

28 January 2016

Ms Anne Pearson  
Acting Chief Executive Officer  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

## **National Electricity Amendment (Transmission Connection and Planning Arrangements) Rule 2015 Consultation Paper**

Dear Ms Pearson

The Energy Networks Association (ENA) welcomes the opportunity to make a submission to the AEMC in response to the Consultation Paper on the *National Electricity Amendment (Transmission Connection and Planning Arrangements) Rule 2015* published by the AEMC on 26 November 2015.

The ENA is the national industry association representing the businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia. ENA members own assets valued at over \$100 billion in energy network infrastructure.

The ENA acknowledges that the consideration of this rule change request is an important part of a suite of rule changes undertaken in response to the Transmission Frameworks Review and intended to improve transparency, contestability and clarity in the connections frameworks, as well as to enhance the Transmission Network Service Provider (TNSP) planning and decision making frameworks.

### ***Extending contestability and requirement to connection as negotiated service***

A key focus of the proposed changes to the connection arrangements is to expand the application of contestability to connections. The ENA considers that for the full benefits of contestability to be achieved it is necessary that local TNSPs have the opportunity to compete on a level playing field without the burden of regulations that do not apply to other competitors. Under the COAG proposal this is a burden that would only be imposed onto TNSPs and not other potential providers as TNSPs would be required to provide connection to the transmission network as negotiated transmission services whereas other competitors would provide connection as a non regulated service. A key benefit of contestability is that, when feasible, it can promote efficient outcomes without the costs and risks of regulation. The current proposal, however, does not avoid the costs and risk of regulation and will also mean that TNSPs cannot compete on a level playing field with other potential providers and so distort market outcomes. All parties that compete to provide connections should be required to provide the same service.

Further, it is the ENA's view that the reach of contestability should extend beyond construction to include the operation, control and maintenance of all assets triggered by a new connection. This means

that all parties that compete to provide operation, control and maintenance of connections should be required to provide the same service. Making operation, control and maintenance of the assets also contestable will remove coordination issues, avoid the inappropriate allocation of risk to other parties such as TNSPs, and ensure the constructing party takes into account the ongoing costs associated with the assets when building the assets. The ENA considers that it is also likely that this approach will facilitate a far simpler approach to the rule drafting and so make the framework easier for all parties to understand and implement. While it is recognised that that TNSPs are currently legally responsible for the reliability of their entire licensed area, this is more likely an approach centered on convenience and history rather than what is in the long term interests of consumers.

### ***Definition of connection service and role of network connection point***

The AEMC states that under the current rules framework for connections that the definitions of services are open to a level of subjectivity that has the potential to reduce the certainty and predictability of the framework. The proposed solution, however, does not simplify or clarify the definition of service issue. The ENA is proposing that a simpler approach be applied to what has been proposed in order to improve the clarity of definitions and so make the framework more workable for new sub station connections. The ENA proposes that for connections with new sub stations, all assets and services beyond the first point of severability from the transmission network would be contestable.

It is not entirely clear from the proposed rule or the Consultation Paper what approach to regulation is intended to apply where existing assets are used to facilitate a new connection. New connections are commonly made to existing assets that provide prescribed transmission services where this is the most efficient approach. Further, it is anticipated that assets built under the new contestability regime may also be used for additional connecting parties. The economic and technical issues are different for these connections compared to entirely new assets and so can be expected to present different challenges. The ENA welcomes the opportunity to discuss the challenges associated with such connections in further detail with the AEMC.

The Transmission Network Connection Point (TNCP) is a fundamental concept in establishing connection which has not been appropriately addressed by the rule proposal or the AEMC. The TNCP should not vary depending on which party owns the connection assets (TNSP is negotiated other providers are non-regulated). The ENA proposes that the AEMC provide more clarity on the intended approach on this matter.

### ***Ensuring flexibility and avoiding 'one-size-fits-all' outcomes***

In many areas that are addressed by the proposed rule change TNSPs already undertake actions that deliver the benefits that are sought. For instance, the economic benefits of contestability for connection services are already harnessed through TNSP outsourcing arrangements. Further, TNSPs already actively engage with AEMO's National Transmission Network Development Plan. While the ENA supports the overarching intention and approach of the proposed rules changes, given much of the possible economic gains are already captured through current approaches, it is important that the implementation of the changes do not introduce new and unnecessary costs.

