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**Mr John Pierce**

**Australian Energy Market Commission**

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**12 September 2019**

**National Electricity Amendment – Transparency of new projects Rule: Draft Determination (ERC0257)**

AGL Energy (AGL) is one of Australia’s leading integrated energy companies and the largest ASX listed owner, operator and developer of renewable generation. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources. AGL is also a significant retailer of energy and provides energy solutions to over 3.6 million customers in New South Wales, Victoria, Queensland, Western Australia and South Australia.

We welcome the opportunity to comment on the Australian Energy Market Commission’s (**AEMC**) Transparency of New Projects draft determination (**Draft Determination**) and Draft Rule which outlines a preferred rule in response to the three rule change requests aimed at increasing the transparency of new generation projects connecting to the National Electricity Market (NEM).

AGL is broadly supportive of the Draft Determination. We agree that greater access to information and data about new generation connections will assist the energy market to transition and enable developers to undertake more informed commercial investment decisions. AGL also believes that the Draft Determination should go some way to complement existing regulatory reform discussion on related projects, including the ongoing Transmission Loss Frameworks rule change<sup>1</sup> and the Coordination of Generation and Investment Review<sup>2</sup>.

**Asset Sale Developer registration**

In our submission to the Consultation Paper, AGL outlined a number of concerns, including with respect to mechanical and governance arrangements<sup>3</sup>. These concerns were largely focused in response to the Australian Energy Market Operator’s (AEMO) rule change request<sup>4</sup> which *proposed “that rule 2.7 of the National Electricity Rules (NER) should be amended to allow persons with the purpose of building a generating system or a large load to register as an Intending Participant (despite not intending to be registered as a Generator or Market Customer)”*<sup>5</sup>.

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<sup>1</sup> <https://www.aemc.gov.au/rule-changes/transmission-loss-factors>

<sup>2</sup> <https://www.aemc.gov.au/market-reviews-advice/coordination-generation-and-transmission-investment-implementation-access-and>

<sup>3</sup> <https://www.aemc.gov.au/sites/default/files/2019-05/AGL%20-%20ERC0257%20Submission.pdf>

<sup>4</sup> <https://www.aemc.gov.au/rule-changes/nem-information-project-developers>

<sup>5</sup> AEMC Draft Rule Determination, National Electricity Amendment (Transparency of New Projects) Rule 2019; 1 August 2019; page 4



AGL supports the AEMC's preferred decision to split developers into two broad categories, obligate AEMO to undertake an annual audit of the Intending Participant registration category, and introduce the 'deemed' Registered Participant category for Asset Sale Developers<sup>6</sup> for the purposes of accessing NEM Standing Data and information under clause 3.13.3(k) of the NER.

We are, however, unsure how this deeming would work in practice in the NER. We request the AEMC to clarify its intent across three broader issues - access, governance, regulatory enforcement. Our concerns across these issues are described below:

- **Access** – AGL supports the addition of the definition of 'Project Developer' (PD), however it appears to conflict with the intended operation of this category outlined in the Draft Determination.

AGL notes that deeming within the NER typically refers to an automatic entry or fulfilment of the registration category's associated requirements. Conversely, the proposed definition outlines that PDs must "*demonstrate to AEMO's reasonable satisfaction that it intends to develop a plan to be connect to the transmission or distribution system.....*". This distinction requires further clarification.

In addition, the detailed process covered by this definition do not appear to be specified within the Draft Determination or Draft Rule. It is therefore unclear if AEMO, in managing this registration category, is expected (or is required) to:

- undertake a similar access assessment as current conducted for Intending Participants to meet its "reasonable satisfaction" test;
- develop an ongoing record of approved PDs and make this list publicly available in order to promote greater transparency in line with the objective of this Draft Determination;
- periodically audit and maintain the deemed Registered Participant category; and/or
- outline these and any other further details/operational requirements in a procedural document managed by itself.

- **Governance** – AGL's understands that once a PD is deemed registered, it has access to NEM Standing Data<sup>7</sup> and is bound by confidentiality obligations under NER clause 8.6.

However, an obligation on AEMO to maintain an update-to-date record of participants within this registration category, a list of data sets provided and their distribution frequency<sup>8</sup>, does not appear to exist. Without proper transparent records, it appears impossible to know who is operating as a PD, what information they have requested (and received), whether they are genuinely progressing their project, and importantly, whether they are operating within the regulatory bounds of the NER.

In addition, once the PD has completed and sold its project, AGL understands that all NER obligations on the developer would to fall away<sup>9</sup>. While AGL agrees this is appropriate because the

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<sup>6</sup> Defined as a 'Project Developer' as proposed by the Draft Determination.

<sup>7</sup> Specified in NER clause 3.13.3(k)

<sup>8</sup> For example, is AEMO required to provide additional or updated data each time the Project Developer requests it? Is this request capped? Can the Project Developer request data sets for multiple NEM regions once it is deemed a Registered Participant, under the pretence of building more than one investment asset?

<sup>9</sup> Although it is unclear how formally this would occur. For example, is the Project Developer expected to provide formal written notice to AEMO and is AEMO expected to respond?



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PD is (presumably) no longer undertaking an activity associated with the NEM, they are likely to continue to hold various confidential data sets.

AGL flagged a key concern regarding misuse or the sale of confidential data, particularly once the PD had left the regulatory environment in our submission to the Consultation Paper. The Draft Determination does not appear to consider this issue in any further detail, nor does it quantify its risk. In addition, there remains a risk that NEM Standing Data is widened to include other and potentially more granular/sensitive datasets, including those associated with Distributed Energy Resources in the future. We therefore again urge the AEMC to review this issue to ensure all unintended consequences are addressed.

