settlements residue* that relates to a *designated network asset*.	Paragraph (h) of Part B of Schedule 5.6 and clause 7.5B.1(a) need to be amended (as suggested below) to avoid confusion concerning *AEMO's* responsibility for calculating *boundary point loss factors*. Clause 3.6.5(a)(3) should be amended to make *AEMO* responsible for calculating, allocating and distributing to (or recovering from) the relevant DNA Owner that portion of the *settlements residue* due to *intra-regional loss factors* that relates to the DNA Owner's *designated network asset* in the same way as currently applies to TNSPs. If clause 3.6.5(a)(3) is amended, clause 3.6.2B(c)(2) can be deleted or amended to refer to *AEMO* rather than the PTNSP. See our comments concerning clause 5.2A.7(e)(7)(ii) below.
5.1.2(g)	The DNA Owner should be required to: • have an *access policy* for its *designated network asset*; and • comply with that *access policy*.	Clause 5.1.2(g) should be amended to read: 'Part B also provides for the owner of a *designated network asset* to have an *access policy* for that *designated network asset* and for *commercial arbitration* under rule 5.5 to apply to a *DNA access dispute*.' See our comments concerning clause 5.2A.8 below.
5.1A.2(a)	Consistency with clause 5.1.2(d)	Clause 5.1.2(d) suggests that Rule 5.3 applies subject to the relevant *access policy*. This is not referenced in clause 5.1A.2(a). The references should be consistent.

		The following words should be added at the end of clause 5.1A.2(a) - '...and rule 5.3 to the extent that rule 5.3 is applicable taking into account the requirements of the *access policy*.'
5.2.7	The DNA Owner should be obliged to design and construct the *designated network asset* to the same standard as would apply if it was being designed and constructed by the PTNSP as part of its shared *transmission network*.	As noted above, the DNA Owner should have direct obligations under the *Rules*. For example, the DNA Owner should be required to: • design and construct the *designated network asset* so that it is able to comply with *performance standards*, *system standards* and other requirements of the NOA and related *connection agreements*; • comply with the *access policy* for the *designated network asset*; and • permit and participate in inspection, testing and commissioning of the *designated network asset*. Whilst these requirement will be repeated in the *connection agreement* and the NOA, the DNA Owner should also have a direct regulatory obligation to ensure compliance with the *Rules*.
5.2A.2	The table will need to be amended to reflect the final Rule.	The second column should be headed 'Relevant Person' given the removal of the registration requirement. Row 1 - The term 'primary *transmission network*' is unclear. The term 'shared transmission network' should be defined and used in its place, particularly given how often this undefined term is used in the *Rules.* For example, 'shared transmission network means in relation to a *Transmission Network Service Provider,* the *transmission network* that is owned by that *Transmission Network Service Provider* and for the avoidance of doubt, excludes a *funded network asset* that is not owned by the *Transmission Network Service Provider*.', Row 2 – The words in brackets should be amended to read '...forms part of the provider's *transmission network* but does not form part of its *shared transmission network*)'.
5.2A.2(b)(4)	Multiple NOA's and potentially	Adopting a linear contracting structure only will be extremely difficult to manage and could potentially place the PTNSP in the middle of disputes between different

	concatenated *designated network assets* would be very complex for the PTNSP to manage and will require a co-ordination / management agreement covering all parties.	owners and connecting parties. Some form of overarching document will be required to ensure that direct contractual responsibilities are established between multiple owners and each party with facilities that are *connected* or proposed to be *connected* to or through the *shared transmission network* via a *funded network asset* that is constructed and owned by a third party. The PTNSP should not be placed in a position where it is required to control all the interactions between the multiple parties. Clause 5.2A.2(b)(4) should be amended to read: 'a *funded network asset* may comprise multiple components owned by different persons, who would each: (i) have a separate *network operating agreement* with the *Primary Transmission Network Service Provider* for the component that person owns; and (ii) be required to enter into a deed with each of those other persons, the *Primary Transmission Network Service Provider* and each *Transmission Network User* with facilities *connected* to that *funded network asset* governing (amongst other things) the management of access to that *funded network asset*.'
5.2A.2(b)(6)	The current wording suggests that *identified user shared assets* are subject to the usual access and *connection* requirements set out in Chapter 5 even if they are owned by third parties.	Where an *identified user shared asset* is owned by a third party and the costs of constructing that asset are being paid to the IUSA Owner by the first connecting party, query whether principles governing the form of the agreement between the IUSA Owner, first connecting party and subsequent connecting parties concerning the allocation of those charges between the first connecting party and the subsequent connecting party should be specified in the *Rules*. It appears that the same payment arrangement and allocation risks would apply to subsequent *connections* to or through an *identified user shared asset* that is owned by a third party.
5.2A.2(b)(8)	The objective of the *access policy* is limited to providing protection to the existing *identified user group* for the *designated*	One of the objectives of the *access policy* should be to give future users a right to seek access to a *designated network asset* subject to satisfying certain requirements. The *access policy* is also protecting the rights of future users by ensuring that the terms and conditions of access (if it is available) are fair and reasonable.