Connection arrangements can be highly bespoke to a particular network, or part of the network, and also the needs and nature of the party wishing to connect. Further, there is no single best way to present planning information or to ensure coordination of plans. Therefore, it is necessary to ensure that the framework for transmission connection and planning allows for there to be sufficient flexibility in the approach that is taken to connections and planning by TNSPs. The ENA is concerned that some of the proposals, such as new oversight on technical specifications for connections, or the approach to producing annual reports, have the potential to lead to a 'one size fits all' approach that inappropriately restricts the discretion of TNSPs.

Further detailed responses to the Consultation Paper questions are set out in Attachment A.

If further information is sought on this matter, please contact Garth Crawford, Executive Director, Economic Regulation, on 02 6272 1555 or by email on [gcrawford@ena.asn.au](mailto:gcrawford@ena.asn.au)

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'John Bradley', with a stylized flourish at the end.

John Bradley  
Chief Executive Officer

## Attachment A – Detailed responses to Consultation Paper questions

Consultation questions	ENA response
<b>Q1: Current Connection Arrangements</b>	
<p><i>(a) Is the AEMC's explanation of the current connection arrangements consistent with how this is done in practice?</i></p>	<p>The AEMC's explanations of the current connections arrangements is overly simplified and does not reflect current arrangements in each of the three examples cited – load, generation or DNSP connection.</p> <p>The ENA considers that the framework for connections, and also the approach to economic regulation, can be substantially simplified by requiring that all new connections requiring a new sub-station to be fully contestable. That is, the construction, ownership, operation and maintenance of all new connection assets. The asset boundary for contestability to apply would be the point where the connection triggered assets can be severable from the existing network. Further, the TNCP should not vary depending on asset ownership. The approach that is taken with respect to connections to existing sub-station assets is more complex, noting that the intended approach of the rule change proposal in this case is not clear. In this case, however, it is important that there continue to be no obligation for TNSPs to invest in what have been identified in the rule proposal as Dedicated Connection Assets. Changing the framework to require TNSPs to invest in these assets would expose them to an unlimited investment requirement.</p>
<p><i>(b) Has anything changed about TNSP practice in relation to transmission connections since the conclusion of the Transmission Frameworks Review in 2013?</i></p>	<p>There have been no changes to how the connections rules have been interpreted since the conclusion of the Transmission Frameworks Review (TFR) in 2013. However, TNSPs have been working to improve their engagement with customers in respect to connections and to better understand their concerns and needs. It is notable that since the TFR it remains the case that there have not been any disputes raised with respect to connections. Further, an AER survey of transmission connection customers identified that there are no widespread concerns with the approach to connections.<sup>1</sup></p>

<sup>1</sup> AER Quarterly Compliance Report: National Electricity and Gas Laws January – March 2014 Appendix A p.19. at [http://www.aer.gov.au/system/files/Quarterly%20compliance%20report%20January%20-%20March%202014\\_0.pdf](http://www.aer.gov.au/system/files/Quarterly%20compliance%20report%20January%20-%20March%202014_0.pdf)

Consultation questions	ENA response
<b>Q2: Assessment Factors</b>	
<p><i>(a) Is the assessment framework appropriate to consider the proposed changes to the transmission connection and planning arrangements?</i></p>	<p>The assessment factors jointly address the planning and connections aspects of the rule change. As a consequence they are relatively broad. It is not obvious, therefore, that having this assessment framework adds considerable value over and above the guidance offered by the NEO and the revenue and pricing principles.</p> <p>In terms of the proposed assessment factors the ENA makes the following comments:</p> <ul style="list-style-type: none"> <li>• It is highly appropriate to focus on efficient investment in, and operation of, electricity services. This objective is consistent with the NEO and therefore the long-term interests of consumers</li> <li>• An appropriate assessment factor is that the price paid by consumers promotes efficiency in so far as it reasonably reflects the costs and risks of providing services, having regard to the need to ensure reliability, safety and security of the transmission network. This contrasts with the current factor that is focused on providing services at lowest possible costs. Focusing on this objective may encourage preferring low cost outcomes in the short term at the expense of the long-term interests of consumers.</li> <li>• With respect to transparency and predictability the focus should be on outcomes rather than a potential solution. The current factor appears focused on the promotion of information as a solution of itself. Instead, the outcome sought should be that parties are able to make well informed decisions. The extent that this requires the promotion of specific information provisions is an open question having regard to the costs and benefits of doing so.</li> </ul>
<p><i>(b) Are there any additional factors that should be considered in assessing this rule change request?</i></p>	<p>In considering the promotion of efficient investment factor discussed above it is necessary that explicit regard is given to the need to provide investors with a reasonable opportunity to earn a normal return on their investment. Connections involve commercial risks and liabilities that are different from prescribed transmission services. It is therefore important that this fact is given due consideration. Doing so will promote a level playing field and ensure that TNSPs have an equal opportunity to other potential providers to be compensated for at least the efficient costs of investment and a return commensurate with the risks involved. This outcome is consistent with the NEO and the revenue and pricing principles.</p> <p>It is also important that the assessment factors encourage the allocation of risk to those parties that are best placed to manage or bear those risks. Third party investment on the network can lead to risks being inappropriately imposed on either the TNSP or the customer, not the third party investor. This is an outcome that</p>

Consultation questions	ENA response
	<p>should be avoided to the extent it is possible to do so or adequate compensation provided where necessary.</p> <p>A theme that has run through the Transmission Frameworks Review as well as this proposed rule change is a desire for increased consistency across regions with respect to the approach to connections and planning. While it is necessary to maintain appropriate flexibility in the approaches taken in each jurisdiction, an additional factor the AEMC may wish to have regard to is the desirability of harmonising arrangements across the NEM and between market participants to the extent it is reasonable to do so.</p>
<b>Q3: Connections Framework</b>	
<p><i>(a) Is the objective for a connections framework, as articulated above, complete? Is there anything else that needs to be incorporated, and therefore reflected in the framework?</i></p>	<p>An objective for connections focused on delivering efficient connection services to those parties seeking to connect is clearly consistent with the NEO and strongly supported by the ENA.</p> <p>While the ENA supports the extension of contestability, it is important that the framework imposed for this does not impose more costs than it avoids. Therefore, in seeking to achieve the desired objective the AEMC needs to be cautious to ensure that the model chosen for implementation delivers actual economic benefits that exceed the direct and indirect costs associated with the change to the framework.</p>
<b>Q4: Identified User Shared Network Assets</b>	
<p><i>(a) What are the benefits of amending the transmission connections process to allow contestability in the construction of identified user shared assets?</i></p>	<p>It is well accepted that, when feasible, competition is the best means of promoting efficient outcomes.<sup>2</sup> Conversely, given the substantial costs and risks associated with economic regulation a high threshold is applied for its application, namely material and enduring market power.</p> <p>The ENA considers that for the benefits of contestability to be achieved it is necessary that TNSPs have the opportunity to compete without the burden of economic regulation where they are competing with other providers not faced with this burden. The intention being to deliver a level playing field. Further, the reach of</p>

<sup>2</sup> There are some cases where competition is not feasible, such as where there are substantial economies of scale or scope. In this case the efficiencies of monopolies should be harnessed while using regulation to protect customers from the use of market power that is conferred upon monopoly providers.

Consultation questions	ENA response
	<p>contestability should extend beyond construction to the operation, control and maintenance for all connections that do not rely on existing assets. The intended approach for connections that might connect to an existing sub-station is not clear at this stage. Given that these connections present different challenges the ENA welcomes the opportunity to discuss further the intended approach, and the possible implications, of these types of connections.</p> <p>The current proposal looks to extend contestability to obtain the benefits of competition without removing the costs of regulation and is therefore inefficient. A contestability model can deliver potential efficiency improvements. Indeed, the current approach to connections by TNSPs seeks to capture the efficiency benefits of contestability through the competitive sourcing of construction and associated services for negotiated transmission services. To that extent, the AEMC should take comfort that a large degree of the benefits from competition are already achieved. Given this, the ENA is concerned that the proposal in its current form is unlikely to achieve the cost savings needed to deliver greater economic benefits and that a simpler approach for extending contestability is required.</p> <p>Removing the economic regulation obligations on TNSPs will serve to remove the costs and risks that economic regulation imposes while also improving the effectiveness of the competitive market given this will facilitate a level playing field. Further, making operation, control and maintenance of the assets also contestable will remove coordination issues, avoid the inappropriate allocation of risk to other parties such as TNSPs and customers, while also making the drafting of the rules far more straightforward and therefore easier for all parties to understand and implement.</p>
<p><i>(b) Would these changes promote contestability, while still having clear responsibility for the provision of a safe, secure and reliable transmission network?</i></p>	<p>Contestability for Identified User Shared Network Assets involving new sub-station assets will occur given self-supply always remains an option for connecting parties. Parties that connect to transmission networks are large, sophisticated and well resourced. Therefore, they have the means to both construct and operate assets themselves or to successfully run market tenders for such work to be undertaken on their behalf.</p> <p>The promotion of contestability under the current proposal will be most impacted by the retention of regulation</p>

Consultation questions	ENA response
	<p>on only one participant; namely TNSPs. Having regulation apply only to TNSPs will likely distort outcomes in the following ways:</p> <ul style="list-style-type: none"> <li>• Costs are imposed on one party but not others meaning a level playing field cannot exist</li> <li>• Only a TNSP's offer will be required to follow rules mandated dispute resolution. Not only would this colour the offer that a TNSP might provide (but not that of its competitors),<sup>3</sup> in a contestable market it also allows connecting parties to abuse this tool. For instance, armed with inefficiently low alternative quotes connecting parties may threaten the use of dispute resolution procedures knowing that the TNSP is obliged to undertake the investment.<sup>4</sup></li> <li>• The cost transparency imposed only on TNSPs is likely to see connecting parties use that information to obtain better offers from alternative providers. As such, connecting parties would be using TNSPs as information resources without any intention of selecting the TNSP to undertake the work. This is a clear waste of resources.</li> <li>• The transparency obligations on TNSPs would also likely serve to constrain the ability for TNSPs to make innovative offers that add value. This is because, for instance, it is difficult to objectively justify the cost of taking on a liability such as meeting a delivery deadline or budget target.</li> <li>• TNSPs are exposed to STPIS risk while other parties are not. This is a risk and potential cost that only TNSP needs to account for in their offers.</li> </ul> <p>Naturally, extending contestability to these services without the burden of regulation on only one party overcomes these problems. In turn, the market can be expected to function better without these distortions impacting on outcomes.</p> <p>The ENA notes that there is good reason to expect that connecting parties would be adequately protected without the fallback of the negotiated services regulation on TNSPs. As indicated above, self-supply is a realistic and genuine alternative for transmission connected parties such that there will always be an alternative option to TNSP provision available.</p>

<sup>3</sup> For instance, TNSPs may be less inclined to make offers that see them take on additional liability given it is difficult to objectively justify this cost to an arbitrator.

<sup>4</sup> That is, a party may obtain a very low quote from someone even though in reality the project could not be done at that cost or it would impose more substantial costs into the future. However, armed with this quote the connecting party could use it to effectively force a TNSP to undertake a project at this low cost. No other potential bidder, however, would be compelled to undertake the project and so could not be constrained in the same way.

Consultation questions	ENA response
	<p>The ENA considers also that extending contestability to the ownership and operation of the assets will serve to better promote the safety, security and reliability of the network. When the party constructing the asset knows that it also bears responsibility for its operation, control and maintenance it means that it has an incentive to take into account the full costs of the connection, including the ongoing operating and maintenance costs. Further, and relatedly, this approach also allow for TNSPs to be shielded from STPIS risks associated with decisions made by third parties. Specifically, the ENA recommends that when designing and applying the STPIS the AER be required to have regard to the impacts of third party supply of assets on the scheme.<sup>5</sup></p>
<p><i>(c) Are there any other aspects or criteria that need to be considered when defining identified user shared assets?</i></p>	<p>The ENA considers that the rules approach to the definition of connection assets should be made far simpler than the current rules and what is presented in the rule change proposal. For connections that do not rely on existing sub-station assets all of the connection services beyond the first point of severability from the shared network should be subject to contestability. This approach:</p> <ul style="list-style-type: none"> <li>• Enables the responsibility for service performance to be linked to the party responsible for owning and constructing the assets, and</li> <li>• Better reflects that all of the assets beyond the point of severability exist only as a consequence of the connection despite the fact that they may support the transmission network also.</li> </ul> <p>Conversely, the ENA considers that the proposed criteria for defining connection services simply change the words in the rules without a material improvement in clarity.</p> <p>One further matter that will require clarification in the drafting of the rules is the location of the TNCP. The boundary between different asset types does not necessarily define the connection point. Defining this point is important given certain obligations are dependent on its location. It should be the same irrespective of ownership.</p>
<p><i>d) Should the same set of negotiation principles that apply to negotiating the services that a TNSP provides to a connecting party apply to the negotiating of the lease or transfer of the identified user shared assets?</i></p>	<p>Where a connection will not rely on 3<sup>rd</sup> party access to an existing connection the need to consider what negotiating framework should apply to the lease or transfer of Identified User Shared Network Assets is unnecessary if the party that constructs the assets is responsible for the operation, control and maintenance of that asset. While a provider may nevertheless decide to outsource this function, or lease or transfer the ownership</p>

