

Australian Energy Market Commission

DRAFT RULE DETERMINATION

National Electricity Amendment (Connecting
Embedded Generators Under Chapter 5A) Rule
2014

Rule Proponent
Clean Energy Council

21 August 2014

**RULE
CHANGE**

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About the AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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Summary

The Australian Energy Market Commission has made a more preferable draft rule providing eligible embedded generator proponents a choice of which framework to use when negotiating connection to a distribution network.

The ability to choose a connection framework has been created with the purpose of addressing the difficulties that some embedded generator proponents have faced in attempting to connect to a distribution network. In making a selection, embedded generator proponents will be able to use a process that best suits their needs when seeking to connect to a distribution network. This should result in efficient and timely connections and investment in embedded generation and the distribution networks.

The National Electricity Rules includes two connection frameworks relevant to embedded generators. Chapter 5A has a flexible and shorter negotiation process that is available in those jurisdictions that have implemented the National Energy Customer Framework. Its design and structure is to accommodate negotiations associated with basic and standard connection service offerings primarily for load but also for non-registered embedded generation. The Chapter 5A negotiated connection process is currently available in Tasmania, South Australia, New South Wales and the Australian Capital Territory. It will be available in Queensland from 1 July 2015.

The second connection framework is the Chapter 5 embedded generator connection process which was created in April 2014. Chapter 5 applies to registered participants in all jurisdictions. The draft rule allows proponents of non-registered embedded generators to use this more detailed, longer connection process if they consider that it is more appropriate for their circumstances.

This draft rule determination and the draft rule are part of a suite of reforms by the Commission to support the continuing transformation of Australia's energy markets. They have been made in response to a rule change request submitted by the Clean Energy Council.

The rule change request and proposed rule

The rule change request submitted by Clean Energy Council focussed on the less prescriptive nature of the Chapter 5A negotiated connection process as it relates to embedded generators. It reflected the concern of some embedded generator proponents that the less detailed process may be a barrier to the efficient connection of embedded generators across the National Electricity Market.

The Clean Energy Council's proposed rule included a number of amendments to the Chapter 5A negotiated connection process with the aim of improving clarity and certainty for proponents of embedded generators. In particular, the Clean Energy Council sought greater prescription regarding the connection process, timing of actions within the process, information to be provided by distributors, fees and charges relevant to the connection of an embedded generator, the liability of an embedded generator proponent to a distributor and the matters that may be the subject to dispute resolution. Many of the issues raised by Clean Energy Council are similar to the issues that the Commission addressed in its recent development of the new embedded generator connection process in Chapter 5.

The draft rule

In making the more preferable draft rule, the Commission has decided that broadening the scope of the Chapter 5 embedded generation connection process would address the main concerns of embedded generator proponents regarding the level of prescription currently found in the Chapter 5A negotiated connection process.

The draft rule amends Chapters 5 and 5A of the National Electricity Rules. It applies to non-registered embedded generators (that is, generators with a generating capacity of less than 5MW) who are not micro-embedded generators. Proponents of embedded generators for whom a basic or standard connection offer is not available will be eligible to use the Chapter 5 embedded generator connection framework instead of the Chapter 5A arrangements if they wish to do so. The draft rule provides that the selection of the Chapter 5 framework is at the discretion of the embedded generator proponent: it is not subject to agreement by the distributor.

The ability to select the Chapter 5 embedded generator connection process is only available prior to the commencement of the enquiry stage of the connection process. In making this choice, proponents of embedded generators should be aware that all other provisions of Chapter 5, including its schedules, would also apply to their project. These include: information provisions; technical requirements; fees and charging arrangements and the Chapter 8 dispute resolution provisions.

It is important that the eligible embedded generator proponents to whom Chapter 5 would be available must be in a position to make an informed decision regarding which connection process to use. For this reason, the draft rule also includes additional requirements regarding the information that distributors are to provide on their websites. This information relates to the Chapter 5A 'information pack' and includes a register of generating plant relevant to non-registered embedded generators. It is expected that the additional information would be incremental in nature and build on the information to be provided under the Chapter 5 provisions.

In addition to the concerns expressed regarding the less prescriptive nature of the Chapter 5A negotiated connection process, the Clean Energy Council also proposed a number of other amendments to some related provisions. These included: specifying certain process and information requirements, fees and charges relevant to an embedded generator connection, power transfer capability, the cost of augmentation for forecast load growth, the scope of the dispute resolution mechanism and the liability of an embedded generator proponent to a distributor.

The Commission has considered each of these additional matters and the nature of the concerns identified. In some cases, where a key issue is the less prescriptive nature of Chapter 5A, amendments to Chapter 5A do not appear necessary. This is because concerned embedded generator proponents would be able to use the more detailed process set out in Chapter 5.

In relation to other issues (such as power transfer capability, augmentation for forecast load growth and dispute resolution), the Commission has concluded that on balance, the proposed amendments do not appear to be required as the relevant Chapter 5A provisions are sufficiently clear in their scope and intent or are otherwise appropriate. On the matter of an embedded generator's liability to a DNSP, this is most

appropriately managed through usual commercial negotiation taking into account the particular circumstances of the embedded generator project. The draft rule does not make any change to this arrangement.

In not making significant amendments to the process for connecting an embedded generator under Chapter 5A the Commission has also taken into account that the process is relatively new and has had limited use to date.

It is proposed that any final rule made following consultation on this draft rule will take effect approximately three months after the making of the final rule determination. At present, neither the Victorian nor Queensland Governments have implemented the National Energy Customer Framework, of which Chapter 5A is part. Until this occurs, Chapter 5A and any amendments to it resulting from this rule change process, will not apply to those states.

Invitation for submissions

Stakeholders are invited to make written submissions in response to this draft rule determination and the draft rule by 2 October 2014.

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1 The Clean Energy Council's rule change request

1.1 The rule change request

On 19 April 2013, the Clean Energy Council (CEC) made a request to the Australian Energy Market Commission (AEMC or Commission) to make a rule regarding negotiated connections for embedded generators under Chapter 5A of the National Electricity Rules (rule change request). The rule change request and proposed rule seek to amend the negotiated connection framework in Chapter 5A of the National Electricity Rules (NER) for embedded generators. It does not propose to make any changes to the connection process available to any load customer or to the frameworks for basic and standard connections for embedded generators.

1.2 Rationale for rule change request

The CEC considers that embedded generator proponents negotiating a connection to a distribution network under Chapter 5A of the NER will experience unexpected costs, significant delays and an uncertain investment environment.¹

Although the CEC has acknowledged that some standard connection services will become available to embedded generator proponents over time, it questions the extent to which distribution network service providers (DNSP) will develop these. The CEC has suggested it will be impractical for DNSPs to develop standard connection services for all embedded generators within the scope of Chapter 5A.² As a result, the negotiated connection process will be used by the vast majority of embedded generator proponents with a capacity between 10 kilowatts (kW) and 5 megawatts (MW).³

The cause of the overarching problem of a long and difficult connection process is, according to the CEC, that the negotiated connection process in Chapter 5A lacks sufficient prescription.⁴ It has suggested that this lack of prescription is due to the approach taken in the drafting of Chapter 5A. The CEC contends the drafting approach was intended to not significantly disrupt the existing jurisdictional processes. It also considers that the drafting of Chapter 5A unnecessarily treats embedded generator connections in the same way as load connections.⁵

1.3 Solution proposed in the rule change request

To address these concerns, the CEC has proposed amendments that would increase the level of prescription in the Chapter 5A negotiated connection process. The majority of the amendments proposed by the CEC relate to information to be exchanged between the parties and the structure and timing of the process. In particular, it has proposed to:

- amend the structure and timing of the process such that embedded generator proponents receive the information they need to assess the viability of proposed

1 CEC rule change request, 19 April 2013, pp2-3.

2 *ibid.* p8.

3 *ibid.* p6.

4 *ibid.* p2.

5 *ibid.* p7.

projects at the earliest possible time and that DNSPs are prevented from delaying the process or providing information that is not accurate or up to date;

- prescribe in detail the information that DNSPs must provide embedded generator proponents before making a "negotiated connection application". For example, the proposed rule prescribes, in a new schedule to Chapter 5A, specific information that the DNSP must provide an embedded generator proponent prior to it submitting a negotiated connection application. This would include information such as proposed technical standards, design and planning information and interface requirements such as switching and isolation facilities;
- require the express provision of information about power transfer capability at a number of stages in the connection process from the DNSP to the embedded generator proponent and other parties that may be affected by a proposed connection. The proposed rule also expressly allows an embedded generator proponent to seek distribution network user access arrangements at any level of power transfer capability. In addition, DNSPs will be required to use reasonable endeavours to make a connection offer that complies with the distribution network user access arrangements reasonably sought by the proponent, including the location of the proposed connection point and the level and standard of power transfer capability that the network will provide;
- require DNSPs to consider the technical merit of the connection arrangements proposed, or determine the technical requirements for the connection when assessing negotiated connection applications;
- require DNSPs to describe the technical requirements for connection, including any relevant technical standards, when assessing negotiated connection applications;
- make clear that any matter relevant to a connection is subject to negotiation. The CEC considers that the current provision indicates only connection charges are negotiable;
- require that all information exchanged between the parties as part of the negotiation process be treated as confidential information;
- require DNSPs to provide an embedded generator proponent access to their legal personnel in order to negotiate the terms and conditions of an offer, after the offer has been made; and
- require a more detailed breakdown of connection costs and process fees in the connection offer.⁶

The CEC has also proposed a number of other amendments to Chapter 5A of the NER. These are:

- restrict the ability of DNSPs to charge for the provision of information that they are required to maintain;

⁶ *ibid.* pp22-52 and Attachment 1.

- prevent DNSPs from charging a fee to cover the costs of negotiation and processing a negotiated connection application until the proponent has been advised by the DNSP that the relevant application is complete;
- remove the ability for embedded generator proponents to be charged for augmentations relating to forecast load growth;
- expressly provide that a negotiated connection offer must not include a charge that is inconsistent with Chapter 5A;
- limit connection costs that DNSPs can charge embedded generator connection proponents to those which could have been reasonably identified by the proponent from the information initially provided by the DNSP. The purpose of this limitation is to encourage DNSPs to provide complete, correct information to the embedded generator proponent in the first instance;
- require a limitation on embedded generator liability in the minimum content requirements for a connection contract under Schedule 5A.1. The CEC has not proposed what this limit should be or how, conceptually, liability should be limited and for what actions or omissions; and
- amend the definition of a “relevant dispute” under Part G of Chapter 5A to broaden the scope of issues that can be considered under it. Specifically, to include in the definition of a “relevant dispute” a dispute between a customer and a DNSP about the requirements of Chapter 5A and any material produced by a DNSP under Chapter 5A. This proposed change addresses the CEC's concerns that the Chapter 5A dispute resolution process is too narrow and excludes aspects of the negotiation process that may be subject to disagreement.⁷

1.4 Relevant background

The AEMC has recently completed an assessment of a rule change request relating to the connection of embedded generators to distribution networks under Chapter 5 of the NER (the Chapter 5 rule change request).⁸ Chapter 5 of the NER caters for embedded generator connections that are above the Australian Energy Market Operator's (AEMO) standing exemption from the requirement to register as a generator in the National Electricity Market (NEM). AEMO has set this minimum threshold at 5MW of generating capacity.⁹

Following extensive consultation with stakeholders, the Commission made substantial amendments to the connection process as it applies to embedded generators in Chapter 5 in its final rule. The key amendments were:

- DNSPs are now required to publish an ‘information pack’ setting out information to guide embedded generator proponents on matters such as the process requirements and potential costs;

⁷ *ibid.*

⁸ AEMC, *Connecting embedded generators, rule determination*, 17 April 2014.

⁹ AEMO, *NEM Generator Registration Guide*, May 2013, pp35-36.

- DNSPs are now required to publish a register of generating plant that has been successfully connected to the network in the preceding five years to allow embedded generator proponents to better understand the types of equipment that have been able to connect to a distribution network;
- the introduction of a two-stage connection enquiry process consisting of a preliminary enquiry stage followed by a detailed enquiry stage;
- the introduction of clear, relevant information requirements and timeframes for both parties at each stage of the connection process; and
- clarifying that the existing dispute resolution process set out in the NER is applicable to technical issues as well as other matters arising during a connection process.

Many of the issues considered as part of the Chapter 5 rule change request are similar to those raised by the CEC in regard to Chapter 5A. Where relevant, the AEMC has drawn on work carried out during the Chapter 5 rule change process to assist in its consideration of the CEC's rule change request.

In addition, and also of relevance to the issues raised by the CEC, is the AEMC's final rule on a distribution network planning and expansion framework.¹⁰ The rule, which commenced on 1 January 2013, established a national framework for distribution network planning and expansion. This included new obligations on DNSPs to develop and document a demand side engagement strategy and to engage with non-network providers. In addition, DNSPs are now required to publish an annual planning report that includes information on demand forecasts and system limitations.

1.5 Commencement of rule making process

On 15 May 2014, the Commission published a notice advising of its intention to commence the rule making process and the first round of consultation in respect of the CEC's rule change request. The assessment of this rule change request was deferred until it was practicable to consider the request in light of the amendments made to the Chapter 5 connection process specifically for embedded generators on 17 April 2014.

A consultation paper prepared by AEMC staff identifying specific questions for consultation was also published with the rule change request. Submissions closed on 12 June 2014.

The Commission received 11 submissions as part of the first round of consultation. They are available on the AEMC website (www.aemc.gov.au). A summary of the issues raised in submissions and the Commission's response to each issue is contained in Appendix A.

In addition to considering written submissions, the AEMC has discussed various issues relating to the connection of embedded generators with a number of stakeholders. The issues arising from these discussions have also been considered in making this draft rule determination.

¹⁰ AEMC, Distribution network planning and expansions framework, rule determination, 11 October 2012.

1.6 Consultation on draft rule determination

The Commission invites submissions on this draft rule determination, including the draft rule, by 2 October 2014.

Any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 28 August 2014.¹¹

Submissions and requests for a hearing should quote project number “ERC0158” and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

¹¹ In accordance with s. 101(1a) of the National Electricity Law (NEL). A public hearing is a formal requirement for the Commission to appear before the applicant to enable the applicant to make a presentation to the Commission.

2 Draft rule determination

2.1 Commission's draft rule determination

The Commission has determined to not make the proposed rule by the CEC and instead to make a more preferable draft rule.¹²

The draft rule is attached to and published with this draft rule determination. Its key features are described in Chapter 3.

The amendments made by the draft rule to Chapter 5A of the NER will apply to jurisdictions that have implemented the National Energy Customer Framework (NECF). Queensland and Victoria have yet to implement NECF. However, the Queensland Government has indicated that it will do so on 1 July 2015.¹³

Having regard to the issues raised in the rule change request and by stakeholders, the Commission is satisfied that the draft rule will, or is likely to, better contribute to the national electricity objective (NEO). It is satisfied that the reasonable needs of both the DNSPs and embedded generator proponents are met. In addition, the draft rule, if implemented, would support the efficient connection of embedded generators to distribution networks while not undermining the security and reliability of a network.

The draft rule does not represent a significant administrative burden on the parties. The Commission is satisfied that the cost to implement the rule would be likely to be outweighed by the benefits of efficient connections being able to occur under appropriate processes.

In particular, the draft rule provides eligible embedded generator proponents in Chapter 5A with the choice of connecting under Chapter 5A or Chapter 5. This compares to the proposed rule which replaced the existing negotiated connection process in Chapter 5A with a new more detailed process in the same chapter. Giving embedded generator proponents a choice under the draft rule will enable them to select the connection process which best suits their needs. The negotiated connection process in Chapter 5A provides a flexible and potentially shorter process that may be relevant for some embedded generator proponents. For this reason, it should remain in place.

However, other embedded generator proponents may consider that the more detailed Chapter 5 embedded generator connection process would be more appropriate for their needs. For example, to the extent that the lack of prescription in the Chapter 5A process is a concern to an eligible embedded generator proponent, then the more detailed provisions included in the Chapter 5 embedded generator connection process may address these concerns. For this reason, the Commission has decided to allow such embedded generator proponents to select the Chapter 5 embedded generator connection process.

¹² Under s. 91A of the NEL the AEMC may make a rule that is different (including materially different) from a market initiated proposed rule (a more preferable rule) if the AEMC is satisfied that having regard to the issue or issues that were raised by the market initiated proposed rule (to which the more preferable rule relates), the more preferable rule will or is likely to better contribute to the achievement of the national electricity objective.

¹³ www.dews.qld.gov.au/policies-initiatives/electricity-sector-reform/supply/customer-framework.

The draft rule also includes additional requirements regarding the information that DNSPs are to provide on their websites. Specifically, the type of public information relating to embedded generators that is to be provided in accordance with Chapter 5 will also need to be provided in regard to non-registered embedded generators.

The CEC proposed other changes related to Chapter 5A negotiated connections for embedded generators. They broadly related to:

- the level of power transfer capability that the network will provide;
- process fees;
- connection charges;
- embedded generator liability; and
- dispute resolution.

The draft rule does not include any of the proposed amendments on these issues.

The Commission's reasons for making this draft rule determination are set out in Chapters 3 and 4. Appendix C sets out further detail on the legal requirements for the making of this draft rule determination.

2.2 Rule making test

The Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NEO. This is the decision making framework that the Commission applies.

The NEO states:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity;
and
- (b) the reliability, safety and security of the national electricity system.”

The objective captures the three dimensions of efficiency: productive (efficient operation), allocative (efficient use of) and dynamic efficiency (efficient investment).¹⁴

For this rule change request, the Commission considers the relevant aspects of the NEO are:

- efficient investment in embedded generation and distribution networks;
- efficient operation of distribution networks; and
- efficient use of electricity services.

¹⁴ Productive efficiency means goods and services should be provided at lowest possible cost to consumers; allocative efficiency means that the price of goods and services should reflect the cost of providing them, and that only those products and services that consumers desire should be provided; dynamic efficiency means arrangements should promote investment and innovation in the production of goods and services so that allocative and productive efficiency can be sustained over time, taking into account changes in technologies and the needs and preferences of consumers.

The Commission is satisfied that the draft rule will, or is likely to, contribute to the achievement of the NEO.

The draft rule will give eligible embedded generator proponents under Chapter 5A the ability to choose whether to connect under the more prescribed connection process in Chapter 5 or the more flexible connection process in Chapter 5A. Giving embedded generator proponents this choice will allow them to connect under a process that best suits their needs. Connecting under the process that best suits their needs allows embedded generator proponents to connect in an efficient and more timely manner. This will support efficient investment in embedded generators and distribution networks. This will also enable DNSPs to make better informed decisions when planning and operating their networks.

In this way, the draft rule will promote efficient investment and operation of distribution networks and efficient use of electricity services and thus promote the long term interests of consumers in respect of the price of electricity services.

There will be an additional administrative burden for DNSPs in making relevant information available. Such information is necessary to allow eligible embedded generator proponents to make an appropriately informed choice. However, these costs would be unlikely to outweigh the benefits that will arise by giving eligible embedded generator proponents in Chapter 5A the choice of which process to connect under.

2.3 Assessment approach

In the context of making an assessment about the proposed and draft rules and their consistency with the NEO, the Commission has developed an assessment framework.

The Commission considers that an efficient negotiated connection process for embedded generators would generally have the following characteristics:

- meet the reasonable needs of embedded generator connection proponents;
- support connection services being priced in a cost reflective manner;
- support connection services being provided at least cost; and
- does not undermine the security and reliability of the relevant distribution network.

The Commission considers these outcomes would support investment and competition in embedded generation. It will also support investment in, and efficient use of, distribution networks.

To support its assessment of whether the CEC's rule change request and any draft rule is likely to promote these outcomes, the Commission considered the following issues:

- transparency: the NER should facilitate the provision of accurate and timely information to embedded generator connection proponents. This includes information by which the costs of connection can be reasonably assessed. Better and more transparent information promotes allocative efficiency. It also promotes dynamic efficiency by enhancing confidence in, and predictability of, the process;
- allocation of costs (and risks): efficient contracting arrangements allocate costs and risks to the party best able to manage (reduce) them. This typically means

those whose decisions cause the costs or risks to be incurred (assuming that causes can be clearly identified). Efficient risk and cost allocation supports productive and dynamic efficiency;

- transactions costs: the connection process should be timely and easily understood by stakeholders. An overly complex or burdensome process for negotiating connection is likely to deter efficient connections (with implications for investment and innovation in embedded generation). Low transactions costs support both productive and dynamic efficiency;
- security and reliability of supply: connections should not undermine the ability of DNSPs to meet their performance obligations for the safety, security and reliability of the network; and
- administrative burden: the NER should not impose an unnecessary administrative or compliance burden on either embedded generator proponents or DNSPs. Higher administrative costs will be reflected in prices and passed through to consumers, which reduces productive efficiency.

In addition, the Commission has also had regard to the following in making its decision:

- the extent to which experiences in connecting embedded generators to distribution networks in recent years relates to the use of the negotiated connection process currently set out in Chapter 5A of the NER;
- the recent implementation of the distribution and network planning and expansion framework rule and the extent to which these amendments, particularly in relation to information provision, may address the concerns of the CEC and embedded generator proponents;
- the similarity and differences between the issues raised in the CEC rule change request and those identified through the recent assessment of the connection process for embedded generators under Chapter 5 of the NER; and
- the extent to which the changes to Chapter 5, which commence on 1 October 2014, may appropriately address the issues identified by the CEC and other embedded generator proponents in relation to Chapter 5A of the NER if they are made available to non-registered embedded generator proponents.

2.4 Strategic priority

This draft rule determination relates to the AEMC's strategic priority of market arrangements that encourage efficient investment and flexibility. It affects the process by which embedded generator proponents are able to negotiate a connection to a distribution network. Use of appropriate processes would support the efficient connection of embedded generators.

3 The negotiated connection process

This chapter sets out the Commission's broad response to the issues raised by the CEC in regard to the negotiated connection process for embedded generator proponents under the AEMO standing exemption registration threshold of 5MW.

3.1 Amending the current connection process

As set out in Chapter 1 of this draft rule determination, the CEC has proposed a number of amendments to the Chapter 5A negotiated connection process for embedded generators. The amendments focused on increasing the level of prescription within the process to improve clarity and certainty for parties.

However, the Commission considers that the particular changes included in the proposed rule are not the most appropriate way to achieve the CEC's aim of a clearer connection process. Accordingly, the draft rule provides an alternative, and more preferable, approach to address the issues regarding the Chapter 5A negotiated connection process. Rather than amend the current Chapter 5A process, the draft rule broadens the scope of the Chapter 5 embedded generation connection process. That is, some embedded generator projects that have a generating capacity of less than 5MW will, under the draft rule, be able to use the Chapter 5 embedded generator connection process. In this way, embedded generator proponents who value a more detailed connection process will be able to use one by accessing the Chapter 5 process. This allows the issues arising from using a less prescribed process to be addressed without substantial amendments to Chapter 5A.

In deciding not to amend the Chapter 5A negotiated connection process as proposed by the CEC, the Commission notes that:

- while the number of embedded generation connections is growing, experience in using the Chapter 5A negotiated connection process is still limited;
- the Chapter 5A negotiated connection process may be suitable for and preferred by some embedded generation proponents; and
- the current Chapter 5A negotiated connection process is relevant for load connections as well as embedded generators.

Each of these points is discussed below.

3.1.1 Experience in using Chapter 5A

The CEC has submitted that the negotiated connection process in Chapter 5A lacks prescription and that, as a result, embedded generator proponents wishing to connect to a distribution network under this chapter face a long and unpredictable connection process. Such difficulties may impact on the final size and cost of an embedded generation project and the financing of such projects.

The CEC has provided information that it claims shows that some embedded generator proponents under 5MW have experienced difficulties in connecting to a distribution

network in the past.¹⁵ The information also indicates that the number of embedded connections continues to increase across the NEM.

While this information provides an important context for assessing the CEC's rule change request, it should be noted that the information provided only suggests that there has been some experience in using the negotiated connection process under Chapter 5A of the NER. It is unclear whether all of the examples provided relate to connecting to distribution networks under Chapter 5A. Nor is it clear how difficult it was to achieve those connections. In particular, it should be noted that:

- Chapter 5A has not yet been implemented in all jurisdictions. Victoria and Queensland are yet to adopt the NECF package including Chapter 5A.
- The earliest adoption of Chapter 5A was in July 2012 in Tasmania and the ACT. Allowing for a period for negotiations to be carried out, it is possible that some completed connections since January 2013 would have been negotiated under the Chapter 5A process in these jurisdictions. Connections finalised earlier are likely to have been negotiated under previous relevant jurisdictional arrangements.
- The period that Chapter 5A has been available to parties is relatively short, as noted in a number of submissions.¹⁶

The Commission is hesitant to make significant amendments to a process that is relatively new and has had limited use unless there are clear examples of problems occurring under that process.

3.1.2 Usefulness of the Chapter 5A process

In addition to the above, the Commission considers that the current negotiated connection process in Chapter 5A may be useful and relevant to some embedded generator proponents in the future.

In particular, embedded generator proponents negotiating the details of connections based on either a basic or standard connection agreement may find the more flexible and less prescriptive process suitable for their needs. The Commission does not consider it appropriate, based on the information it has received, to alter the processes available to these categories of embedded generator proponents.

In addition, proponents of less complex or relatively small embedded generation projects may also find that the flexible and less prescriptive negotiation process is suitable for their needs. It may also be appropriate for experienced embedded generator proponents familiar with the needs and processes of a DNSP.

The Commission has concluded that the current negotiated connection process in Chapter 5A is relevant for some embedded generator proponents and should therefore remain unchanged and available to all parties who are currently eligible to use it.

¹⁵ CEC submission to consultation paper, pp3-5.

¹⁶ Submissions to consultation paper: Energy Networks Association (ENA), p1; Department of Manufacturing, Innovation, Trade, Resources and Energy (DMITRE), p2; Energex, p1; Ergon, p2; NSW DNSPs, p1; and Victorian DNSPs, p1.

3.1.3 Load connections

The negotiated connection process currently set out in Chapter 5A of the NER is relevant for both load and embedded generator connections. To make amendments to the process as proposed by the CEC may impact on both groups of connection applicant. However, the CEC has clearly stated that it has not intended to impact on the process for load applicants. The CEC's focus has been to amend the negotiated connection process for non-registered embedded generator proponents only.¹⁷

The Commission's assessment of the rule change request and the issues raised during consultation to date have been carried out with regard to the CEC's intention. This draft rule determination and the draft rule address the negotiated connection process available to proponents of embedded generator projects that are less than the AEMO standing exemption registration threshold. As a result, no changes are made to the Chapter 5A negotiated connection process that will impact on potential load connections.

3.2 Accessing the Chapter 5 connection process

3.2.1 Overview

The key issue raised by the CEC in regard to the Chapter 5A negotiated connection process is its lack of prescription. The CEC has asserted that this less prescriptive process has, and will, result in long and difficult connection processes for embedded generator proponents.