AGL suggests exploring whether an obligation to destroy or desensitise (with evidence) the data sets prior to leaving the NER (i.e. prior to selling off their asset etc.), could be enforced as a way of ensuring the data provided within the regulatory framework remained wholly protected. To suitably incentivise PDs to adhere to this obligation, AGL also believes a civil penalty provision should be considered.

- **Regulatory Enforcement** – AGL remains unclear how the proposed deemed Registered Participant framework would be enforced generally, and specifically under certain scenarios. Examples include where:
  - there was a breach of the NER such as a violation of the confidentiality provisions;
  - the PD became bankrupt; or
  - The PD abandoned their project prior to completing its intended operation (and sale).

In our view, addressing the access and governance issues above would go some way to identifying a potential regulatory breach and enforcing the regulatory framework. However, we believe further practical guidance to the Australian Energy Regulator is necessary to ensure this likely growing registration category is appropriated managed within the NER.

Overall, AGL supports introduction of the overarching PD registration category, however, we believe several significant layers of regulatory detail is missing from the Draft Determination and Draft Rule. We suggest that rather than create specific obligations which are prescribed to this deemed registration category, the AEMC should instead consider mirroring the arrangements applicable to the Intending Participant category, with some slight differences:

- we agree that PD should not have access to those rights and obligations related to disputes outlined in NER clause 5.16.5, 5.17.5 and 8.2.1(a)<sup>10</sup>; but that
- a new obligation regarding data protection, outlined above, be implemented and enforced as a civil penalty provision.

As a general principle, any information and data obtained through the NEM regulatory framework must be protected to the greatest extent possible by the framework, and suitable incentives must equally be placed on participants to operate within the bounds of the NER.

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<sup>10</sup> AEMC Draft Rule Determination, National Electricity Amendment (Transparency of New Projects) Rule 2019; 1 August 2019; page 25



While AGL acknowledges that a data destruction obligation does not apply to Intending Participants<sup>11</sup>, we believe that one should apply to deemed Registered Participants. This is because an Intending Participant is suitably incentivised to progress to full Registered Participant status in order to protect their ongoing ability to operate in the NEM, whereas this same incentive does not apply to deemed Registered Participants. A PD never intending to register as a Registered Participant will therefore only spend a limited amount of time bound by the NER but the sensitivity/confidential nature of the data sets may prevail for longer.

Further, due to the broad nature of the PD definition, the number of developers progressing projects through the deemed Registered Participant category, irrespective of whether their project reaches completion or not, is likely to be higher when compared to Intending Participants. Therefore, the number of PDs walking away from the NER is also likely to increase, and as such we believe there is a clear case to ensure that enduring data protections and confidentiality provisions are strengthened for this class of Registered Participant.

### **Informational flows between connection applicants, TNSPs and AEMO**

AGL understands the Draft Determination seeks to place an obligation on Transmission Network System Providers (TNSPs) to share key connection information with AEMO, which it has received from connection applications and enquires. AGL supports the provision and transfer of key connection information with AEMO for publication in a central register (i.e. the Generator Information Page (GIP)).

We also welcome the proposed measures to uplift the GIP and turn it into a key market reference source. However, we believe that this page needs to strike the right balance between transparency and accuracy of information to serve its intended purpose.

AGL has some concerns that the inclusion of information from connection enquiries, which are likely to include speculative proponent information, may mislead the view of bona fide developers seeking to build new investments. This may be particularly damaging to areas of the NEM where generation, load or balancing services (including system strength, frequency support and inertia services) are required. We believe such misdirection may increase the risks that no new (or insufficient levels) of investment occur.

In addition, but separately, developer information provided at the enquiry stage may be dependent or may influence several other commercial hurdles. Sharing of this information on the GIP may then unfairly erode a first mover advantage, where the proponent is reliant on other commercial negotiations or approvals outside of its control (i.e. state environmental approval or negotiations with a landowner etc.) to complete.

While we recognise that improving the transparency of connection enquires will provide insights into the areas which have or are experiencing increased levels of developer interest, we believe there may be a better way to provide this informational signal to the market, while balancing transparency, commercial interests and informational accuracy. AGL encourage the AEMC to amend its Draft Determination to only require an aggregated subset of information to be shared by TNSPs with AEMO at the connection enquiry level on a quarterly basis. Specifically, the aggregated data set would only cover information which can be used to inform developer interest or growing congestion in a region. This information should be limited to the following:

- Site location – referenced to the proposed transmission connection point/node or transmission line, instead of proposed GPS coordinates<sup>12</sup>;

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<sup>11</sup> Therefore, a small proportion of persons deregistered by themselves or AEMO retain access to time sensitive and confidential NEM Standing Data.

<sup>12</sup> This adjustment should be made to information received from both connection applications and enquires to protect commercial interests.



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- Maximum power generation or demand of the plant – outlining the likely capacity of the proposed investment and therefore the remaining available capacity on the respective transmission line etc.; and
  - Technology type – to demonstrate the impact on (or uplift of) local balancing services.

Lastly AGL acknowledges the obligation on connection applicants to promptly update a TNSP of any 'material' changes to key connection information. We note that 'material' carries some vagueness and ambiguity, and therefore is likely to be a subjective self-assessment by the developer. To ensure this mechanic operates as intended, AGL suggest that the AEMC either include some guidance on how materiality should be defined in its final rule or mirrors the existing materiality threshold tests applicable in other areas of the NER. Consideration should also be given as to whether separate materiality tests are necessary across the key information categories. For example, should the same test be employed to 'site location' Vs. 'technology of proposed generating unit' etc.

AGL welcomes the opportunity to discuss our submission further with the AEMC. If you have any queries about the submission, please call Dan Mascarenhas on (03) 8633 7880 or [DMascare@agl.com.au](mailto:DMascare@agl.com.au).

Yours sincerely,

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