<sup>5</sup> The ENA notes that there is currently a legal obligation in licences for TNSPs to bear responsibility for the performance of the network. While it understood that there might be a preference for a single party to bear this responsibility it is apparent that this approach may not deliver the best outcomes in terms of the NEO going forward.

Consultation questions	ENA response
	<p>to the local TNSP, this becomes a commercial decision for that party. It is no longer a requirement of the rules and so any potential negotiating imbalance is removed.</p> <p>It is important also that whatever arrangements are imposed on TNSPs with respect to negotiations are also imposed on alternative providers in similar circumstances. Doing so will ensure that there is a level playing field for the provision of assets and services.</p>
<p><i>(e) Given AEMO's role in declared network jurisdictions, could this definition of an identified user shared network asset apply in these jurisdictions?</i></p>	<p>The case for there to continue to be a different approach in Victoria to the rest of the NEM is weak and serves only to compromise the achievement of a truly national, transparent and predictable regime. While the AEMC's powers with respect to this particular rule change are constrained in this regard, the ENA nevertheless encourages it to apply its influence to better align the arrangements in Victoria with the remainder of the NEM.</p>
<p><b>Q5: Dedicated Connection Assets</b></p>	
<p><i>(a) What are the benefits of clarifying that any party can provide dedicated connection assets contestably?</i></p>	<p>On the premise that the assets that currently run away from the shared network are already subject to contestability the ENA supports contestability for Dedicated Connection Assets. These are assets that are dedicated to a single user or small group of users and are highly suitable to contestability, in particular, given the ability to isolate the assets from the transmission network. To the extent that the current arrangements create uncertainty for stakeholders it is apparent that clarifying the arrangements would likely prove beneficial.</p>
<p><i>(b) Are there any concerns with allowing any party to provide these dedicated connection assets? For example, are there any concerns related to the provision of a safe, secure and reliable transmission network?</i></p>	<p>As long as connection to the transmission network is only made when the assets meet appropriate standards there should be no concerns with dedicated connection assets being provided by any party.</p>
<p><i>(c) Are there any other issues or criteria that need to be considered when defining dedicated connection assets?</i></p>	<p>Two issues that require clarification with respect to Dedicated Connection Assets are: to make clear where the TNCP is intended to be defined, and to confirm that, consistent with the current arrangements, TNSPs not be required to provide Dedicated Connection Assets given this would impose an unlimited liability onto TNSPs.</p>
<p><i>(d) Is the proposed boundary between the dedicated transmission connection assets and identified user</i></p>	<p>In order to ensure that TNSPs do not bear an unlimited liability it is necessary that there is a clear boundary between Dedicated Connection Assets and Identified User Shared Network Assets. Given that it is not clear at</p>