Similar issues were raised in regard to the connection process set out in Chapter 5 of the NER.¹⁸ In response, a connection process was developed specifically for embedded generators greater than the AEMO standing exemption threshold for registration as a generator. The Commission developed the process following extensive consultation with stakeholders. It addressed concerns about a lack of clarity by providing a more prescribed process. The amendments to the NER included detailed regulatory requirements for both parties in regard to process, timeframes and the provision of information before and during the connection process.

The CEC was an active participant in the Chapter 5 connecting embedded generators rule change process. It has also commented that there may be cases where Chapter 5 could be an applicable process for non-registered embedded generators.¹⁹ Similarly, some other stakeholders have commented that the Chapter 5 connection process is a relevant consideration when assessing the issues raised in relation to the Chapter 5A negotiated connection process.²⁰

The Commission has concluded that the main issues raised by the CEC and other stakeholders in regard to the negotiated connection process in Chapter 5A can be addressed by providing eligible embedded generator proponents access to the Chapter

¹⁷ CEC rule change request, p24.

¹⁸ AEMC, Connecting embedded generators, rule determination, 17 April 2014, pp10-11.

¹⁹ CEC submission to consultation paper, 12 June 2014, p11.

²⁰ Submissions to consultation paper: ENA, June 2014, p1; Energex, 12 June 2014, p1; Victorian DNSPs, 12 June 2014 p2; NSW DNSPs, 17 June 2014, p1.

5 embedded generator connection process. In this way, eligible proponents of embedded generator projects that are less than 5MW will be able to use a connection process that more clearly prescribes the negotiation process, the information to be exchanged during the process and the timeframes relevant to the various stages within the process. This level of detail provides greater transparency and certainty for parties considering a potential embedded generator connection.

Using the Chapter 5 process should assist some embedded generator proponents seeking to connect to a distribution network as it provides greater detail on the process to follow and the actions and timing within the process. However, there may be other embedded generator proponents that find the less detailed and more flexible Chapter 5A negotiated connection process more suitable for their needs. For this reason, the draft rule does not replace the existing Chapter 5A process. It provides eligible embedded generator proponents with the ability to select the Chapter 5 embedded generator connection process if they wish to do so.

Importantly, this approach does not create any new connection processes in the NER. In this way, the administrative burden on DNSPs and embedded generator proponents is minimised.

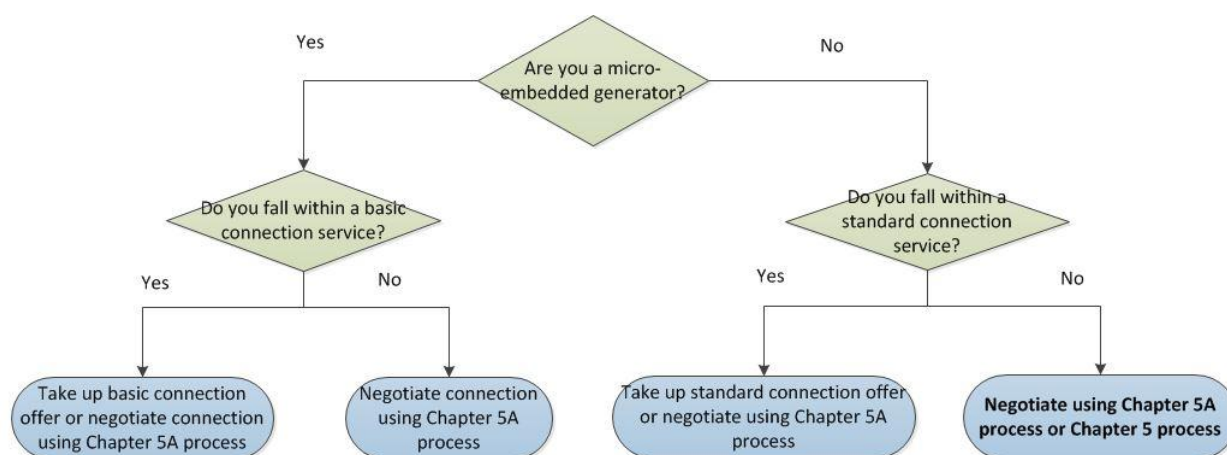
3.2.2 Who can choose?

As indicated above, the draft rule provides only certain proponents of embedded generator projects that currently fall within the scope of Chapter 5A with the ability to select the Chapter 5 embedded generator connection process.

Micro-embedded generator proponents or embedded generator proponents to whom a standard connection offer applies will not be able to use the Chapter 5 process. These embedded generator proponents would have access to an existing model offer (either the basic offer or the standard offer) that has been approved by the Australian Energy Regulator (AER). Any alterations to finalise such contracts and the requirements of connection should be of a nature that would be best managed through the Chapter 5A negotiated connection process rather than commencing the more detailed Chapter 5 embedded generator connection process. The level of detail in, and some of the requirements associated with, the Chapter 5 process should not be necessary in such circumstances in light of the applicable model offer developed by the DNSP.

For this reason, the draft rule provides the option to select the Chapter 5 embedded generator connection process for certain embedded generator proponents. A diagram setting out the connection options available to embedded generator proponents in jurisdictions in which NECF applies is provided in Figure 3.1.

Figure 3.1 Connection options for Chapter 5A embedded generators



Note: This decision tree is only relevant to unregistered embedded generator proponents located in jurisdictions where NECF applies. Until NECF applies in Queensland and Victoria, an unregistered embedded generator proponent in these states will be able to seek to connect under a jurisdictional process, a DNSP specific process, or under Chapter 5 of the NER (subject to the agreement of the relevant DNSP). Proponents of registered embedded generators, or those intending to register, can seek to connect to a distribution network under Chapter 5 of the NER.

3.2.3 What is an embedded generator proponent choosing?

In brief, the choice between the Chapter 5A and Chapter 5 processes is a choice between two different frameworks for the connection of an embedded generator.²¹ The connection provisions in each of the chapters are part of a whole package of arrangements that fit together.

Where an embedded generator proponent chooses to use the Chapter 5 embedded generator connection process, then the whole of the Chapter 5 framework as it relates to embedded generators would be relevant. That is, not only would the parties use the multi-stage process to achieve a connection agreement but the associated schedules, information provisions, technical requirements, timeframes, fees and charging arrangements would also be relevant. In addition, the dispute resolution mechanism under Chapter 8 of the NER would be the applicable dispute process.

The alternative to selecting a ‘whole package’ in either Chapter 5A or Chapter 5 is to enable parties to use parts of one chapter in combination with parts from the other chapter. The Commission considers that this approach would be complex and burdensome for both parties. It may also effectively result in the creation of an additional connection process. Consequently, the ‘whole package’ approach is considered to be preferable.

To provide an understanding of the differences between the connection processes relevant to embedded generators under Chapter 5A and Chapter 5, a comparison of the two frameworks is provided in Appendix B.

It is important to note that the draft rule does not impact on the process to connect load to a distribution network. Where an embedded generator is also connecting load, then

²¹ That is, one or other of the processes must be followed until either the embedded generator proponent chooses not to connect or a connection agreement is achieved. The draft rule does not provide for parties to change from one process to another ‘mid-stream’.

the load connection will be progressed under either Chapter 5 or Chapter 5A, whichever is relevant.²² That is, the election to use the Chapter 5 embedded generator connection process does not impact on which connection process is relevant for a load connection.

3.2.4 How does an embedded generator proponent choose?

The election to use the Chapter 5 embedded generator connection process is at the discretion of the embedded generator proponent. The draft rule does not include any requirement to seek the agreement of the relevant DNSP. Nor is the DNSP able to veto the choice made by the embedded generator proponent. Nevertheless, an embedded generator proponent is not excluded from conducting initial discussions with the relevant DNSP that may assist it in making its selection.²³

In making the decision on what connection framework to use, an embedded generator proponent should consider the 'whole package' of each framework. While both aim to facilitate the connection of embedded generators, there are key differences. It is for the embedded generator proponent to decide, on balance, which framework will most suit their circumstances. Factors such as the level of complexity of the project, their degree of experience in connecting to the network and their experiences with the relevant DNSP may be factors to consider in making a decision. Information about the processes themselves is also relevant (see section 3.2.6).

Where an eligible embedded generator proponent does not make a choice, the Chapter 5A negotiated connection process will apply. That is, the Chapter 5A process is the default.

3.2.5 When does an embedded generator choose?

The draft rule provides for an embedded generator proponent to select the Chapter 5 embedded generator connection process before the preliminary enquiry stage in Chapter 5A.

It is important that the choice to opt out of the default Chapter 5A process and use the Chapter 5 process is made before any connection process commences. Upon selecting the Chapter 5 embedded generator connection process, the embedded generator must notify the relevant DNSP of its decision.

The Commission acknowledges that to enable an embedded generator proponent to make an informed decision at this point, it must have certain information available. This is discussed further below.

²² Chapter 5 is relevant to connect load for a registered or intending participant. In non NECF jurisdictions, other potential applicants may also connect under Chapter 5 with the agreement of the relevant DNSP. Under Chapter 5A (clause 5A.D.3) applications to connect load may be made by a retail customer, a retailer or other person on behalf of a retail customer, or a real estate developer.

²³ In addition, information regarding the connection processes must be published by DNSPs. See section 3.2.6.

3.2.6 Information to make a choice

The draft rule provides for certain proponents of embedded generator projects below the standing exemption from registration threshold of 5MW to elect to use the Chapter 5 embedded generator connection process. This decision must be made prior to making an enquiry under Chapter 5A. To enable this to occur, the draft rule also requires certain information relevant to any such decision be available.

As Chapter 5A embedded generator proponents have the ability to connect under Chapter 5, it is appropriate that they be in the same position in terms of information as those proponents that are already within the scope of Chapter 5.

Therefore, the draft rule requires DNSPs to provide the same upfront information as required under Chapter 5 for the relevant Chapter 5A embedded generators (where this information is not already required to be published under Chapter 5A). The effect of this aspect of the draft rule is to align Chapter 5A with Chapter 5 in regard to information that is to be made available upfront. The Commission notes that there was general support for 'alignment' of Chapter 5A with Chapter 5 in submissions to the consultation paper.²⁴

The specific information to be required to be published by DNSPs is included in the Chapter 5 provisions on the information pack and register of generating plant as set out below.

Information pack

In addition to the public information currently prescribed in Chapter 5A, DNSPs would be required to publish relevant information of the nature described in the Chapter 5 'information pack' provisions. That is:

- a list of services relevant to the connection that are contestable;
- single diagrams and schematic representation of protection and control systems;
- worked examples of connection service charges;
- details of any minimum access or plants standards;
- technical requirements relevant to the processing of a connection enquiry; and
- a model connection agreement.

As DNSPs will be able to leverage off the equivalent information they would publish in accordance with Chapter 5, this requirement is not expected to create a significantly greater administrative burden for DNSPs. The benefits that Chapter 5A embedded generator proponents will receive from having ready access to this information early in a project's life would be expected to outweigh these costs.

Where DNSPs do not have standard connection services for all or some non registered embedded generators, the draft rule also requires that a statement to this effect be made. The purpose of this is to make clear to embedded generator proponents whether

²⁴ Submissions to consultation paper: ClimateWorks Australia, Property Council of Australia and Seed Advisory (ClimateWorks, Property Council and Seed), p2; Energex, p1; ENA, p1; and Victorian DNSPs, p2.

they will be able to choose to connect under the Chapter 5 embedded generator connection process.

Register of generating plant

The Chapter 5 embedded generator connection process includes provisions requiring DNSPs to publish a register of completed embedded generation projects for embedded generators that have a capacity of at least 5MW. As noted above, to place Chapter 5A embedded generator proponents in the same information position as those proponents already under Chapter 5, similar provisions have been included in Chapter 5A. Specifically, the draft rule has the effect of requiring all completed Chapter 5A embedded generator projects other than micro-embedded generation projects to be included in a public register. The draft rule does not specify the details of how this is to be implemented. DNSPs will be able to choose whether two separate registers or one single register is preferable to maintain.

Embedded generator proponents with projects in the generating capacity range of between 30kW (which is currently the maximum threshold for micro-embedded generation projects in the NER) and 5MW will benefit from a public register including technical information relevant to the size of their own projects. These benefits would be likely to outweigh any costs that DNSPs will incur in effectively extending the scope of the register.²⁵

Chapter 5A provides that the information in the register is to be made available regarding successfully connected embedded generation projects that occur following the commencement of any final rule made by the AEMC for an initial five year period. After this time, this register will also be a rolling five year register similar to the Chapter 5 register.

3.2.7 Implementation and transitional arrangements

There are some aspects of the draft rule that, if implemented would require DNSPs to undertake some preparations to comply with the provisions. However, much of this preparation would build on work already undertaken in accordance with other NER provisions.

Accordingly, the Commission proposes that a final rule, if made, should come into effect three months after it has been made. Under the current rule change process timeframe, a final rule would be made in mid November 2014. As a result, it would commence in mid February 2015.

To transition to the new arrangements, the Commission considers that unless an embedded generator proponent and DNSP otherwise agree, a connection process that has commenced but not concluded under Chapter 5A should continue under that chapter.

²⁵ As this is implemented through changes to Chapter 5A, only DNSPs in jurisdictions that have implemented NECF will be required to comply.

4 Other issues

The CEC raised a number of other issues in its rule change request related to negotiating the connection of an embedded generator to a distribution network. This chapter responds to these issues.

4.1 Process and information issues

4.1.1 Background

The broad issue raised by the CEC in its rule change request was a lack of prescription in the negotiated connection process in Chapter 5A.

It proposed amendments to the structure and timing of the negotiated connection process. The proposed amendments also specified in more detail the information to be provided by DNSPs. In addition, the CEC sought other specific amendments associated with the negotiated connection process in Chapter 5A of the NER. These were:

- requiring DNSPs to provide an embedded generator proponent access to their legal personnel in order to negotiate the terms and conditions of an offer, after the offer has been made;²⁶
- requiring DNSPs to provide information on proposed technical standards prior to submitting a negotiated connection application;²⁷
- requiring DNSPs to consider the technical merit of the connection arrangements proposed, or determine the technical requirements for the connection when assessing negotiated connection applications;²⁸
- requiring DNSPs to either accept or reject the negotiated connection application. If the DNSP does not respond within 65 business days, it is deemed to have accepted the application;²⁹
- specifying that any matter relevant to a connection is subject to negotiation;³⁰ and
- requiring that all information exchanged as part of the negotiation process be treated as confidential information for the purposes of the NER.³¹

4.1.2 Stakeholder submissions

DNSPs did not support the CEC's proposal to require them to provide access to their legal personnel after an offer has been made in order to negotiate terms and conditions of an offer with the embedded generator proponent. It would be impractical due to the conflict of interest facing the legal counsel but may also constrain the ability of DNSPs

²⁶ CEC rule change request, 19 April 2013, p31.

²⁷ *ibid.* pp22 and 28-29.

²⁸ *ibid.* p27.

²⁹ *ibid.* p34.

³⁰ *ibid.* p24.

³¹ *ibid.* p27.

to retain access to legal advisers as they see fit.³² There were no other comments on this issue from other stakeholders.

Ergon did not support the proposed requirements for DNSPs to provide proposed technical standards prior to submitting a negotiated connection application. It submitted that different standards would be required depending on the characteristics of the embedded generator. In addition, it considered the requirement for DNSPs to describe technical requirements when assessing negotiated connection applications may be unnecessary.³³ The NSW DNSPs did not support the inclusion of the proposed schedule of information requirements. They submitted that this information is disproportionate to the type of generators envisaged to be connected in Chapter 5A.³⁴

In addition, DNSPs have not supported the proposal for a negotiated connection application to be deemed to be accepted if the DNSP does not explicitly accept or reject the application within the stipulated timeframe.³⁵

Lumo expressed support for the CEC's proposal to make it clear in the NER that any matter relevant to a connection is subject to negotiation.³⁶ It also supported the proposed requirement that all information exchanged as part of the negotiation process be treated as confidential information.³⁷ Ergon submitted that it does not support the proposed changes to confidentiality.³⁸

4.1.3 Commission's assessment

The Commission does not consider it appropriate for the NER to require DNSPs to provide access to their legal personnel to enable an embedded generator proponent to finalise a connection offer. This is because each DNSP is best placed to determine who in its business should be involved in negotiating connection arrangements.

In addition, legal counsel act on instructions and are not necessarily able to finalise negotiations of a technical nature independently of a DNSP's staff. As with other aspects of the negotiation process, any concern held by an embedded generator proponent about the terms and conditions of an offer could be the subject of dispute resolution.

The draft rule does not provide for a technical standard to apply to embedded generators under the scope of Chapter 5A. As discussed in the final determination on the Chapter 5 rule change request, the development of technical standards for embedded generators is being considered by the COAG Energy Council.³⁹

³² Submissions to consultation paper: Energex, pp3-4; ENA, p2; NSW DNSPs, p4; and Victorian DNSPs, p2.

³³ Ergon submission to consultation paper, pp4-5.

³⁴ NSW DNSPs submission to consultation paper, p3.

³⁵ See, for example, Ergon submission to consultation paper, pp3-4.

³⁶ Lumo submission to consultation paper, p4.

³⁷ *ibid.* p6.

³⁸ Ergon submission to consultation paper, p5.

³⁹ COAG Energy Council, viewed 23 July 2014, www.scer.gov.au.

In addition, the Commission does not consider it necessary to provide a requirement in the NER to require a DNSP to respond to different technical solutions proposed by an embedded generator proponent. The Commission understands that an embedded generator proponent may have a number of possible projects under consideration, particularly in the early stages of project development. It may discuss these with the relevant DNSP. Chapter 5A does not prevent or limit any such discussions or considerations. The CEC's proposal for DNSPs to consider technical aspects of various potential projects is able to occur under the current framework.

The draft rule provides eligible embedded generators the use of the Chapter 5 process. This may be beneficial for some embedded generator proponents if they prefer more specific requirements regarding the provision and consideration of technical information.

The draft rule also extends the requirement in the Chapter 5 embedded generator connection process for DNSPs to publish certain technical information on their websites to Chapter 5A embedded generators greater than the micro size. This will improve the information position of embedded generator proponents seeking to connect under Chapter 5A.

The CEC also proposed a new provision in Chapter 5A where a DNSP would be deemed to have accepted a connection application if it had not responded within 65 business days. The draft rule does not include such a provision as it is not appropriate or necessary. A DNSP must be able to respond to an incomplete application appropriately. The information in the application may not meet the technical standards required which could ultimately put at risk DNSPs' obligations relating to the reliability, safety and security of the network. Such matters may require considerable work to be resolved. If DNSPs are not complying with stipulated timeframes in the NER then this is a compliance issue that should be reported to the AER.

In regard to the matters relevant to the connection of an embedded generator that are open to negotiation, the Commission does not consider that the NER limits these matters to connection charges. This is consistent with the AER's view that the current Chapter 5A framework can deal with various types of disputes, including procedural aspects around the timing and quality of information required to be provided by DNSPs.⁴⁰ Therefore, the draft rule makes no change to the NER on this matter.

The draft rule does not specify that all information exchanged as part of the negotiation process be treated as confidential information as proposed by the CEC. Not all of the information exchanged during the process would necessarily be confidential in nature and some information may already be in the public domain. It would therefore be inappropriate to treat all information in the way proposed. Clause 5A.C.3(c) of the NER appropriately provides for the confidentiality of negotiations. The Commission does not consider it desirable or necessary to make other specific provisions in Chapter 5A, making it different to other connection processes. This would also add administrative compliance costs to connecting parties.

⁴⁰ AER submission to consultation paper, p1.

4.2 Power transfer capability

4.2.1 Background

The CEC has sought to amend the negotiated connection process with respect to power transfer capability to:

- explicitly enable negotiated connection applicants to seek distribution network user access arrangements at any level of power transfer capability between zero and the higher of the expected maximum demand or the maximum power input of the relevant embedded generator. This is consistent with clause 5.5(d) of the NER;⁴¹
- require DNSPs to consult with other network users or prospective users who may be adversely affected by the proposed connection, connection alteration, or the distribution network user access arrangements sought by the applicant. Currently DNSPs may consult with other users who may be affected by the proposed new connection;⁴²
- require DNSPs to make reasonable endeavours to make a connection offer that complies with the distribution network user access arrangements reasonably sought by the applicant, including the location of the proposed connection point and the level and standard of power transfer capability that the network will provide. Currently DNSPs are required to make reasonable endeavours to make a connection offer that complies with the connection applicant's reasonable requirements;⁴³ and
- require DNSPs to provide details of the connection point, including the level and standard of power transfer capability that the relevant network will provide, along with correlating network conditions, in the connection offer. Currently DNSPs are required to provide details of the connection point and the maximum capacity of the connection to import and export electricity.⁴⁴

4.2.2 Stakeholder submissions

DNSPs broadly considered that the existing requirements relating to power transfer capability are adequate. They noted that power transfer capability is an issue that should be subject to negotiation.⁴⁵ Lumo supported the CEC's proposals.⁴⁶

4.2.3 Commission's assessment

The CEC proposed to include a specific provision in Chapter 5A explicitly enabling embedded generator applicants to seek distribution network user access arrangements at any level of power transfer capability between zero and the higher of the expected

41 CEC rule change request, 19 April 2013, p25.

42 *ibid.*

43 *ibid.* pp31-32.

44 *ibid.* p25.

45 Submissions to consultation paper: Energex, pp4-5; ENA, p3; and Ergon, pp5-6.

46 Lumo submission to consultation paper, p7.

maximum demand or the maximum power input of the relevant embedded generator. The Commission considers that Chapter 5A does not prevent an embedded generator applicant from seeking relevant distribution network user access arrangements. Further, there is not sufficient evidence to suggest that this needs to be explicitly provided for in Chapter 5A. Where this issue is important to an embedded generator proponent then it may elect to connect under the Chapter 5 embedded generator connection process which contains this provision on power transfer capability.

Similarly, the draft rule does not amend the Chapter 5A provisions regarding consultation with other network users. Given the limited use of Chapter 5A at this stage, the Commission considers that the current provisions in clause 5A.C.3(4) of the NER are sufficient. There could be large numbers of potentially affected users and it may not always be efficient or necessary to mandate DNSPs to consult with them all. The DNSP is best placed to decide who it should consult with. Consequently, the current level of discretion is appropriate.

The CEC also proposed amendments relating to the making of an offer to an embedded generator proponent. Chapter 5A already requires DNSPs to make reasonable endeavours to make a connection offer that complies with the connection applicant's reasonable requirements.⁴⁷ This does not appear to be deficient and would reasonably provide for the specific suggestions made by the CEC. Providing more detail in the clause could also inappropriately limit its scope. For these reasons, this proposed change is not included in the draft rule.

For similar reasons, the draft rule does not specifically require DNSPs to provide details of the level and standard of power transfer capability that the relevant network will provide, along with correlating network conditions, in the connection offer. Chapter 5A currently requires DNSPs to provide details of the maximum capacity of the connection to import and export electricity. In this way, it effectively requires DNSPs to provide the level of power transfer capability that the network will provide at the connection point. Further, Chapter 5A does not preclude embedded generator proponents from seeking additional information in the connection offer such as network conditions associated with a level of service to be provided. The existing requirements are therefore sufficient.

4.3 Process fees and connection charges

This section considers issues raised by the CEC relating to fees and charges imposed by DNSPs to embedded generator proponents for:

- the costs of the negotiation process (process fees); and
- capital expenditure relating to the connection (connection charges).

⁴⁷ NER clause 5AC.3(6).

4.3.1 Process fees

Background

Currently, under Chapter 5A DNSPs may charge negotiated connection proponents fees to cover expenses directly and reasonably incurred by the DNSP for assessing the proponent's application and making a connection offer.⁴⁸

The CEC has proposed amendments to:

- restrict the ability of DNSPs to charge for the provision of technical information that they are required to maintain;⁴⁹ and
- prevent DNSPs from charging a fee to cover the costs of negotiation and processing a negotiated connection application until the applicant has been advised by the DNSP that the relevant application is complete.⁵⁰

Stakeholder submissions

DNSPs did not support restricting their ability to charge for the provision of information that they are required to maintain.⁵¹ The ENA noted that information maintained by a DNSP may require significant alteration when being applied to an individual connection.⁵² Similarly, DNSPs were not supportive of restricting fees from being charged until the application is determined as being complete.⁵³

Commission's assessment

It is not appropriate to restrict the ability of DNSPs to charge for the provision of technical information that DNSPs are required to maintain in the manner proposed. A DNSP may still be required to carry out work to provide the information in a form that is appropriate and relevant to the embedded generator proponent. If this is the case, a DNSP should be able to recover the reasonable costs of doing so as currently provided. This is consistent with the broad approach taken in the final rule determination on the Chapter 5 rule change request where fees can be charged for the detailed enquiry response but not the preliminary enquiry response. The Commission does not propose to make any change to the NER on this issue.

It should be noted that the draft rule does include some changes to public information relevant to connecting embedded generators to distribution networks. These changes, in combination with amendments from the Chapter 5 embedded generator rule change and the distribution network planning and expansion rule change are expected to improve the information available to parties considering embedded generation projects.

48 NER clause 5A.C.4.

49 CEC rule change request, 19 April 2013, p36.

50 *ibid.* pp35-36.

51 Submissions to consultation paper: ENA, p4; Ergon, p6; NSW DNSPs, pp4-5; and Victorian DNSPs, p3.

52 ENA submission to consultation paper, p4.

53 Submissions to consultation paper: Energex, p5; ENA, p4; Ergon, p6; and NSW DNSPs, p5.

The second fee related proposal by the CEC was to prevent a fee being charged until the embedded generator proponent has made a complete application. This does not appear appropriate or consistent with the Chapter 5 embedded generator connection framework. If Chapter 5A was to prevent a DNSP from charging fees until an application is complete, then a DNSP would bear a risk of not being able to recover any costs that it has incurred to confirm the completeness of an application. However, by being able to charge fees up front, a commitment to the project from the embedded generator proponent is established as well as the DNSP's recovery of relevant costs. For these reasons, the draft rule does not amend Chapter 5A in a manner that would be inconsistent with the Chapter 5 embedded generator connection framework.

4.3.2 Connection charges - augmentation for forecast load growth

Background

Under Chapter 5A the capital cost of connecting an embedded generator may be recovered from embedded generator connection proponents, as appropriate, through:

- a reasonable capital contribution towards the cost of an extension necessary to provide the connection service;
- a reasonable capital contribution towards the cost of augmentation of premises connection assets necessary in order to provide a connection service; and
- if augmentation of the distribution system is necessary in order to provide a connection service under a negotiated connection contract, connection charges may include a reasonable capital contribution towards the cost of augmenting the distribution system to the extent necessary to provide the service and to any further extent that a prudent service provider would consider necessary to provide efficiently for forecast load growth.⁵⁴

However, a capital contribution may only be sought in these circumstances if the costs are not to be recovered through use of system charges or a tariff applicable to the connection.⁵⁵

In its rule change request, the CEC stated that clause 5A.E.1(c)(4) allows DNSPs to charge embedded generator proponents connection-related augmentation costs for forecast load growth. It submitted that this creates the opportunity for DNSPs to transfer the financial risk of network expansion for load growth to embedded generators.⁵⁶ In its view, this is inconsistent with the principles relating to charging for negotiated distribution services.⁵⁷

To resolve this issue, the CEC proposed to amend clause 5A.E.1(c)(4) to remove any application this clause may have to embedded generator proponents within the scope of Chapter 5A.⁵⁸

⁵⁴ NER clause 5A.E.1(c)(4)

⁵⁵ NER clause 5A.E.1(c)(6).