	network asset in respect of future uses of the *designated network asset*.	Clause 5.2A.2(b)(8) should be amended by replacing the words 'established and administered by the *Primary Network Service Provider'* with the words '...for that *designated network asset*'. The Note at the end of clause 5.2A.2(b) will need to be amended to reflect the changes to clause 5.2A.2(b).
5.2A.3(d1)	As drafted, *DNA services* are provided by the PTNSP to the DNA Owner. The *access policy* will need to give the PTNSP the right to reject an *application to connect* or offer constrained access on behalf of the DNA Owner if the DNA Owner advises the PTNSP that there is not sufficient spare capacity on the *designated network asset*.	As drafted, the *DNA services* are provided to and paid for by the DNA Owner. Clause 5.2A.3(d1) needs to make clear: • the role of the DNA Owner in relation to the original application process; • the role of the DNA Owner and the first connecting party in relation to the application process for each subsequent connecting party; and • the proposed interaction between the NOA and the *connection agreements* with each connecting party (e.g. given that the *DNA services* are being provided to the DNA Owner by the PTNSP, there will be one NOA between the PTNSP and the DNA Owner even if there is more than one party *connected* to the *designated network assets*). Both the DNA Owner and the first connecting party should be obliged to permit the *connection* of the subsequent connecting party if that is consistent with the *access policy* for the *designated network asset* and the terms of the agreement negotiated between those parties or the outcome from any relevant *DNA access dispute*. The *access policy* will need to contain clear rules concerning how to assess the available capacity of the *designated network assets* taking into account the capacity that has been allocated to the first connecting party under its funding and contracted capacity agreement with the DNA Owner and its *connection agreement* with the PTNSP. There will also need to be a process for booking up further capacity and that process will need to include various checks and balances to avoid 'recent invention' when a subsequent connecting party lodges a *connection enquiry*. The PTNSP should not be place in a position where it has to adjudicate between the first connecting party and a subsequent connecting party concerning what capacity of a *designated network asset* is still available and what limits should apply to the use of that capacity. This issue should be determined

		between the DNA Owner, the first connecting party and the subsequent connecting party applying the principles in the *access policy* for the *designated network asset* and the requirements of the 'Access Management Deed' for the *designated network asset*.
5.2A.3(e)	The DNA Owner and each party that is *connected* to the *designated network asset* should also be prevented from preventing or hindering access.	Clause 5.2A.3(e) should also apply to the DNA Owner and each party who has facilities *connected* to the *designated network asset*.
5.2A.4(a)	The detailed design of remote monitoring, communications and protection system for a *designated network asset* should only be undertaken by the PTNSP	Given that: • the *designated network asset* will form part of the PTNSP's *transmission network* • the *designated network asset* will be required to be operated by the PTNSP; and • the remote monitoring, communications and protection system for a *designated network asset* will be inextricably linked with and will need to be fully compatible with, the monitoring, communications and protection system for the balance of the PTNSP's *transmission network*, the detailed design of remote monitoring, communications and protection system for a *designated network asset* should be non-contestable.
5.2A.6(b)(4)	The PTNSP will also need to notify and consult with the DNA Owner	The following words should be added to clause 5.2A.6(a) after the reference to rule 5.3 i.e. '..., the *access policy* (if applicable),'. The PTNSP will need to consult with the DNA Owner if an adjustment is required to the charge payable by the DNA Owner to the PTNSP for the DNA Services and the process for the DNA Owner to allocate a proportion of the original costs /