<b>Consultation questions</b>	<b>ENA response</b>
<i>shared assets appropriate?</i>	present how the TNCP is defined under the proposed approach the ENA considers that there is some progress to be made on this matter.
<i>(e) Given AEMO's role in declared network jurisdictions, could this definition of dedicated connection asset apply in these jurisdictions?</i>	The ENA refers to its answer in Q4(e) but notes also that in this case the matter may be more complicated with respect to assets over or below 220kv given this influences the definition of assets in that jurisdiction.
<b>Q6: Application to Load</b>	
<i>(a) Is it appropriate to apply the "identified user shared asset" and "dedicated connection assets" and associated service classifications to load connecting to the transmission network? If yes, what are the reasons? If no, what are the reasons?</i>	The current rules do not have a distinction between load and generation in terms of connections. The ENA sees no reason why this should not continue. In terms of the connection process and the assets used, the approach for loads and generators is almost identical. The main difference is with respect to performance standards. Also, in some circumstances a load connection may pass the RIT-T and so be classified as prescribed transmission network.
<i>(b) Is it appropriate to apply the "identified user shared asset" and "dedicated connection assets" and associated service classifications to DNSPs connecting to the transmission network? If yes, what are the reasons? If no, what are the reasons?</i>	The ENA does not consider the current approach to DNSP's connecting to the transmission network should be changed. The advantage of the current approach is that it facilitates effective joint planning between TNSPs and DNSPs. Further, given these assets will be charged back to end-use customers it is important that they remain subject to the RIT-T process and the economic regulation arrangements under the Rules.
<b>Q7: Exemptions from Registration and Third Party Access</b>	
<i>(a) Is the proposed process for exemption (i.e., that parties have to register with AEMO to be exempt) appropriate?</i>	The ENA does not consider that there is any justification for other providers to be exempt from registration with AEMO. Given the size of these participants the burden of registration is low. Further, it is important for the integrity of the transmission system that they are subject to the requirements of Chapter 5 of the Rules. It is noted that registration with AEMO does not imply that the assets will be subject to economic regulation given this is determined by the definitions in the rules.
<i>(b) Are there any other conditions that should be part of the registration process?</i>	In terms of maintaining a safe, secure and reliable network it is important that the standards contained in Chapter 5 are required to be applied by all providers either by giving force to the Chapter 5 standards themselves or mandating that the connection agreements include equivalent arrangements. Specifically, as per the Connections Configuration Guideline prepared by Grid Australia the current rules arrangements promote three important

Consultation questions	ENA response
	<p>principles for connections, namely:</p> <ul style="list-style-type: none"> <li>• Continuity – which means connections that are consistent with the safe and reliable operation of the power system and good electricity industry practice</li> <li>• Development – which means the connection must be consistent with current network topology and future development of the network in accordance with good electricity industry practice</li> <li>• Control – which means connections must have secondary systems that are aligned with network systems, have redundancy and can operate to isolate credible contingency events</li> </ul> <p>As indicated by the previous response, the ENA considers that achieving these principles is best achieved by requiring that all providers be required to register with AEMO.</p>
<p><i>(c) How should AEMO satisfy itself that the identified user shared assets are operated, controlled and maintained by the local TNSP?</i></p>	<p>As indicated above, the ENA recommends that the operation, control and maintenance of Identified User Shared Network Assets be subject to contestability for connections requiring new sub-station assets. In this case this would negate the need for AEMO to be informed that the TNSP has this function.</p> <p>Nevertheless, should the current proposal proceed this is a process matter that AEMO can address in its own right.</p>
<p><i>(d) What conditions should be imposed on parties in relation to third party access?</i></p>	<p>The ENA considers that the conditions and principles for 3<sup>rd</sup> party access should be the same regardless of the owner of the transmission line or facility. Some specific features that the ENA considers are worthy of detailed consideration as conditions include:</p> <ul style="list-style-type: none"> <li>• The existing user of the assets should have its legitimate contractual and legal rights preserved such that it is not disadvantaged by third party access. The ENA notes that this is something that is usually embedded in a connection agreement</li> <li>• Access to third parties should be provided on a non-discriminatory basis, and</li> <li>• Additional users should be required to pay for the incremental costs caused by their connection as well as a contribution to existing sunk costs.</li> </ul>
<p><b>Q8: Transition to the Shared Network</b></p>	
<p><i>(a) Should there be specific criteria under which assets can transition to the shared network, or is the proposed process where an application is made and a case-by-case assessment is made appropriate?</i></p>	<p>The current arrangements that reveal when an option to address a network need maximises net benefits is the best means of deciding if assets should be transitioned to the transmission network and so provides a clear trigger for this to occur. The RIT-T is a robust test that is well accepted by market participants and other stakeholders. Indeed it has already successfully been used for this purpose with respect to the Kogan Creek Western Downs Sub-station in Queensland and is also used in this way in Victoria.</p>