⁵⁶ CEC rule change request, 19 April 2013, p21.

⁵⁷ CEC submission to consultation paper, p10.

⁵⁸ CEC rule change request, 19 April 2013, p36.

Stakeholder submissions

DNSPs and DMITRE did not consider it appropriate for embedded generator proponents to be excluded from the operation of clause 5A.E.1(c)(4) of the NER as proposed by the CEC.⁵⁹

Lumo supported the CEC's proposal. However, it suggested that the proposal does not go far enough. It considered that as embedded generators do not receive property rights for funding augmentation they should not be required to pay for the assets at all.⁶⁰

Commission's assessment

In general, it is not appropriate for DNSPs to transfer the financial risk of network expansion for general load growth to embedded generators. As set out in the Chapter 5 rule determination, the Commission's general approach is that appropriate price signals can be achieved by allocating costs to the users that impose those costs on the network. That is, an embedded generator proponent should pay for the costs it has caused. If embedded generators do not contribute to the augmentation costs relating to their connection then other users of the distribution network would be inappropriately required to pay these costs.⁶¹

More specifically, clause 5A.E.1(c)(4) does provide for DNSPs to recover augmentation costs associated with any forecast load growth relating to the connection service. This includes the connection of an embedded generator.⁶² Embedded generators often require supply from the network as a back-up. In such circumstances DNSPs are able to recover the cost of any future load growth related to the connection of the embedded generator.

Clause 5A.E.1(c)(4) also appropriately allows for a DNSP to charge a reasonable capital contribution towards an augmentation that is required to provide for future general load growth to the extent that the cost is not recovered by any other means (clause 5A.E.1(c)(6)).

For example, the connection of an embedded generator requires some augmentation to a substation to connect to the network and, at the same time, the DNSP reasonably considers other augmentation to the same substation is needed to accommodate forecast load growth in the area. Instead of carrying out two separate capital works, the DNSP may conduct them at the same time as this is likely to be more efficient. Clause 5A.E.1(c)(4) would allow the DNSP to recover a reasonable capital contribution towards this augmentation from the embedded generator proponent to the extent that it relates to the connection of the embedded generator.

Accordingly, the Commission's assessment is that clause 5A.E.1(c)(4) is consistent with the general principle that users of a distribution network should pay for the reasonable costs in providing services to them. The Commission does not consider any amendments to the clause necessary. However, if further explanation about this clause

⁵⁹ Submissions to consultation paper: DMITRE, pp2-3; ENA, p4; Ergon, p7; and NSW DNSPs, p6.

⁶⁰ Lumo submission to consultation paper, pp8-9.

⁶¹ AEMC, Connecting embedded generators, rule determination, 17 April 2014, pp104-107.

⁶² See for example, ENA submission to consultation paper, p4.

would be beneficial to users and prospective user of distribution networks then this would be appropriate for the AER's connection charge guidelines to address.

4.3.3 Information on process fees and connection charges

Background

The CEC sought to limit connection costs that DNSPs can charge embedded generator proponents to those which could have been reasonably identified by the proponent from the information initially provided by the DNSP. The purpose of this limitation is to encourage DNSPs to provide complete, correct information to the embedded generator proponent in the first instance.⁶³

In addition it proposed that any fees charged by DNSPs for negotiation be accompanied with information on the basis of their calculation, together with an explanation for any departure from any estimate of charges previously provided by a DNSP.⁶⁴ The CEC has also proposed to significantly expand the itemised statement of connection charges that the DNSP has to provide and an explanation of any divergence of costs from cost estimates previously provided.⁶⁵

More broadly, the CEC proposed to expressly disallow in a negotiated connection offer for an embedded generator any charges which are inconsistent with Chapter 5A.⁶⁶

Stakeholder submissions

There were mixed views from DNSPs on whether connection charges should be limited to those which could have been reasonably identified by the embedded generator proponent from the information initially provided by the DNSP. Some supported this proposal subject to the parties being able to agree on variations as the project progresses.⁶⁷ Others did not agree, noting that the information provided by the DNSP depends on the information initially provided by the embedded generator proponent. In addition, network studies, which could identify a number of issues that have cost implications, would not be carried out in the earlier stage of the connection process.⁶⁸

The CEC expressed support for the provisions now included in Chapter 5 on DNSPs providing information on cost breakdown for process fees and connection charges.⁶⁹ Ergon did not support the CEC's proposed changes.⁷⁰

63 CEC rule change request, 19 April 2013, p21.

64 *ibid.* p.35

65 *ibid.* pp35-36.

66 *ibid.* p.37.

67 Submissions to consultation paper: Energex, pp5-6; and ENA, p4.

68 Submissions to consultation paper: Ergon, p7; Victorian DNSPs, p3; and NSW DNSPs, p6.

69 CEC submission to consultation paper, p10.

70 Ergon submission to consultation paper, p6.

Commission's assessment

The CEC's proposed amendment to limit charges to information initially provided by the DNSP reflects its general concern about DNSPs not providing relevant information to embedded generator proponents in a timely manner.

This issue is appropriately addressed by providing eligible embedded generator proponents with the ability to access the Chapter 5 embedded generator connection process. Where an embedded generation project is sufficiently complex, the more structured and detailed process, which includes detailed provisions regarding information requirements, may be preferable. Consequently, the draft rule does not include amendments to Chapter 5A on limiting the ability of DNSPs to charge embedded generator proponents as proposed by CEC.

The CEC also proposed that the NER require DNSPs to provide greater detail on process fees and connection charges imposed on embedded generator proponents. On this matter, Chapter 5A includes a requirement on DNSPs to provide a breakdown of connection charges. While these requirements are different to those proposed by the CEC, they are suited to the overall flexible and less prescriptive approach of Chapter 5A.

In addition, Chapter 5A does not prevent embedded generator proponents from seeking more detailed information than what is already specified under Chapter 5A. Further, there is not sufficient evidence to suggest that the additional detail proposed is required, particularly for smaller embedded generators. Nevertheless, for eligible embedded generator proponents that would prefer more detailed requirements on fees and charges, the use of the Chapter 5 embedded generator connection process may address these concerns.

The draft rule does not include the CEC's proposal to expressly allow only connection charges which are consistent with Chapter 5A. This provision is not necessary. A DNSP's connection charges should be consistent with any charging requirements in the chapter without this provision. Otherwise, it would not be in compliance with the NER.

4.4 Embedded generator liability

4.4.1 Background

Presently, there is no relevant rules-based guidance, restriction or limitation on the liability of an embedded generator for damage caused to a network.

The CEC has proposed an amendment to the NER that will require DNSPs to include a limitation on embedded generator liability in connection offers on the basis that DNSPs have often been unwilling to do so.⁷¹ The CEC has not specified what this limit should be or how, conceptually, liability should be limited and for what actions or omissions.

It is presumed that the liability the CEC seeks to limit is liability for loss, harm or damage to the DNSP caused by the actions or omissions of the embedded generator or its agents. For example, if an embedded generator negligently caused damage to a piece

⁷¹ CEC rule change request, 19 April 2013, pp31-32.

of network equipment, it would, in the normal course of events, be liable to the DNSP to compensate it for the damage it caused.

4.4.2 Stakeholder submissions

Lumo supported the CEC's proposal, suggesting that the limitation of liability for damage to a network be restricted to a dollar value. Given the relevant size of embedded generators that connect under Chapter 5A, it suggests embedded generator liability should be limited to \$100,000-\$200,000. In addition, Lumo suggested DNSPs should also be liable for any damages that they have caused to the embedded generator while connected to the network.⁷²

DNSPs did not support the CEC's proposal. They consider the issue of liability to be a commercial matter that is properly addressed between the DNSP and connection applicant. In addition, DNSPs have expressed concern that a limit on embedded generator liability in the NER could lead to the network, and therefore customers generally, bearing the risk of potential damage caused by an embedded generator.⁷³

4.4.3 Commission's assessment

Lumo proposed that the NER include a maximum limit of liability for an embedded generator. The Commission does not consider this appropriate. This is because the level of potential damage an embedded generator may cause to a network depends on the individual circumstances of a connection as well as the incident. For example, the potential damage that an embedded generator may cause to a distribution network will depend on the location of the connection and the size of the embedded generator. It would therefore be extremely difficult to specify a set dollar amount in the NER that would be applicable to the wide range of possible embedded generators that may connect to any of the distribution networks.

If the NER was to include a limit on the level of liability, there is a risk that the limit would be set too low. This would result in DNSPs, and ultimately all other customers, bearing any shortfall that may arise. This outcome indicates that even if it were possible, setting a liability amount in the NER would not be consistent with the principle that risk should be allocated to the party that is best able to manage it. It would therefore not promote the NEO.

In addition, there is also a risk that any limit in the NER would become the default position for DNSPs. This could result in inappropriately high levels of liability for some embedded generators and impact on the viability of an otherwise feasible project. This would not be in the interests of embedded generator proponents or promote the NEO.

Similarly, the draft rule does not include an amendment to the NER reflecting the CEC's proposal that DNSPs should be required to include a limitation of liability clause in a connection offer made to an embedded generator proponent. In some circumstances the inclusion of such a clause may be appropriate. In other cases, it may not be necessary.

⁷² Lumo submission to consultation paper, p9.

⁷³ Submissions to consultation paper: Energex, p6; ENA, p5; Ergon, p7; NSW DNSPs, p7; and Victorian DNSPs, p3.

Similar to the issue above, if a DNSP is forced by the NER to provide a limitation on the liability of an embedded generator proponent then this may not be consistent with the principle that risk should be allocated to the party that is best able to manage it.

In general, Chapter 5A of the NER does not prevent embedded generator proponents and DNSPs from negotiating the level of liability that an embedded generator proponent should be exposed to. Indeed, it is understood that a limitation on embedded generators' liability is often provided for in connection contracts. Similarly, the liability of a DNSP to a proponent of a connected embedded generator is also a matter that is most appropriately addressed through negotiations between the parties. The parties have access to the dispute resolution process should they not be able to agree on this issue. The Commission therefore does not propose to change the NER as proposed by the CEC or Lumo.

4.5 Dispute resolution

4.5.1 Background

Currently, clause 5A.G.1(a) of the NER defines a relevant dispute as:

“(1) A dispute between a Distribution Network Service Provider and a customer about:

- (i) the terms and conditions on which a basic connection service or a standard connection service is to be provided; or
 - (ii) the proposed or actual terms and conditions of a negotiated connection contract; or
- (2) a dispute between a Distribution Network Service Provider and a customer about connection charges.”

The CEC has proposed an amendment to the definition such that a relevant dispute would include:

“(iii) the requirements of this Chapter and any material produced by a Distribution Network Service Provider subsequent to this Chapter.⁷⁴”

In other words, to include any dispute between a DNSP and a customer about any matter under Chapter 5A.

The CEC considered that the proposed change will enhance the ability of embedded generator proponents to access the dispute resolution process.⁷⁵

4.5.2 Stakeholder submissions

In its submission to the consultation paper, the CEC expanded on its reasons for its proposed amendment to clause 5A.G.1(a). It noted that if the NER was not sufficiently clear on what matters could be the subject of a dispute then the AER, as the dispute resolution body, would be likely to refer to the relevant DNSP's connection policy. However, the CEC opined that the provisions regarding the context of a connection

⁷⁴ CEC rule change request, 19 April 2013, p32.

⁷⁵ *ibid.* pp32 and 34.

policy are also 'vague'. In its view, clarity about disputable matters should be addressed through its proposed amendments.⁷⁶

The ENA questioned the value of the CEC's proposal. In its view, the Chapter 5A dispute resolution framework is sufficient to facilitate the resolution of a wide range of disputes that may arise.⁷⁷ The ENA submitted that any changes made to the Chapter 5A provisions should be consistent with the equivalent in Chapter 5. That is, to use Chapter 8 of the NER as the dispute resolution mechanism.⁷⁸

Energex similarly noted that Chapter 5A appeared sufficient. It also noted that as the mechanisms in Chapter 5A and Chapter 5 both have some benefits it would accept the use of either approach.⁷⁹

The AER has noted that the current framework can manage various types of disputes, including procedural aspects around timing and the quality of information required to be provided by DNSPs.⁸⁰

4.5.3 Commission's assessment

The CEC has stated that as the requirements regarding the content of a DNSP's connection policy are not sufficiently prescriptive, then an amendment to clarify what matters could be the subject of a dispute resolution is needed.⁸¹ However, the Commission notes that the CEC has not raised any specific concerns regarding the requirements for connection policies. In addition, the first connection policies under Chapter 5A have only been effective from 1 July 2014.⁸² There is no evidence of a problem on this issue to date.

The CEC is concerned that there may be connection related matters that fall outside the scope of the Chapter 5A dispute resolution framework. However, the AER has indicated that it considers the framework to be established in a way such that its scope is broad. The AER also noted that it regards its compliance role as sufficient in relation to connecting embedded generators under Chapter 5A of the NER.⁸³

The current Chapter 5A dispute resolution framework is drafted in a broad way that covers all outputs from the negotiated process. Further, what the AER must give effect to when determining a dispute is similarly broad.⁸⁴

The Commission has concluded that the current clause 5A.G.1(a) is suitable for its purpose and the proposed change is not required. The draft rule does not include an amendment as proposed by the CEC.