		charges to the subsequent connecting party. Depending upon who is responsible for monitoring the first connecting parties additional capacity requirements, the PTNSP may need to consult with either or both the first connecting party and the DNA Owner to determine the capacity which can be offered to the subsequent connecting party. This may not be necessary if the DNA Owner has a direct regulatory obligation to permit *connection* to its *designated network asset*. This regulatory obligation would also be supported by an obligation in the NOA. The reference to non-compliance with obligations should also extend to existing *connection agreements* and NOAs.
5.2A.6(c)	As drafted, *DNA services* are provided to, and paid for by, the DNA Owner.	Clause 5.2A.6(c) should be amended to read: 'If a *Connection Applicant* is proposing to establish a *connection* to a part of the *transmission network* that is or will be, a *funded network asset* owned by a third party, the *Primary Transmission Network Service Provider* and the third party owner of that *funded network asset* must, in negotiating the terms of the *network operating agreement* for that *funded network asset* comply with the negotiating principles in schedule 5.12.' Schedule 5.12 will refer to the *access policy* where the *Connection Applicant* is proposing to *connect* to an existing *designated network asset*.
5.2A.7(c)(2)	Given our comments concerning clause 5.2A.8(o), consideration should be given to including terms in the NOA to facilitate the reclassification of a *designated network asset* where this is the most efficient option for meeting customer demand for *prescribed transmission services*	As noted in our comments concerning clause 5.2A.8(o), utilising a *designated network asset* to meet demand for *prescribed transmission services* may be the most efficient option for achieving the *National Electricity Objective*. If this is the case, the proposed Rule change should include provisions which will assist to facilitate this outcome and clarify the process and the responsibilities and obligations of each relevant party. For example, the option to purchase could be extended to cover this circumstance. It is important that the efficient development of the shared *transmission network* is not impeded by a lack of detail and checks and balances concerning this potential process.

	and/or maintaining *power system security* and reliability.	
5.2A.7(c)(3)	As drafted, *DNA services* are provided to, and paid for by, the DNA Owner.	Clause 5.2A.7(c)(3) uses the italicised term '*negotiating principles*' which is defined to mean the negotiating principles in Schedule 5.11. However, Schedule 5.11 now states that it does not apply to *DNA services*. As drafted, *DNA services* are provided to, and paid for by, the DNA Owner. Either this paragraph (3) or Schedule 5.11 or 5.12 will need to be corrected.
5.2A.7(e)(7)(i)	The PTNSP should not be involved in the process of allocating the cost of the *funded network asset* between connecting parties. This should be a matter for agreement between the connecting parties and the owner of the *funded network asset* applying the requirements of the *access policy*.	The PTNSP should not be required to distribute amounts between connecting parties and the owner of the *funded network asset*. The owner of the *funded network asset* will most likely charge the first connecting party an annual fee for a specified number of years contracted capacity in order to recover the capital cost of the *funded network asset* and its return on that capital. The PTNSP would have no involvement in this process and in fact would not wish to know the amount of the charge, how that charge was calculated and how that charge is apportioned between the connecting parties. In addition, the most likely dispute that would arise in this context is between the first connecting party and the subsequent connecting party concerning the allocation of the charge payable to the owner of the *funded network asset* between the two parties. This becomes even more complicated when a connecting party has paid a lump sum capital contribution (or prepayment of future charges) to the owner of the *funded network asset* instead of an ongoing annual charge. The only amount in respect of which the PTNSP may have some input is the allocation of the adjusted charge for the provision of the DNA Services between the first and subsequent connecting parties. However, given that the costs of the DNA Services will be charged to the owner of the *designated network asset* by the PTNSP, this allocation should be controlled by the DNA Owner applying the *access policy*. The high level principles in relation to the methodology which should be applied when allocating these costs and charges between multiple connecting parties

		should be included within the *Rules* and reflected in the *access policy*. It should not be the role of the PTNSP to negotiate and agree this allocation.
5.2A.7(e)(7)(ii)	The PTNSP should not be responsible for distributing the *settlements residue* accrued on the *designated network asset* to the DNA Owner.	As noted above, *AEMO*, not the PTNSP should be responsible for calculating and distributing the *settlements residue* accrued on the *designated network asset* to the DNA Owner.
5.2A.8(a)	Query whether the cost allocation aspects of the *access policy* should also apply to the allocation of the cost of an *identified user shared asset* as between connecting parties.	If a connecting party elects to engage a third party to design, construct and own an *identified user shared asset*, similar cost allocation principles should apply with respect to allocating a portion of those costs to a subsequent connecting party. Whilst other aspects of the normal Rule 5.3 process would apply, there should be a recognition that the Rule 5.3 *connection* process cannot apply in exactly the same manner to a proposed *connection* to the shared *transmission network* as compared to a proposed *connection* to a third party *identified user shared asset*.
5.2A.8(b)	The *access policy* should be prepared, maintained and published by the DNA Owner and cover more than just *DNA services*.	The *access policy* should be prepared, maintained and published by the DNA Owner's *designated network.* The primary focus of the *access policy* should not be *DNA services*. As drafted, *DNA services* are being provided by the PTNSP to the DNA Owner and are limited to maintenance and operation services. The *access policy* will need to also cover other activities, such as access to the *designated network asset* and the allocation of costs and contracted capacity by the DNA Owner as between the parties *connecting* to the *designated network asset*. See our later comments concerning the definition of DNA Services.
5.2A.8(c)		Clause 5.2A.8(c) should set out the principles and issues which need to be reflected in the *access policy*. This should include the principles governing access

		to the *designated network asset*, the provision of contracted capacity by the DNA Owner and the allocation of costs and contracted capacity by the DNA Owner as between the parties *connecting* to the *designated network asset*. It is unclear why old paragraphs (c)(1) and (2) have been deleted. They appear to be equally relevant to a *designated network asset*.. Old paragraph (3) should be amended to refer to: '...the pricing principles and key terms and conditions which are proposed to apply to the provision of services in connection with or related to the *designated network asset* where such principles and terms must be consistent with schedule 5.12.' The *access policy* should contain an obligation on the DNA Owner and the existing connecting parties to provide required information on request by the PTNSP. New paragraph (2) needs to be amended. The *access policy* should clearly allocate the obligations under Rule 5.3 (as modified by the *access policy*) as between the PTNSP and the DNA Owner. It is not sufficient to simply refer to the fact that they supplement or modify Rule 5.3. New paragraph (4) should be amended to reflect the fact that these processes and mechanisms will be implemented by the DNA Owner and how these processes and mechanisms will be supported by the PTNSP via the terms and conditions of its *connection agreements* and the DCA access management deed. The processes and mechanisms to protect the rights of existing connecting parties should include appropriate checks and balances to ensure that the extent of the protections are clear as at the date a *connection enquiry* is received from a subsequent connecting party and the available capacity cannot be 'gamed' by the existing connecting parties. The *access policy* should also regulate: • the allocation of the charges payable to the DNA Owner as between the connecting parties; and

		• the adjustment to the charges payable by the DNA Owner to the PTNSP for the provision of the *DNA Services* following the *connection* of a subsequent connecting party's facilities to the *designated network asset*. Any cost sharing with respect to the cost of developing and owning the *designated network asset* should be a matter for negotiation and agreement between the DNA Owner, the first connecting party and the subsequent connecting party. A failure to agree should be a *DNA access dispute*. The PTNSP should not be placed in a position where it is required to arbitrate a dispute between the first connecting party and a subsequent connecting party. New paragraph (5) will need to be amended by replacing the reference to *'DNA services* from' with a reference to *'...connection* to'. It is likely that other principles and issues will need to be mandated in clause 5.2A.8 in order to properly regulate the form of the *access policy*.
5.2A.8(e) to (m)	These clauses will need to be amended to reflect the fact that the DNA Owner will be responsible for preparing and varying the *access policy* for its *designated network asset*	These clauses assume that the PTNSP will be responsible for preparing and varying the *access policy* for a *designated network asset*. As noted above, the DNA Owner should be responsible for this function. Given that there was no consultation process for the *access policy* for a *large dedicated connection asset*, why is a consultation process required for this *access policy*, particularly where the *access policy* will be limited to a *designated network asset*, will be required to be consistent with the *access policy* principles.
5.2A.8(n)	The obligation to not engage in conduct for the purposes of preventing or hindering access to DNA Services should be amended to cover the DNA Owner and existing connecting parties and access to	This obligation should apply to the DNA Owner and existing connected parties. In addition, it should extend to access to the *designated network asset* rather than simply being limited to the *DNA Services*. Paragraph (n) should make clear that the PTNSP will not be engaging in conduct for the purposes of preventing or hindering access if it rejects or limits a subsequent connecting party's access application in accordance with the requirements of the *access policy*.

