

Our Ref: 15761987
Your Ref: ERC0363
Contact Officer: Stephen Watson
Contact Phone: 02 9102 4039
Date: 10 October 2023

Ms Anna Collyer
Chair – Australian Energy Market Commission
PO Box A2449
Sydney South, NSW, 1235

Dear Ms Collyer,

Enhancing investment certainty in the R1 process – consultation paper 2023

The Australian Energy Regulator (**AER**) welcomes the opportunity to comment on the Australian Energy Market Commission's (**AEMC's**) recent consultation paper on "Enhancing investment certainty in the R1 process" which relates to the Clean Energy Council (**CEC**) rule change proposal on the process through which new generating units can connect to a network.

Related developments in policy

As context for its rule change request, the CEC refers to its experience as a member of the Connections Reform Initiative (CRI), a multi-stakeholder group which also includes the Australian Energy Market Operator (**AEMO**), and network service providers (NSPs). Established in 2020, the CRI is undertaking a program of work to research the processes and governance of the connection process for new generators, and to consider changes which have the potential to improve market outcomes.

The AER wishes to highlight two other regulatory policy developments that are relevant to connections which should also contribute to investment certainty and improved connection processes. Firstly, within the CRI program, the Streamlined Connection Process (previously known as "batching") is of particular relevance to this rule change request. The Streamlined Connection Process workstream consists of several initiatives which explore pathways towards the "batching" together of connection assessment studies, which could create resourcing efficiencies through reducing the amount of modelling required.

These initiatives, which are currently being trialled, have the potential to ameliorate some of the problems identified by the CEC. We recommend the AEMC consider the possible implications of this workstream on the issues explored in its consultation on the CEC's rule change request.

Additionally, the AER has submitted a rule change request to the AEMC seeking to expand the transmission ring-fencing framework to include negotiated transmission services. This proposal seeks to protect connecting parties from potential discrimination by TNSPs. In the absence of ring-fencing controls for negotiated transmission services, it is possible for a TNSP to unduly delay connection services to parties who, for example, do not engage the TNSP's related entity for contestable services. The intention of this rule change is partially to safeguard economic efficiency for new connection assessments by preventing transmission businesses from leveraging market power to discriminate. If this rule change is approved,

the AER considers it should help promote confidence in decision-making and timeliness in relation to connections.

The AER's consultation process prior to submitting the rule change found broad stakeholder support for the proposal.

The proposed framework for addressing external circumstances

The CEC's proposal would create a "Type" framework, where generators would classify their R1 packages into a "Type" category, ultimately providing a pathway to registration. The nature of the category that is determined would depend on the impact of the connection on the power system and whether it leads to material differences or deviations from the negotiated generator performance standard:

- There would be a materiality threshold for an R1 assessment to be considered as a "minor" deviation, in which case, the application would be categorised as Type 1, and the performance standards would be revised in order to complete the connection. This materiality threshold would be negotiated between the parties to the connection agreement. AEMO would publish a guideline on this process.
- There would also be a category for R1 packages which identify a power system issue that is external to the generator. The CEC characterises this category as Type 2 and calls for a second guideline for generators to classify applications as such, with the option to merge this guideline with the first guideline. The second guideline would be prepared by AEMO or the AER.

The CEC proposes that responsibility for addressing external circumstances should be placed with the TNSP. Since the CEC considers reasonable costs may be difficult to determine, it suggests a standardised schedule of payments for particular actions in a Type 2 process, which could be recovered through regulated revenue. This could be via a cost pass through, and/or a contingent project application.

The AER is concerned that these options may not serve the long-term interests of energy consumers. While there may be value in networks having a role in resolving external power system issues, the AER queries whether the default option should not be for these costs to be recovered directly from consumers in the first instance:

- These cost recovery options would place the burden for resolving external power system issues on energy consumers, who have not caused and are unable to manage this risk. Instead, the AER would ask the AEMC to consider how these risks should be best allocated and the extent to which risk should be borne by or shared with the developers of the connecting units, rather than being passed through to consumers. The AER would ask that the AEMC consider whether the developers of new generating units are better placed to forecast and therefore manage some or all of this risk.
- We note the timeframe involved in a contingent project application is unlikely to allow issues to be resolved within the span of a generator application process.
- Additionally, this option may reduce the incentive for generators to make high-quality connection applications that consider how power system impacts can be ameliorated. In turn this may also raise questions as to the level of assurance that the generator can fulfil all the requirements of their connection agreement.

In summary, we ask that the AEMC give consideration to other risk allocation and cost recovery mechanisms.

Dispute resolution

The rule change request considers that when disputes regarding the R1 process delay a connection agreement, the pathway for resolving such disputes is not clear. To address this, the CEC has proposed a facilitated review process.

The AER oversees a series of dispute resolution mechanisms for market participants. Chapter 8 of the NER contains provisions for dispute management, including a process facilitated by the Wholesale Energy Market Dispute Resolution Adviser appointed by the AER. We also have a role in the commercial arbitration process, including appointing a commercial arbitrator to assist in resolving disputes. Dispute resolution by a third party is highly valuable in reaching mutually agreeable outcomes and is an important consideration for any new framework.

In our experience, market participants are often unsure which dispute resolution pathways are available to them in a given situation. When disagreements do arise, this uncertainty has the potential to consume time and resources, and draw out disagreements, which can cause delays to projects. Increased clarity around the dispute resolution framework that applies to disputes relating to the commercial terms for accessing the network, including disputes regarding cost, would be beneficial in ensuring that disputes can be resolved smoothly. As the volume of connection applications grows over the coming years, it will be important for the AEMC to carefully consider how the efficiency of these processes can be ensured.

Resourcing and transitional arrangements

We note that adding additional responsibilities to the AER's role, such as the development of a guideline, will create further resourcing needs, which we request that the AEMC consider throughout the consultation. We also request that the AEMC consults us on the timing of the commencement of any roles and responsibilities to ensure we can be adequately prepared and secure the necessary funding and resources.

The AER would welcome further engagement with the AEMC on these issues.

We thank the Commission for the opportunity to provide input to this consultation. If you have any questions about our submission, please contact Stephen Watson on 02 9102 4039.

Yours sincerely,



Mark Feather
General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator