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Dr John Tamblyn
Chairman
Australian Energy Market Commission
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Email: submissions@aemc.gov.au

Dear Dr Tamblyn

Draft Rule Determination: Draft National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006

Flinders Power offers the following brief comments on the draft transmission revenue Rule change proposals. Whilst Flinders believes the arrangements proposed provide an improved framework for the regulation of transmission revenue in the NEM, a number of detailed aspects warrant clarification and refinement to address some apparent inconsistencies and uncertainties.

By way of background, Flinders Power (formerly NRG Flinders) is fully owned by Babcock and Brown Limited, and was recently acquired from NRG Energy Inc. Flinders is an integrated energy business centred around base load electricity generation, energy trading and retail operations, based in South Australia. The portfolio comprises the baseload coal-fired Northern and Playford Power Stations at Port Augusta, the Leigh Creek coal mine and rail line, and the output of the Osborne Power Station (under power purchase agreement).

1. Unregulated Services

The boundary between *negotiated transmission services* and services which fall outside this definition, and by implication are therefore considered unregulated contestable services, remains somewhat unclear. The AEMC should consider further clarifying these boundaries, given that a contestable transmission service falls outside the protections of the regulatory framework.

The development of a definition and clear criteria for assets which fall into the category of unregulated "contestable transmission services" may assist in removing this uncertainty, and limit the potential scope for dispute over service classification. This definition should reflect the principle that contestable services are those services subject to genuine competition, and able to be practically and economically provided by multiple service providers.

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2. Cost Allocation

The proposed Cost Allocation Principles prevent historically shared costs associated with *prescribed transmission services* from being reallocated to *negotiated transmission services* under draft Rule 6A.19.2(a)(8), where *negotiated transmission services* are defined to include generator *entry services*. This prevents inefficient cost shifting from historically shared assets to dedicated generator connection assets.

However, existing 'legacy' generator connection assets that sit within the Regulated Asset Base (RAB) are grandfathered as *prescribed transmission services* by draft Rule 11.5.11. This denies these 'legacy' connection services the same protection. Within the category of *prescribed transmission services*, costs could therefore be reallocated from historically shared assets to legacy connection assets, due to network changes that are beyond the control of the connected party.

As the AEMC indicated in its Rule proposal report (February 2006):

> *"The Commission recognises that assets that were once used as part of the shared network may over time become dedicated to one user, as demand patterns change. However, given that the user's locational decision has already been made, there is nothing to be gained by providing a price signal to that user via a negotiated charge, and requiring that user to pay for the entire cost of the asset, when it had not previously been doing so, would increase investment risk for the user." (p60)*

Flinders Power would agree. There is no efficiency gain to be made by imposing increased pricing signals to existing sunk investments, and this only serves to increase investor risk.

The same principle should therefore apply to generator connection costs regardless of how historically determined - shared network costs should not be reallocated to generator connection services.

The Cost Allocation Principles should be appropriately amended to reflect this point, or consideration be given to the addition of a new clause to this end, for example:

…

6A.19.2(a)(x) Costs for *prescribed transmission services* which have not been allocated to *entry services* must not be reallocated to *entry services.*

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3. Increases in Asset Value

As noted above, services provided by an asset included within the RAB are grandfathered as *prescribed transmission services* under draft Rule 11.5.11. However, if a TNSP modifies such grandfathered assets (eg via a network reconfiguration or refurbishment project) it is unclear whether:

- New or replacement assets remain deemed to be providing *prescribed transmission services*;
- Any increases in asset value also remain allocated to *prescribed transmission services*.

This uncertainty arises because Rule 11.5.11 refers to a service being a *prescribed transmission service* to the extent the value of the asset used to provide it is included in the RAB. This leads to the risk that replacement assets or increases in asset value would fall outside the scope of *prescribed transmission services*, and be deemed to be a *negotiated transmission service* payable by connected parties.

This creates considerable uncertainty for generator connection costs, and leads to an exposure to cost increases from network changes the generator has no ability to influence. When combined with the different treatment of 'legacy' connection assets discussed above, this presents generators with the dilemma outlined on the diagram overleaf (refer flow chart: *Network reconfiguration project – cost allocation implications*).

The treatment of increases in grandfathered asset value should therefore be clarified. Any increase in asset value should not be allocated to existing generator *entry services* where such projects are initiated by the TNSP to benefit users generally.

4. Dispute Resolution

Expert arbitration has been provided as a mechanism for resolving disputes over *negotiated transmission services* to underpin the commercial negotiating framework. The negotiate/arbitrate model would appear to be the appropriate form of regulation to apply to these services.

However, it is noted that such arbitration is limited to pricing matters. In addition, an NSP is expressly not required to provide a *negotiated transmission service* - even though such a service is still considered a monopoly service within the framework of Chapter 6A.

This may render the dispute mechanism ineffective if the NSP can simply refuse to provide the service. It is also conceivable that an NSP dissatisfied with the pricing outcomes of a dispute process may simply seek to recover such costs through non-pricing terms (eg liability regime, payment terms, credit support, etc).

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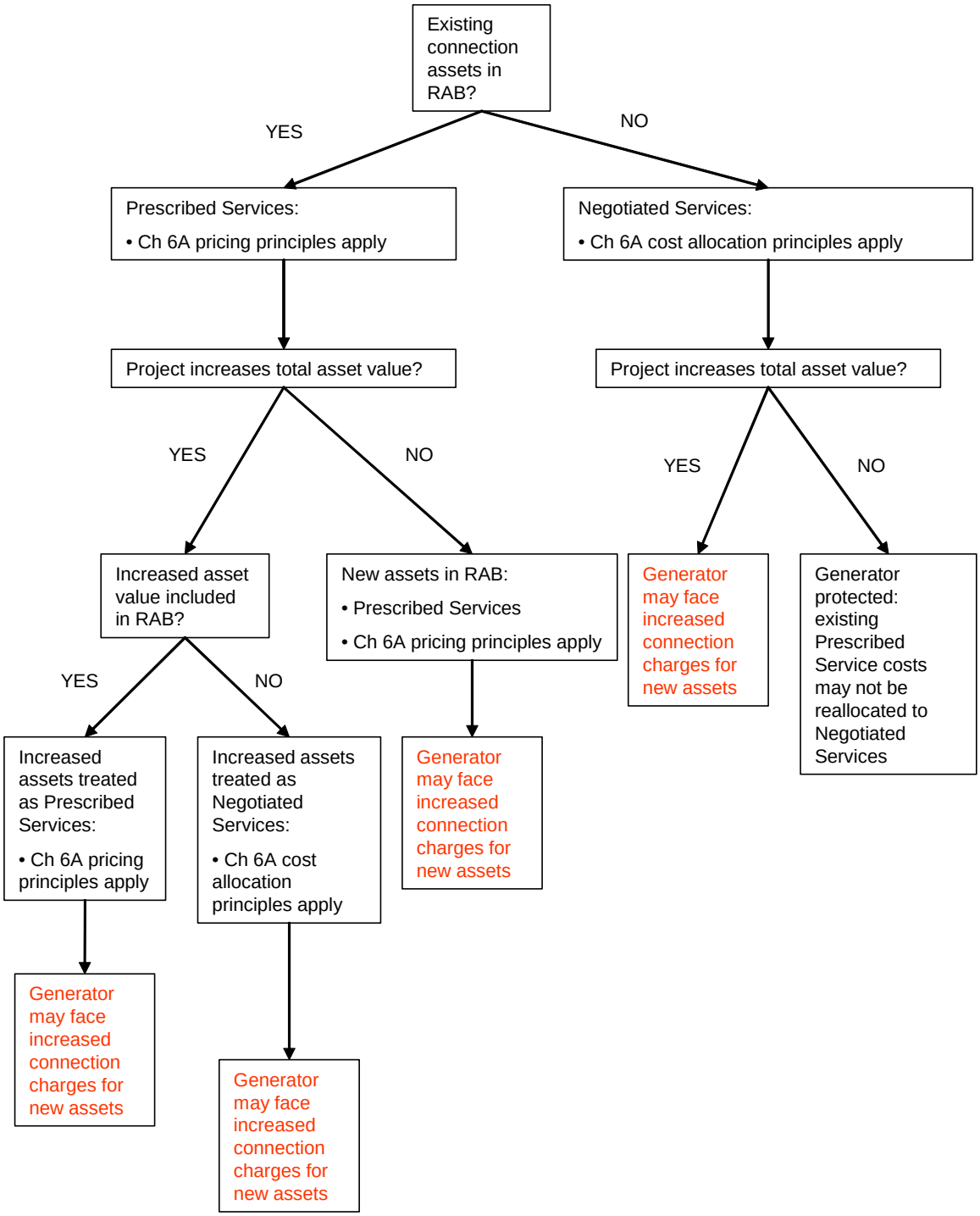
Network reconfiguration project – cost allocation implications



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It would appear that the TNSP should be required to provide that service at the price determined by the arbitration process, at least in respect of *entry* and *exit services*. There also appears to be little benefit in restricting the scope of the arbitration process to the price that may be charged. It would seem preferable for arbitration to be available to resolve both pricing and non-price terms.

Flinders Power appreciates the opportunity to offer these comments on areas of the Draft Determination which would appear to benefit from further refinement and clarification.

Should you wish to discuss any aspect of this submission, please contact Simon Appleby on (08) 8372 8706 or myself on (08) 8372 8726.

Yours Sincerely

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