	the *designated network asset*.	
5.2A.8(o)	This clause should refer to access to a *designated network asset* rather than *DNA services.* The Rule change should provide some checks and balances concerning the process for reclassifying a *designated network asset*.	As drafted, the *DNA services* are provided to the DNA Owner by the PTNSP. Clause 5.2A.8(o) should refer to *'... access to a designated network asset'* rather than *'...access to an applicant for DNA services'.* The Rule change should provide some checks and balances concerning the process for reclassifying a *designated network asset*. Clause 5.2A.8(o) gives the PTNSP a discretion to permit or deny an access application which would result in the *designated network asset* being reclassified as part of the shared *transmission network*. However, the proposed Rule change provides no guidance as to the process that will be followed particularly where utilising the *designated network assets* to meet demand for *prescribed transmission services* is the most efficient option for achieving the *National Electricity Objective*. For example, see our comments concerning clause 5.2A.7(e)(2).
5.3.3	The 5.3.3 response process needs to recognise that the PTNSP will be reliant on the third-party owner of the *funded network asset* and the existing users of the *funded network asset* for much of the information referred to in clause 5.3.3.	Paragraph (b)(3) should also refer to the third party owner and the existing users of the *funded network asset* and the fact that amounts may need to be paid to those parties. The clause 5.3.3 process will now need to work for *connections* directly to the shared *transmission network* as well as *connections* to a *funded network asset*.
5.3.4	In the case of a *contestable FNA component*, it will be necessary to include the proposed owner of	For example, given that the PTNSP will be required to enter into a NOA with the owner of the *contestable FNA component*, the form of the NOA should be discussed with the owner as well as the *connection applicant*. Query in paragraph (b1)(i)(2) whether the focus should be on facilitating future expansion rather than not unreasonably inhibiting or precluding.

	the *contestable FNA component* in the process for preparing the *application to connect*.	
5.3.6(a)	Given this is a civil penalty provision, the timeframe should recognise that the *preliminary program* is dependent upon the activities of parties who are not within the control of the PTNSP and that the involvement of multiple parties in a *connection* process is likely to lead to delays which are beyond the control of the PTNSP.	Paragraph (a)(1) should be amended to accommodate the ability to allow additional time in these circumstances.
5.5	As noted above, certain types of disputes should not require the involvement of the PTNSP but rather should be resolved as between the third party owner of the *funded network asset*, the first connecting party and any subsequent connecting party.	Rule 5.5 will need to be amended to address this issue. The reference to *DNA Services* in the heading is not required because *DNA Services* are already defined as *negotiated transmission services*. Rule 5.5.1 will need to be amended to include disputes which may arise between the DNA Owner, first connecting party and subsequent connecting concerning the terms and conditions of access in relation to the subsequent connecting party.