76 CEC submission to consultation paper, pp10-11.

77 Submissions to consultation paper: ENA, p5; Victorian DNSPs, p3; and NSW DNSPs, p7.

78 ENA submission to consultation paper, p5.

79 Energex submission to consultation paper, p6.

80 AER submission to consultation paper, p1.

81 CEC submission to consultation paper, pp10-11.

82 The AER approved the connection policies of the NSW and ACT DNSPs as part of the latest round of regulatory determinations. These connection policies came into effect on 1 July 2014.

83 AER submission to consultation paper, p1.

84 NER clause 5A.G.2.

Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CEC	Clean Energy Council
Commission	see AEMC
DMITRE	Department of Manufacturing, Innovation, Trade, Resources and Energy
DNSP	distribution network service provider
kW	kilowatt
MCE	Ministerial Council on Energy
MW	megawatt
NECF	National Energy Customer Framework
NEL	National Electricity Law
NEM	National Electricity Market
NEO	national electricity objective
NER	National Electricity Rules

A Summary of issues raised in submissions

Existing arrangements and evidence of a broad problem

Stakeholder	Issue	AEMC response
CEC (pp1, 6, 9)	<p>A member survey shows that the negotiated connection process in Chapter 5A is not effectively supporting the negotiate-arbitrate arrangements in the NER and the principle of countervailing market power.</p> <p>The member survey shows that a large number of micro-embedded generators are connecting under the negotiated connection process in Chapter 5A. This implies that DNSPs are largely not offering basic connection services to micro-embedded generators. This problem is created by the lack of prescription in the negotiated connection process in Chapter 5A.</p> <p>The member survey shows that DNSPs are imposing export limitations on embedded generators which can impose significant additional costs on the embedded generator. As the negotiated connection process in Chapter 5A is not prescriptive, the opportunities for an embedded generator to fully understand alternative opportunities are significantly diminished.</p>	The Commission's assessment on the extent of a problem is set out in section 3.1.
ClimateWorks, Property Council and Seed (p2)	Barriers to the connection of embedded generators identified in the Chapter 5 rule change process are relevant to embedded generators in Chapter 5A.	As above.
Energex (p1) , ENA (p1), Ergon (p2), NSW DNSPs	Chapter 5A has only recently been applied in some, but not all, jurisdictions and therefore it is	As above.

Stakeholder	Issue	AEMC response
(p1), DMITRE (p2), Victorian DNSPs (p1)	questionable whether there is any evidence that the negotiated connection process in Chapter 5A is not working to achieve the NEO.	
ClimateWorks, Property Council and Seed (p2)	No evidence that DNSPs intend to provide model standard connection offers. In addition, the concept of allowing DNSPs to develop multiple standard connection offers as opposed to developing a wider standard is not consistent with the NEO.	Noted although there may be scope for more standard connection offers by DNSPs over time.
Energex (p3)	Model connection offers may not be suitable for micro-embedded generator connections that require network augmentation and are technically complex in nature.	As above.
ENA (p1), Victorian DNSPs (p2)	Each connection point in the network is unique; therefore it is likely that the majority of non-basic connections will be negotiated connections.	As above.

Structure and timing of the connection process

Stakeholder	Issue	AEMC response
CEC (p7)	<p>The structure of the proposed rule is consistent with that set out in the Chapter 5 rule change final determination. That is, the provision of information is early in the process and that the provisions are specific about what information is required.</p> <p>The survey results show that achieving a connection agreement in a certain timeframe is more important than achieving a connection</p>	No changes to the structure and timing of the connection process in Chapter 5A have been made. However, the draft rule provides for eligible embedded generator proponents in Chapter 5A to select to use the more structured Chapter 5 process.

Stakeholder	Issue	AEMC response
	agreement in the tightest timeframe. However, the existing process allows DNSPs to stop-the-clock with information requests and there is no requirement on DNSPs to be clear about the information they require. This creates an uncertain environment for investment. The risk associated with this uncertainty is carried by embedded generator proponents.	
ClimateWorks, Property Council, Seed (p2)	The length of time allowed in Chapter 5 from a preliminary enquiry to making a connection offer is too long for embedded generator applications in Chapter 5A.	As above. The embedded generator proponent could consider the timeframes in each of the processes when deciding which process to use.
ENA (p2)	Delays to the process generally arise when the DNSP is not provided with sufficient information to assess an application and make a complete offer.	No changes to the structure and timing of the connection process in Chapter 5A have been made. However, the draft rule provides for eligible embedded generator proponents in Chapter 5A to select to use the more structured Chapter 5 process.
ENA (p2), Ergon (p4), NSW DNSPs (p3), Victorian DNSPs (p2)	Do not support the proposal that the connection application by the embedded generator proponent is deemed to have been accepted if the DNSP does not acknowledge or accept/reject the proposal within the stipulated timeframe. Timeframes should be able to be extended with the agreement of both parties.	The draft rule does not include this proposal. See section 4.1.
Energex (pp3-4), ENA (p2), Ergon (p4), NSW DNSPs (p4), Victorian DNSPs (p2)	Do not support the proposal to require DNSPs to provide embedded generator proponents access to their legal personnel. This would be impractical due to the conflict of interest facing the legal counsel but	As above.

Stakeholder	Issue	AEMC response
	may also constrain the ability of DNSPs to retain access to legal advisers as they see fit.	
Ergon (pp3-4)	<p>Does not support requiring DNSPs to:</p> <ul style="list-style-type: none"> • advise embedded generator connection proponents whether a negotiated connection application is complete within ten business days; and • require DNSPs to make a connection offer within 65 business days (it supports the current requirement of 'best endeavours'). <p>Remaining proposed amendments to structure and timing of the negotiated connection process are either unnecessary or not controversial.</p>	The draft rule does not include these proposals. See section 4.1.
Lumo (pp3-5)	<p>Supports changes to the structure and timing of the negotiated connection process.</p> <p>The proposal for a negotiated connection application to be automatically accepted after 65 business days should expedite the connection process.</p>	No changes to the structure and timing of the connection process in Chapter 5A have been made. However, the draft rule provides for eligible embedded generator proponents in Chapter 5A to select to use the more structured Chapter 5 process.
NSW DNSPs (p3)	Do not support the introduction of a "negotiated connection application" stage. The DNSP will not be able to provide all the relevant information needed to support a negotiated connection application before the proponent has provided a detailed project scope including the type and nature of the equipment to be used.	As above.

Information requirements

Stakeholder	Issue	AEMC response
CEC (p7)	<p>The member survey results indicate that a lack of information and changes to information during the connection process are a significant concern for embedded generator proponents.</p> <p>Considers information requirements set out in its rule change request are required to support an effective negotiation process. In particular, the proposed amendment to clause 5A.C3(a)(3) to require the DNSP to provide an embedded generator proponent with information it reasonably requires to fully assess the commercial significance of the access arrangements sought.</p> <p>The survey results suggest that requirements on DNSPs and embedded generator proponents are vague and that embedded generator connection proponents rely on information from the DNSP. This makes a case for the NER to be unambiguous about obligations at each stage of the connection process.</p>	<p>The draft rule allows eligible embedded generator proponents to use the Chapter 5 embedded generator connection process which sets out information requirements in greater detail.</p> <p>To enable eligible embedded generator proponents to effectively use the Chapter 5 process the draft rule requires DNSPs to provide the same upfront information as required under Chapter 5 with respect to non micro-embedded generators in Chapter 5A.</p> <p>See section 3.2</p>
CEC (p9)	<p>Limited opportunity for embedded generator proponents to understand alternative technical solutions as a result of DNSP limitations on export. This is caused by a lack of prescription in the negotiated connection process in Chapter 5A.</p>	<p>No changes to the relevant provisions in Chapter 5A are included in the draft rule. See section 4.1.</p>
ClimateWorks, Property Council, Seed (p3)	<p>There should be technical performance standards for the connection of medium sized embedded generators.</p>	<p>The draft rule does not include this proposal. See section 4.1.</p>

Stakeholder	Issue	AEMC response
Energex (p4)	Energex currently provides information to proponents to enable them to assess the commercial implications of their proposals.	The draft rule does not include the specific provision proposed by the CEC to which this comment relates.
ENA (pp2-3), Victorian DNSPs (pp2-3)	<p>The ENA considers the effort and costs required to develop and maintain a register of generating plant for negotiated connections under Chapter 5A (similar to the register required under Chapter 5) would outweigh any potential benefits for connection proponents. Any register should only be required to include connections greater than 1MW and cover a shorter timeframe than in Chapter 5.</p> <p>The Victorian DNSPs expressed similar views.</p>	To enable eligible embedded generator proponents to effectively use the Chapter 5 process the draft rule requires DNSPs to provide the same upfront information as required under Chapter 5 with respect to non micro-embedded generators in Chapter 5A. See section 3.2
Ergon (pp4-5)	<p>Does not support requiring DNSPs to provide proposed technical standards prior to submitting a negotiated connection application as different standards would be required depending on the characteristics of the embedded generator.</p> <p>Considers the requirement for DNSPs to describe technical requirements when assessing negotiated connection applications may be unnecessary.</p> <p>Does not support proposed changes to the confidentiality provisions in Chapter 5A of the NER.</p>	The draft rule does not include these proposals. See section 4.1.
Lumo (pp5-6)	Supports the proposed changes that relate to the information that needs to be provided to embedded generator proponents by DNSPs during the connection process in Chapter 5A of the NER. Connection proponents will have more power to request the necessary information they require up front in the connection process to help them assess	The draft rule provides eligible embedded generator proponents access to the Chapter 5 embedded generator connection process which sets out information requirements in greater detail.

Stakeholder	Issue	AEMC response
	cost early on in the process.	
NSW DNSPs (p3)	Do not support the proposed schedule of information requirements to be provided in a negotiated connection application. The inclusion of technical schedules in Chapter 5A is disproportionate to the type of generators envisaged to be connected under Chapter 5A (that is, non-registered embedded generators). Such onerous information requirements could cause costs and delays.	The draft rule does not include this proposal. See section 4.1

Power transfer capability

Stakeholder	Issue	AEMC response
CEC (pp8-9)	Does not agree with the AEMC's interpretation of power transfer capability in the consultation paper. It appears to restrict it to the permitted power transfer at the connection point. A DNSP's obligations in relation to power transfer capability extend beyond the connection point.	The Commission recognises that power transfer capability may extend beyond the connection point. See section 4.2.
Energex (pp4-5), ENA (p3), Ergon (pp5-6)	Ergon considers the existing requirements in Chapter 5A are reasonable and appropriate and the additional prescription requested by the CEC is not necessary. The ENA and Energex had similar views.	As above. See section 4.2.
ENA (p3), Victorian DNSPs (p3)	The level of power transfer capability should be a matter that is subject to negotiation.	As above.

Stakeholder	Issue	AEMC response
Lumo (p7)	Supports the CEC's proposals.	As above.
NSW DNSPs (p4)	Information requirements outlined in Chapter 5 address connection proponents reasonable expectations of the level and standard of power transfer capability.	As above.

Charges for augmentation for forecast load growth

Stakeholder	Issue	AEMC response
CEC (p10)	On its proposal to exempt embedded generators from being charged for augmentation for forecast load growth, it suggests that Chapter 5A is inconsistent with the principles relating to charging for negotiated distribution services. Clause 6.7.1(3) of the NER refers to the incremental costs above the network performance requirements. This clause expects that the negotiated service only extends to the level of service required to efficiently maintain network performance. Additional costs for future load growth related investment which not needed by a generator should not be borne by that party. Further, the costs of augmentation should only be related to the generator's needs (not future load growth on the network overall).	The draft rule does not include any changes relevant to this issue. As outlined in the final rule determination on the Chapter 5 rule change, embedded generators should not be exempt from paying a reasonable contribution for augmentation to the shared network. See section 4.3.2.
DMITRE (pp2-3)	Embedded generator proponents should not be excluded from the operation of clause 5A.E.a(c)(4) providing for connection charges to include a reasonable capital contribution towards the cost of	As above.

Stakeholder	Issue	AEMC response
	augmentation of the distribution system.	
ENA (p4), NSW DNSPs (p6)	Do not support CEC's proposal to exempt embedded generator proponents from being charged costs for forecast load growth. The existing clause also allows the DNSP to recover the cost of augmentation for forecast load growth from an embedded generator where it has load. The NSW DNSPs note that the AER connection charge guidelines do not exempt embedded generators from the payment of augmentation charges which can include those relating to load growth.	As above.
Ergon (p7)	Does not support CEC's proposal to limit the ability of a DNSP to charge an embedded generator proponent for augmentation for future load growth. This issue is sufficiently considered under the AER's connection charge guidelines and relevant classification of service decisions.	As above.
Lumo (pp8-9)	Supports the CEC's proposal to limit the ability of a DNSP to charge an embedded generator proponent for augmentation for future load growth. However, the proposal fails to go far enough. As embedded generator proponents do not receive property rights for funding augmentation they should not be required to pay for these assets.	As above.
ClimateWorks, Property Council, Seed (pp2-3)	The obligations for DNSPs to reimburse the use of assets funded by the connection proponent to provide services to other connections are not being observed in practice.	This is a NER compliance issue that should be raised with the AER.

Other fee and connection charge issues

Stakeholder	Issue	AEMC response
<p>ENA (p4), Ergon (pp6-7), NSW DNSPs (pp4-5), Victorian DNSPs (p3)</p>	<p>Do not support restricting the ability of DNSPs to charge for the provision of information that they are required to maintain.</p> <p>The ENA notes that information maintained by the DNSP may require significant alteration when being applied to an individual connection.</p> <p>Ergon considers this issue is dealt with through the classification of services determined by the AER in the regulatory determination process.</p> <p>The NSW DNSPs consider DNSPs should not be prevented from charging a fee for a preliminary enquiry fee.</p> <p>The Victorian DNSP support applying a consistent approach to the Chapter 5 rule change request on this issue.</p>	<p>DNSPs are able to charge a fee that represents the reasonable cost of carrying out work required to address matters raised by the embedded generator. The draft rule makes no change to the charging of fees under Chapter 5A. See section 4.3.1.</p>
<p>DMITRE (p3)</p>	<p>Reasonable recovery of costs associated with processing a connection application should be allowed.</p>	<p>As above.</p>
<p>CEC (pp9-10)</p>	<p>The benefits to embedded generator proponents from preventing DNSPs from charging a negotiation and process fee until the applicant has been advised that the application is complete outweigh any risks to DNSPs.</p>	<p>No changes to the charging of fees under Chapter 5A have been made by the draft rule. See section 4.3.1.</p>
<p>Energex (p5), ENA (p4), Ergon (p6), NSW DNSPs (p5)</p>	<p>Do not support preventing DNSPs from charging a negotiation and process fee until the proponent has</p>	<p>As above.</p>

Stakeholder	Issue	AEMC response
	been advised that the application is complete.	
Ergon (p7), Victorian DNSPs (p3), NSW DNSPs (p6)	Do not support proposal to limit connection costs to those which could have been reasonably identified by the embedded generator proponent from the information initially provided by the DNSP. The NSW DNSPs and Ergon note the information provided by the DNSP is dependent on the information initially provided by the embedded generator proponent. The Victorian DNSPs consider it is not appropriate as network studies would not have been carried out at that stage. Similarly, Ergon also noted that the scope of works might change during the process.	As above.
Energex (pp5-6), ENA (p4)	Support proposal to limit connection costs that DNSPs can charge embedded generator proponents based in the information initially provided by the DNSP although variations should be able to be agreed between the parties as a project progresses.	As above. See section 4.3.3.
CEC (p10)	Supports cost breakdowns for connection fees and charges in Chapter 5.	Chapter 5A requires cost information to be broken down by DNSPs and does not prevent an embedded generator proponent from seeking additional breakdowns. The Chapter 5 process requires more detailed cost breakdown information to be provided. Eligible embedded generator proponents may elect to use the Chapter 5 process.
Lumo (p8)	Supports costs breakdown for connection fees and charges put forward by the CEC. DNSPs should not be able to charge a fee to recover the "reasonable" costs of responding to a detailed connection enquiry	Cost breakdowns information is specified in Chapter 5. It is appropriate that DNSPs be able to charge for responding to a detailed connection enquiry. See

Stakeholder	Issue	AEMC response
	as DNSPs use information that is already in their possession.	section 4.3.3.
Ergon (p6)	Information requirements on fees and costs in the connection offer should not be more any more onerous than it is for other connections in Chapter 5A.	The draft rule does not include any changes related to this issue.
NSW DNSPs (p5)	DNSPs unable to provide certain information in the connection offer where an accredited service provider is undertaking the work.	The requirements in Chapter 5 and Chapter 5A are flexible enough to accommodate this scenario.

Embedded generator liability

Stakeholder	Issue	AEMC response
Energex (p6), ENA (p5), Ergon (p7), NSW DNSPs (p7), Victorian DNSPs (p3)	Do not support this proposal. Consider the issue of liability to be a commercial matter that is properly addressed between the DNSP and connection applicant. Raise concerns that a limit on embedded generator liability in the NER could lead to the network and therefore customers generally bearing the risk of damage caused by an embedded generator.	The draft rule does not include any changes to the Chapter 5A provisions as they are appropriate. See section 4.4.
Lumo (p9)	Supports the proposal to limit embedded generator liability, suggesting that the limitation of liability for damage to the network be restricted to a dollar value and could be set in proportion to the size of the connecting embedded generator. Given the relevant size of embedded generators that connect under Chapter 5A, their liability should be limited to	As above.

Stakeholder	Issue	AEMC response
	\$100,000-\$200,000. DNSPs should also be liable for any damages that they have caused to the embedded generator while connected to the network, which would make it fairer for all parties.	

Dispute resolution

Stakeholder	Issue	AEMC response
AER (pp1-2)	<p>The key to reduce disputes is to increase the level of clarity regarding the requirements on DNSPs and embedded generator proponents.</p> <p>Does not consider that the level of disagreement between embedded generator proponents and DNSPs would be reduced by broadening the definition of what is a relevant dispute.</p> <p>The current framework can deal with various types of disputes, including procedural aspects around timing and quality of information required to be provided by DNSPs.</p> <p>Would like some clarifying amendments on the inter linkages between Chapter 5A disputes and the dispute resolution framework under Part L of Chapter 6.</p>	<p>The draft rule does not change the Chapter 5A provisions. Embedded generator proponents electing to use the Chapter 5 process will have access to the Chapter 8 dispute resolution process including the Wholesale Energy Market Dispute Resolution Adviser. See section 4.5.</p> <p>The draft rule does not amend the NER to provide inter linkages between Chapter 5A disputes and the dispute resolution framework under Part L of Chapter 6 as proposed by the AER. Any such amendments go beyond the scope of this rule change process on the negotiated connection process for embedded generators.</p>
Energex (p6), ENA (p5), NSW DNSPs (p7), Victorian DNSPs (p3)	Do not support proposed amendments. Current dispute resolution arrangements under Chapter 5A are sufficient. ENA and Energex would support consistent arrangements with Chapter 5.	The draft rule does not change the Chapter 5A provisions. Embedded generator proponents electing to use the Chapter 5 process will have access to the Wholesale Energy Market Dispute Resolution Adviser. See section 4.5.

Stakeholder	Issue	AEMC response
CEC (pp10-11)	A lack of prescription in the in the negotiated connection process in Chapter 5A allows DNSPs to develop their connection policies with broad freedom. Further, there is an incentive on DNSPs to limit prescriptiveness in their connection policies as the AER would rely on these when considering a dispute.	The NSW and ACT DNSPs have been the first DNSPs to be required to have a connection policy approved by the AER. These connection policies have been effective from 1 July 2014. To date, there is a lack of evidence of a problem on this issue. The provisions regarding the scope of dispute resolution in Chapter 5A are appropriate.

General approach for way forward

Stakeholder	Issue	AEMC response
CEC (p11)	There may be cases where Chapter 5 could be an applicable process for non-registered embedded generators. However, if adopted into Chapter 5A, an obligation must be placed on the DNSP to meet the embedded generator proponent's request to use the Chapter 5 process. The option should not be by agreement between the parties.	The Commission's approach to resolving the overarching issue in the rule change is set out in Chapter 3.
ClimateWorks, Property Council and Seed (p2)	There is merit in aligning the negotiated connection process in Chapter 5A with the connection process for embedded generators in Chapter 5. DNSPs in non-NECF jurisdictions should be prevented from refusing an application from an embedded generator to be connected to the Chapter 5 process.	As above. The draft rule does not amend the provisions in Chapter 5 that provide DNSPs with some discretion on using rule 5.3 to connect non-registered embedded generators to a network. This issue is out of scope for this rule change request process.
Energex (p1), NSW DNSPs (p1)	AEMC should draw on relevant work carried out during the Chapter 5 rule change process.	The Commission's approach to resolving the overarching issue in the rule change is set out in

Stakeholder	Issue	AEMC response
		Chapter 3.
Energex (pp1,7), ENA (p1), Victorian DNSPs (pp1-2)	<p>Support general alignment of Chapter 5 and 5A processes to the extent possible to reduce regulatory compliance costs and improve certainty for embedded generator proponents.</p> <p>Chapter 5 solutions are appropriate for the reasons raised with Chapter 5A.</p> <p>The Victorian DNSPs consider that the processes should be aligned for all embedded generator connections in Chapter 5A with the exception of micro-embedded generators.</p>	As above.
Energex (p7)	Does not support allowing Chapter 5A embedded generator proponents to use all or part of the Chapter 5 embedded generator connection process. A clear delineation between the Chapters provides regulatory certainty for DNSPs and proponents and will avoid process shopping.	As above.
Lumo (p1)	<p>Supports the CEC rule change request. It will make the negotiated connection process clearer, more transparent and more prescriptive. As a result of requiring more information from DNSPs the negotiated connection process will become more efficient under the proposed rule.</p> <p>The additional clarity, transparency and prescription that the CEC rule change will bring to the negotiated connection process will more than offset the additional administrative costs it will create.</p>	As above.

Other

Stakeholder	Issue	AEMC response
John Herbst (private individual)	Customers should be made aware that the installation of micro-embedded generators may result in tariff changes for them.	This issue is out of scope of this rule change request as it relates to micro-embedded generators that are eligible for a basic connection service and supply tariffs.

B Differences between Chapter 5 and Chapter 5A

In making a choice as to whether to connect under Chapter 5 or Chapter 5A, an eligible Chapter 5A embedded generator proponent will need to take into account the differences between the two chapters and consider these against its own requirements and circumstances. This appendix sets out the key differences between the Chapter 5 embedded generator connection framework that comes into effect from 1 October 2014 and the existing Chapter 5A negotiated connection framework. A high level comparison of the differences is provided in Table B.1

Broadly, Chapter 5 includes a connection process that currently applies to embedded generators that are registered or intending to register with AEMO. Therefore, an embedded generator proponent whose generating system is greater than the standing exemption from registration with AEMO (which is currently 5MW), is to use Chapter 5 when seeking to connect to a distribution network. Chapter 5 is relevant to all jurisdictions in the NEM.

Chapter 5A is relevant to embedded generator proponents whose generating system is less than the AEMO standing exemption threshold. It includes a negotiated connection process that is flexible to accommodate negotiations associated with basic and standard service offerings from DNSPs. Chapter 5A has been implemented in South Australia, Tasmania, NSW and the ACT. It will be implemented in Queensland on 1 July 2015.

Table B.1 Key differences between connection processes

Issue	Chapter 5 (from 1 October 2014)	Chapter 5A (existing)
Process and information	Stages of the process and the information to be provided at each stage are explicitly set out. Envisages a longer process.	Less specific but more flexible about when information is to be provided by the parties throughout the process. Envisages a shorter process.
Fees related to the connection process	Specific about what DNSPs can charge and when they can charge fees. Implicit that fees cannot change after an application is lodged.	DNSPs can charge reasonable fees for assessing an application and making a connection offer. Requires DNSP to estimate fees before entering into negotiations.
How connection charges are calculated	Requires DNSP and embedded generator to negotiate in good faith.	Provides a framework for how connection charges should be determined by DNSPs.
Information on connection charges in the connection offer	Specifically identifies items which should be provided in the connection offer. DNSPs are also required to provide an explanation of any variation in amounts of any of the components from information given earlier.	Requires itemised statement of connection costs (but not as detailed as Chapter 5).
Dispute resolution arrangements	The Chapter 8 dispute resolution framework applies. Under this	The AER resolves disputes under specific arrangements in

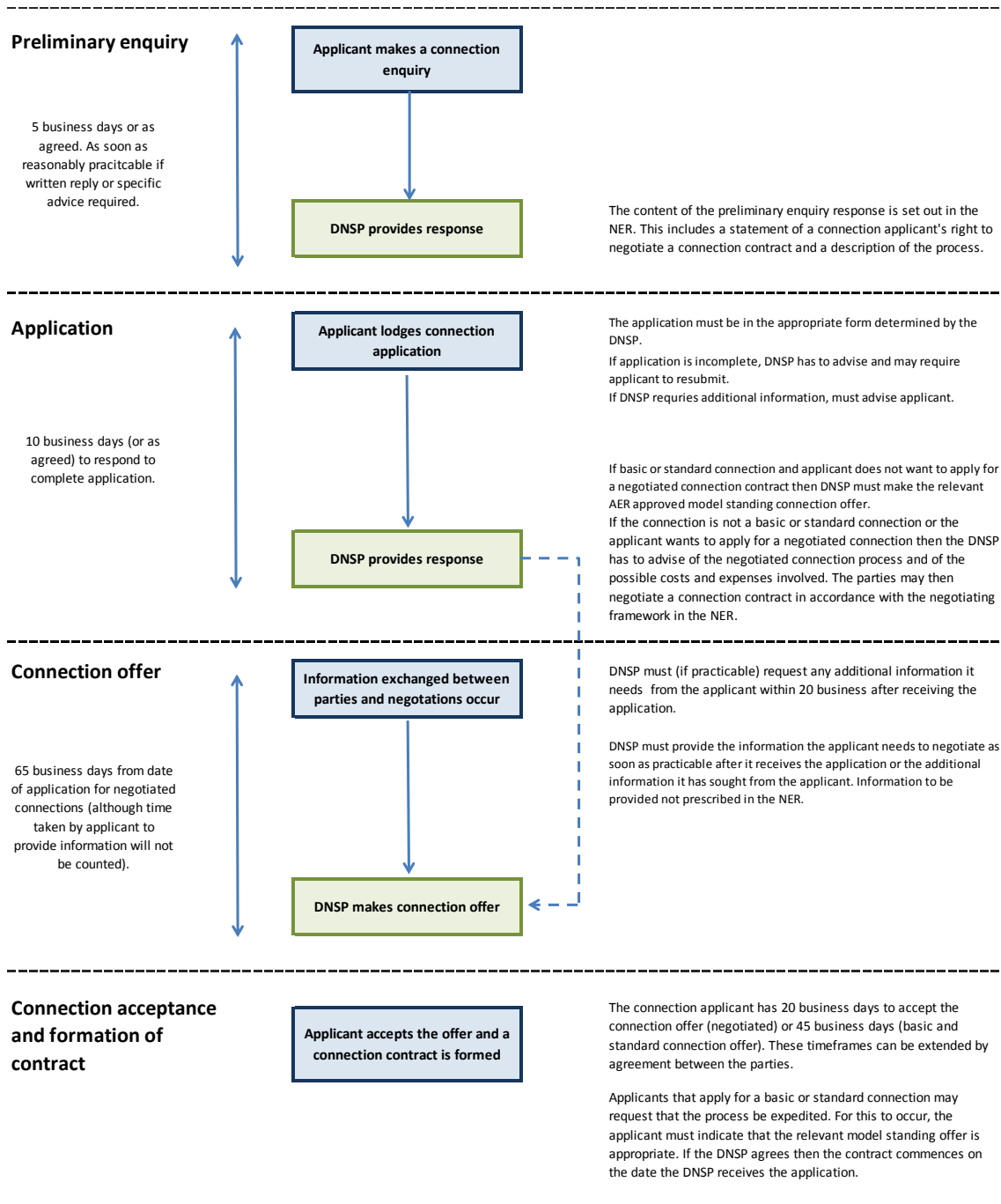
Issue	Chapter 5 (from 1 October 2014)	Chapter 5A (existing)
	framework the Wholesale Energy Market Dispute Resolution Adviser may resolve disputes.	Chapter 5A itself.