Consultation questions	ENA response
	<p>Further, in an integrated electricity network it is not clear why ownership should have any role in whether an option is the best to meet a network need or not. Indeed, considering ownership in this matter is inconsistent with the intention of the rule change to promote cross-regional investment where the objective is to ensure the best solution is chosen to meet a network need. If ownership, or other matters, meant that the option that maximises net economic benefits is not chosen this would compromise the promotion of the NEO.</p> <p>It is also relevant to note that the current arrangements allow for the outcomes of a RIT-T to be disputed. This framework provides an assurance that the test has been appropriately applied before any transition can occur.</p>
<p><i>(b) Is the AER the appropriate body to carry out the assessment of whether assets could transition to the shared network?</i></p>	<p>Given TNSPs bear the responsibility for making investments and also the performance of the transmission network it is important that they maintain control over how they deliver service obligations. As such, the ENA supports the AEMC's original recommendation on this matter. Having the AER make the assessment of whether transition should occur effectively shifts planning and investment responsibility to the AER while TNSPs retain responsibility, and liability, for the performance of the network. On this basis it is clear that it is not appropriate for the AER to make such an assessment and is also inconsistent with the framework for economic regulation which sees the AER approve a total amount rather than direct which investments should or should not proceed.</p> <p>The ENA notes also that having the AER undertake this assessment would be procedurally inefficient. The AER would likely be required to undertake a public consultation process calling for stakeholder submissions. This would be a time consuming exercise. If the AER then found that the option was not suitable it would mean that the TNSP would need to commence a new process to identify alternative options and so further delay the commencement of investment. Delaying necessary investment could serve to compromise the achievement of network performance requirements.</p>
<p><i>(c) What costs and benefits should be taken into account when considering whether assets could transition to the shared network?</i></p>	<p>The costs and benefits that form part of the current RIT-T, or any equivalent test for replacement assets, includes all the relevant considerations for this decision.</p>
<p><i>(d) What issues, if any, may arise from economically</i></p>	<p>Irrespective of ownership, it is essential that the economic regulation framework ensures that the price paid by</p>

Consultation questions	ENA response
<p><i>regulating owners of these assets that have become part of the shared network?</i></p>	<p>customers, and the revenue earned by owners, reflects the efficient costs of supply.</p> <p>One specific issue that might arise in the context of assets that transition for connection assets to the transmission network is what contribution should be made to the recovery of sunk costs. This is essentially asking the question of should the opening asset value of the transitioned assets be. While the rules may provide some guidance on this, in particular provisions in Schedule 6A.2, the ENA considers that the starting point for establishing this value is the unrecovered actual cost of the asset.</p>
<p><b>Q9: Negotiating Principles</b></p>	
<p><i>(a) What do the negotiating principles need to take into account?</i></p>	<p>The negotiating principles need to be able to apply to all parties that construct, operate and maintain connection assets. This is to ensure that there is a level playing field between all participants.</p> <p>The current negotiating principles that are applied by TNSPs have been developed over a number of years in consultation with the AER. It is important that proper regard be given to the work that has gone into developing these in terms of any new arrangements noting that material changes would serve to impose new costs.</p> <p>It is also necessary that in developing the negotiating principles that sufficient flexibility remains to allow for TNSPs to continue applying approaches that best suit their network and the way they meet required service performance standards. Given there is already a high degree of consistency in the negotiating frameworks across TNSPs, maintaining much of this framework will enable this outcome to be delivered while also minimising the costs of transition to a new framework.</p>
<p><i>(b) What are the issues to be considered in transitioning from a framework where the AER approves these negotiating principles as part of the revenue determination process, to a framework where the principles are enshrined in the Rules? For example, would this need to occur at the next revenue determination?</i></p>	<p>Given a TNSP's current negotiating framework is established as part of a revenue determination it would make sense that any new framework applies as part of the next revenue determination. This should ensure that any changes in the definition of services or assets does not impact on cost recovery for TNSPs.</p> <p>An arrangement will also be required for those connection negotiations that are in train and remain ongoing at the time the transition to the new framework occurs. The ENA recommends that connection negotiations that have already commenced should continue under the framework they commenced under.</p>