Schedule 5.6, Part A	The list of indicative conditions for inclusion in a *connection agreement* for a facility that is proposed to be *connected* to a *designated network asset* will need to include some additional conditions relating to the modified access arrangements.	For example, conditions relating to: • the contracted capacity being provided by the DNA Owner; • the *DNA services* being provided by the PTNSP under the NOA and the interaction with the PTNSP's obligations under the *connection agreement*; • the obligations of the DNA Owner under the NOA and the interaction with the PTNSP's obligations under the *connection agreement*; • entering into a deed with the *Primary Transmission Network Service Provider*, the DNA Owner and each other *Transmission Network User* with facilities *connected* to the *designated network asset* governing (amongst other things) the management of access to that *designated network asset*; • the installation and operation of the *metering installation* required to be installed for the *boundary point*.
Schedule 5.6, Part B	The list of provisions which must be included in the NOA should be expanded.	Paragraph (a) should refer to the shared *transmission network*. In addition, the agreed boundaries and interfaces should cover *identified user shared assets*, *designated network assets*, *dedicated connection assets* and the connecting party's facility. It should also identify the *transmission network connection point* and the *boundary point*. Paragraph (h) should be amended to read '...for a *designated network* asset, metering arrangements at the *boundary point* as required by clause 7.5B.1.' Additional provisions should cover: • the contracted capacity being provided by the DNA Owner; • the interaction and interdependencies between the performance of the DNA Owner's obligations under the NOA and with the PTNSP's obligations under the *connection agreement*; • the requirement to enter into a deed with the *Primary Transmission Network Service Provider* and each *Transmission Network User* with facilities *connected* to the *designated network asset* governing (amongst other things) the management of access to that *designated network asset*;

		• the DNA Owner's obligation to funded defect repairs and major replacements.
Schedule 5.11	Given the earlier comments concerning *DNA services* should Schedule 5.11 not apply to all services provided in connection with or related to a *designated network asset*.	Given the earlier comments concerning *DNA services*, Schedule 5.11 should be amended to refer to all services provided in connection with or related to a *designated network asset* and Schedule 5.12 should set out all the negotiating principles relating to these services.
Schedule 5.12	Given the earlier comments concerning *DNA services* Schedule 5.12 should exclusively govern the negotiating principles for all services provided in connection with or related to a *designated network asset*.	As drafted, Schedule 5.12 only applies to *DNA Services*. However, the *DNA Services* are provided by the PTNSP to the DNA Owner and will be adjusted if a subsequent connecting party proposes to *connect* to the *designated network asset*. A large portion of the costs related to a *designated network asset* are not covered by the current negotiating principles. Whilst the cost and charging arrangement that is negotiated between the third party owner of the *designated network asset* and the first connecting party is unregulated and is a matter for commercial agreement between those parties, the manner in which those costs and charges are allocated to subsequent connecting parties needs to be subject to some form of regulation and control over the negotiation process. As noted above, the PTNSP should not be involved in these negotiations or be required to adjudicate concerning these negotiations. Rather, the *Rules* and the DNA Owner's *access policy* should set out the principles which are required to be reflected in the cost allocation and the third party owner, first connecting party and subsequent connecting party should be bound to comply with those principles. The prices for *DNA services* and any services which are provided by the PTNSP in relation to the *designated network asset* need to be set at a level which is

		commensurate with the commercial risk associated with providing those services as per the principle enunciated in section 7A(5) of the *National Electricity Law*. The negotiating principles should recognise that *connecting* additional connecting parties to a *designated network asset* exposes the PTNSP to additional risk which would not have been factored into the original charges for the *DNA Services* for the first connecting party. There will need to be a clear process for determining the *power transfer capability* for an existing connecting party in order to avoid gaming. In particular, paragraph (8)(a) needs to be expanded so that there is a clear method for determining a person's reasonably anticipated requirements measured at the time of the *application to connect* in order to avoid gaming.
7.5B.1(a)	*AEMO* is required to calculate the *electrical energy losses*.	The words '...by *AEMO*.' should be added at the end of paragraph (a).
access policy	The *access policy* relates to a *designated network asset* not just the *DNA services*.	The definition should be amended to read '...An access policy as required for a *designated network asset* under clause 5.2A.8.' In this way the scope and purpose of the *access policy* can be defined in clause 5.2A.8.
boundary point	There are some drafting issues with the definition of *boundary point*.	The current drafting suggests that all new *connections* to a *transmission network* will have an *identified user shared asset* located between the *designated network asset* and the pre-existing shared *transmission network*. Will a third party owner of an *identified user shared asset* have any role in determining the *boundary point*? The PTNSP will have a NOA with the third party owner under new clause 5.2A.7 which could include terms regulating this issue. The reference to 'leased' in paragraph (b) is unnecessary given clause 5.2A.1(b). The definition of *boundary point* depends upon the definition of *designated network asset*, but the definition of *designated network asset* depends upon determining the *boundary point*. This circularity will need to be addressed.

DNA service	The term *'DNA service'* needs to be better defined.	The draft Rule change assumes that a *DNA service* is the same as a *large DCA service*. This assumption is incorrect and has impacted upon the entire draft Rule. Under the current *Rules*, the *Dedicated Connection Asset Service Provider* was responsible for providing all of the services related to the *large dedicated connection asset*. Under the draft Rule change, some of these services are being provided by the DNA Owner and some are being provided by the PTNSP. In addition, the current *Rules* contain no concept of the PTNSP providing O&M services to the *Dedicated Connection Asset Service Provider* for its *large dedicated connection asset*. *DNA services* are provided to the DNA Owner by the PTNSP under the NOA. The charges for the *DNA services* are payable by the DNA Owner to the PTNSP under the NOA. The *DNA services* will include the following activities: • routine maintenance of the *designated network asset;* • non-routine maintenance (i.e. repair or replacement of defective assets and major repairs subject to receipt of funding from the DNA Owner; • repairs and/or replacements caused by a breach of the NOA by the PTNSP; • operation of the *designated network asset* consistent with the requirements and approach applied to the shared *transmission network* by the PTNSP; • storage and maintenance of spares required to be provided by the DNA Owner under the NOA; • emergency step in and replacement of assets covered by the DNA Owner's guarantee; and • oversight and discharge of those aspects of the Rule 5.3 *connection* processes that are allocated to the PTNSP under the *access policy* and the NOA.

DNA services access dispute	This definition needs to cover all disputes concerning access to the *designated network asset*	This definition needs to cover the situation where the DNA Owner, the first connecting party and the subsequent connecting party cannot reach agreement concerning the allocation of costs or contracted capacity.
funded network asset	The definition of *funded augmentation* needs to be amended to exclude *funded network assets*.	*Funded augmentation* is defined to mean '...a *transmission network augmentation* for which the *Transmission Network Service Provider* is not entitled to receive a charge pursuant to Chapter 6A.' In other words, work to enlarge the TNSP's *transmission network* or increase the capacity of the TNSP's *transmission network* to transmit electricity the cost of which is not being recovered via charges for *prescribed transmission services*. It follows that work to enlarge a *designated network asset* or increase the capacity of a *designated network asset* would be a *funded augmentation* and subject to the requirements of Rule 5.18. It is unlikely that this is intended particularly given the uncertainty concerning what Rule 5.18 is trying to achieve (i.e. Rule 5.18 is not intended to apply to non-regulated / fully contestable services such as a PTNSP extending an existing *designated network asset* or increase the capacity of a *designated network asset*). The definition of *funded network asset* currently excludes parts of a *transmission network* that form components of *system strength connection works*. Query whether there could be circumstances where it is more efficient to install larger capacity *system strength connection works* and share the costs rather than require each connecting party to install its own *system strength connection works*.
identified user shared asset	This definition needs to be clarified	It is unclear what is meant by the terms 'expanding' and 'incorporate' when used in paragraph (a)(2). Paragraph (a)(2) should be amended to read '...extending or *augmenting* the existing *transmission network* to permit the *connection* of a *designated network asset* (but does not include subsequent components that are incorporated into that *designated network asset*)'. Paragraph (b) should be amended to read '...are not for the exclusive use by (1) the person referred to in paragraph (a)(1); or (2) the *identified user group* for the *designated network asset* referred to in paragraph (a)(2);'

		Paragraph (c) should be amended to refer to '…to *connect* a person or *identified user group* to a *transmission network*' given paragraphs (a) and (b). ' It is also unclear what is meant by the last part of the Note.
terms and conditions of access	The definition will need to be amended to refer to clause 5.5.1 given the proposed amendments to that clause.	
Transitional, 11.[xxx].3(b)	Bringing a TCAPA Connection Agreement under the Amending Rule	PTNSP should have the right to refuse to convert a *dedicated connection asset* into part of its *transmission network* if the *dedicated connection asset* does not meet the standards that apply to the shared *transmission network*.
Transitional, 11.[xxx].5	Time frame and default position	This clause will need to be amended to reflect the fact that the DNA Owner will be required to develop and publish the *access policy*. Query whether 4 months is long enough in which to develop the *access policy.*


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