B.1 Process and information requirements during the process

The Chapter 5A and Chapter 5 connection processes are set out in Figure B.1 and Figure B.2 respectively.⁸⁵ In addition to the connection application processes themselves, DNSPs are required to publish certain information on their websites so that embedded generator proponents have ready access to relevant information before they commence a connection process.

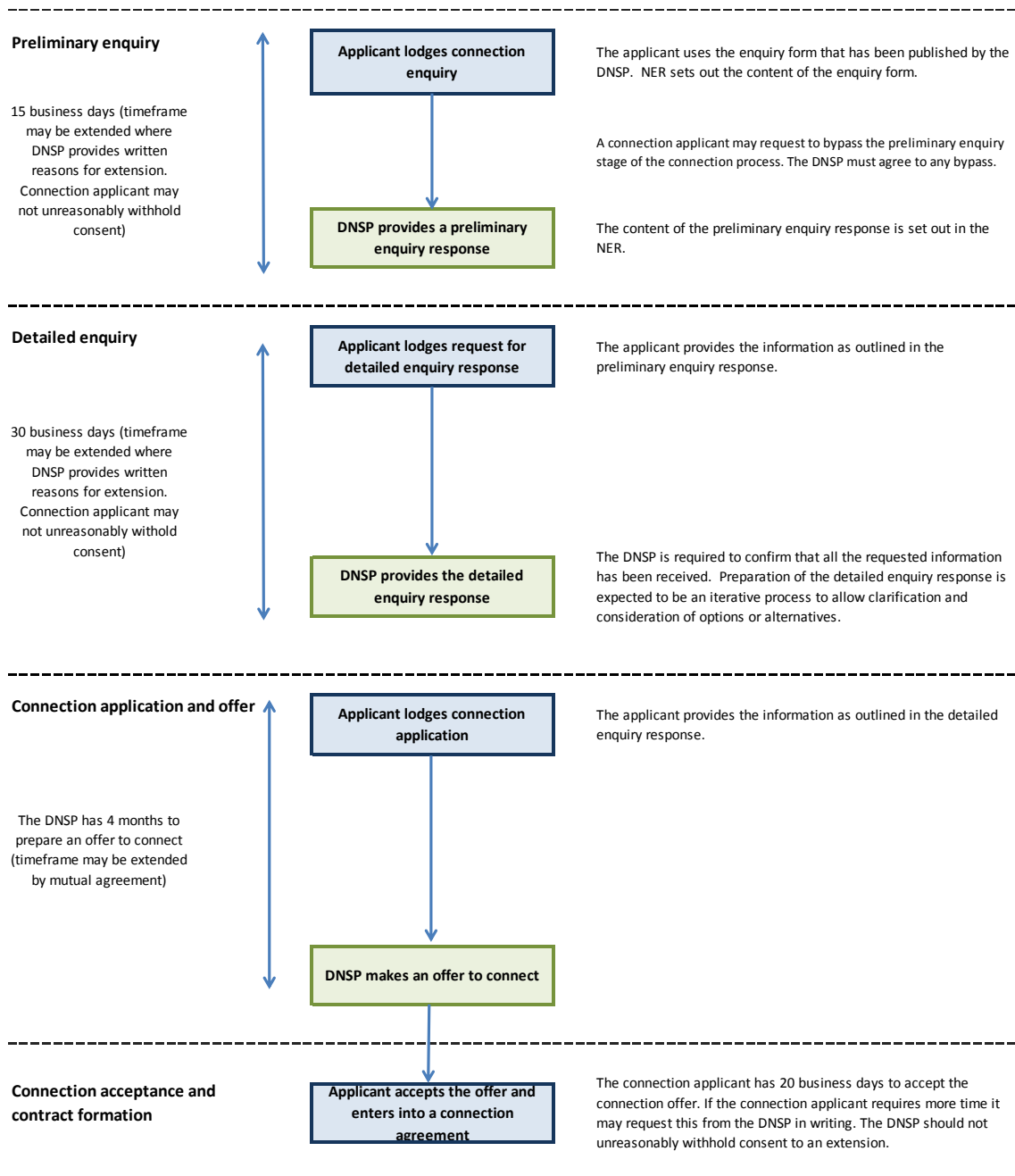
⁸⁵ The Chapter 5 process referred to includes amendments made by the connecting embedded generators rule which comes into effect on 1 October 2014.

Figure B.1 The Chapter 5A connection process



Source: AEMC; Chapter 5A of the NER

Figure B.2 The Chapter 5 connection process



Source: AEMC, Factsheet – Connection process for embedded generators, 17 April 2014.

The Chapter 5 process clearly sets out the stages of the process and the information that should be provided by the parties at each stage. Importantly, before an application is made it provides for a two-stage embedded generator enquiry process known as the preliminary and detailed enquiry stages. DNSPs are required to provide the information specified in the NER to proponents at these stages. An embedded generator proponent can then develop its application in light of the information provided by the DNSP taking into account its own commercial considerations. This is similar to the process that the CEC sought in its rule change request.

By comparison, Chapter 5A is more flexible on what information is to be provided by the parties and when. Based on the drafting of Chapter 5A, it is expected that much of the information exchange between the parties would occur following the making of a

connection application by an embedded generator proponent. Although the precise information that must be exchanged is not specified in detail in the NER.

In addition, the Chapter 5A process is generally expected to be shorter in length than the Chapter 5 process. Excluding the time taken by embedded generator proponents to provide information, Chapter 5A provides DNSPs with approximately 16 weeks to make a connection offer. This compares to approximately 25 weeks under the Chapter 5 embedded generator connection process.

B.2 Fees related to the connection process

The Chapter 5 embedded generator connection process specifically permits DNSPs to charge a fee to recover the reasonable costs incurred to respond to a detailed enquiry.⁸⁶ These fees are payable by the embedded generator proponent before the DNSP embarks on providing this information.⁸⁷

DNSPs are also allowed to charge an application fee payable on lodgement of the application by the embedded generator proponent.⁸⁸ There are specific provisions regarding what this fee can include. That is, the fee must not:

- include an amount for work that was completed in preparing the detailed enquiry response;
- exceed more than necessary to cover the costs of work and expenses reasonably incurred by the DNSP in assessing the application and making an offer; and
- be more than necessary to meet the reasonable costs anticipated to be incurred by AEMO and other network service providers whose involvement is required.⁸⁹

Fees to recover the preliminary enquiry response have not been provided for.⁹⁰ The response to a preliminary enquiry is intended to be sourced from information already available to the DNSP.

Chapter 5A contains a general provision that DNSPs may charge an embedded generator proponent a reasonable fee to cover expenses directly and reasonably incurred by the DNSP in assessing an application for a negotiated connection and making a connection offer.⁹¹ It also requires a DNSP to provide an estimate of the amount to be charged for the assessment of the application before entering into negotiations with the embedded generator proponent.⁹²

B.3 Connection charging arrangements

The Chapter 5 embedded generator connection process requires the DNSP and the embedded generator proponent to negotiate in good faith to reach agreement on

⁸⁶ NER clause 5.3A.4 in National Electricity Amendment Rule 2014 No.3.

⁸⁷ NER clause 5.3A.4(c) in National Electricity Amendment Rule 2014 No.3.

⁸⁸ NER clause 5.3A.4(e) in National Electricity Amendment Rule 2014 No.3.

⁸⁹ NER clause 5.3A.4(e) in National Electricity Amendment Rule 2014 No.3

⁹⁰ NER clause 5.3A.4(e) in National Electricity Amendment Rule 2014 No.3.

⁹¹ NER clause 5A.C.4 (a).

⁹² NER clause 5A.C.3(a)(3)(i).

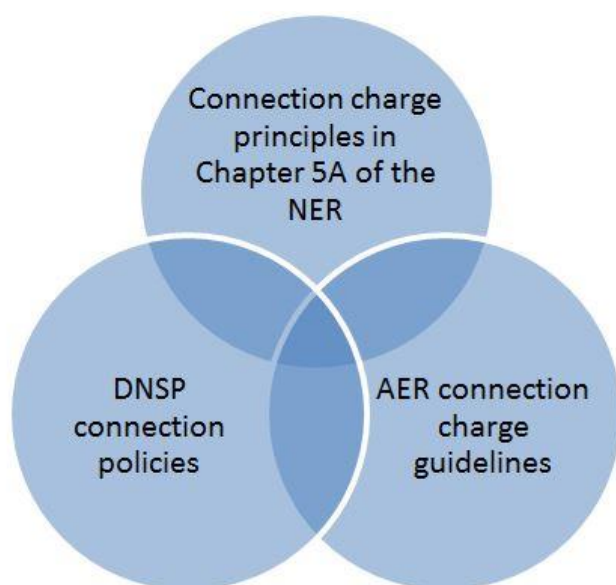
connection charges.⁹³ However, where the service provided by the DNSP is a regulated service (either a direct control service or a negotiated service) the charges imposed by the DNSP would also be subject to a regulatory determination made by the AER.

By comparison, Chapter 5A provides a framework for how connection charges for embedded generator proponents should be determined by DNSPs. This framework includes:

- a set of principles in Chapter 5A of the NER which DNSPs must use to determine connection charges;
- a DNSP connection policy approved by the AER setting out how the DNSP will determine connection charges; and
- AER connection guidelines which DNSPs must follow in developing their connection policies.⁹⁴

The charging arrangements in Chapter 5A are set out diagrammatically below.

Figure B.1 The relationship between different elements of the Chapter 5A connection charging framework



Source: AEMC, from NER, Chapter 5A.

B.4 Information on connection charges

Chapter 5 obliges DNSPs to provide an itemised statement of connection costs in its detailed enquiry response and offer to connect where these items are relevant.⁹⁵ The items which should be included in the statement are specified in the NER. Importantly,

⁹³ NER clause 5.5(f).

⁹⁴ Part E of Chapter 5A of the NER.

⁹⁵ NER clause S5.4B(h) in National Electricity Amendment Rule 2014 No.3.

DNSPs are also required to provide an explanation of any variation in the amounts of any of the components between the two stages in Chapter 5.⁹⁶

Chapter 5A requires DNSPs to provide an estimate of connection charges and the basis on which they are calculated at the commencement of the negotiation process.⁹⁷

Following on from this, it requires the connection offer to be accompanied by a schedule containing an itemised statement of connection costs.⁹⁸ The list includes some, but not all of the specific information required by the Chapter 5 process.

B.5 Dispute resolution arrangements

For an embedded generator proponent seeking to connect under Chapter 5, the relevant dispute resolution process is in Chapter 8 of the NER which includes the Wholesale Energy Market Dispute Resolution Adviser.

If an embedded generator proponent in Chapter 5A is not satisfied with the terms and conditions or charges in a negotiated connection contract, and it cannot resolve the issue directly with the DNSP, it can seek dispute resolution assistance from the AER.

⁹⁶ NER clause 5.3.6(b2)(2).

⁹⁷ NER clause 5A.C.3(a)(3).

⁹⁸ NER clause 5A.E.2.

C Legal requirements under the NEL

This appendix sets out the relevant legal requirements under the NEL for the AEMC in making this draft rule determination.

C.1 Draft rule determination

In accordance with s. 99 of the NEL, the Commission has made this draft rule determination in relation to the rule proposed by the CEC.

C.2 Commission's power to make the rule

The Commission is satisfied that the draft rule falls within the subject matter about which the Commission may make rules. The draft rule falls within s. 34 of the NEL. This is because the rule change relates to regulating the activities of persons participating in the national electricity market or involved in the operation of the national electricity system. Further, the draft rule falls within the matters set out in items 11-13 of Schedule 1 to the NEL as it relates to:

- the operation of distribution systems;
- the augmentation of distribution systems; and
- access to electricity services provided by means of distribution systems.

C.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the rule;
- the rule change request;
- submissions received during the first round of consultation;
- feedback provided at stakeholder meetings with embedded generator proponents and DNSPs; and
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NEO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles that apply to this rule change request.⁹⁹

⁹⁹ Under s. 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011 the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated Council is now called the COAG Energy Council.