Consultation questions	ENA response
<i>(c) Should the same set of negotiating principles apply to generators, load and DNSPs connecting to the transmission network?</i>	The ENA does not see that there is any reason for the negotiating principles to differ between generators and load. This is consistent with the current treatment of these parties. Given the view that the existing approach to network-to-network connection should remain, the ENA considers that there is no need for negotiating principles with respect to these connections.
<b>Q10: Increasing Transparency</b>	
<i>(a) What benefits would accrue from requiring TNSPs to provide the above information to connecting parties?</i>	<p>If a fully contestable approach is implemented this would negate the need for prescriptive information requirements in the rules. In a contestable market there would be an incentive to provide a level of information that is desired by customers in order to win the project. Further, connecting parties can test the efficiency of any cost estimate submitted by the TNSP by seeking alternative estimates. This provides information about the efficiency of the price quoted and in turn avoids the costs and risks of regulation.</p> <p>Imposing information transparency requirements on only one potential provider would distort the outcomes of the contestable market and mean that there is not a level playing field between providers.</p> <p>Indeed, the prescriptive information requirements proposed are likely to work against the interests of connecting parties. First, it imposes a cost that will be passed onto customers. Second, it is likely to see TNSPs avoid making offers that include innovations or liabilities that are difficult to objectively quantify; such as incentives for delivering projects to a specific timeline or budget. This is despite these having a value to customers. Further, as articulated above, the information sourced could be abused by connecting parties and used only as a negotiating tool with other providers.</p> <p>If the AEMC chooses to proceed with imposing increased regulation on TNSPs in this area it is important that it first assure itself that the benefits of any additional transparency requirements will outweigh the cost, including having regard to how it may distort the market. The AEMC needs to also ensure it takes into account the fact that each connection is bespoke and so a one-size-fits-all approach is unlikely to improve outcomes for any party.</p>
<i>(b) Is there any additional information that would be beneficial, and at what stage would this information be</i>	To the extent that additional information is beneficial to customers, a fully contestable approach would see this revealed naturally as customers would demand it before choosing a provider.

Consultation questions	ENA response
<i>beneficial?</i>	
<i>(c) What would be the costs to TNSPs of providing this information to connecting parties? To what extent is some of this information already available?</i>	The AEMC needs to be conscious that these arrangements will impose a significant cost burden and so it is important that TNSPs be kept whole and so continue to expect the recovery of efficient costs when new regulatory obligations are imposed. This means that the AEMC needs to consider the cost burden it is placing on customers/connecting parties when it imposes new obligations and whether the benefit of these exceed the cost.
<b>Q11: Independent Engineer</b>	
<i>(a) Do parties consider that recourse to an independent engineer would be helpful in negotiating the connections process? Would this be helpful in terms of negotiating the cost and specification of any assets required for connection? Would this be helpful in terms of negotiating the technical standards required for connection?</i>	<p>The independent engineer role can support the connections process as long as it does not inappropriately constrain the flexibility of TNSPs to choose connection approaches that best suit the circumstances of their network and does not impose a disproportionate cost burden on TNSPs or other parties. That is, TNSPs should remain free to specify connections so that there are no adverse impacts on the performance of the rest of the network.</p> <p>It is the ENA's view that much of the concern about the current connections framework has been driven by the lack of clarity in the definitions in the rules rather than a material concern with the technical arrangements imposed by TNSPs. This is reflected in the lack of any disputed outcomes with respect to technical specifications. Further, where there is the potential for some dispute to emerge TNSPs are known to rely on independent engineer provisions in procurement contracts.</p> <p>Even though it is proposed that the decision of the independent engineer be non-binding, it is important that careful consideration is given to the guidance provided to it given its findings would likely have a significant impact on outcomes. Given TNSPs retain responsibility for service performance it is crucial that they retain sufficient flexibility to undertake connection works in ways that they consider best. For instance, it would be inappropriate for the independent engineer role to lead to a uniform approach to connection specification at the expense of fit-for-purpose solutions. In this respect, the ENA considers that the following guidance to the independent engineer would be appropriate:</p> <ul style="list-style-type: none"> <li>• The specification proposed by the TNSP should be reasonable in that the benefits are commensurate with the</li> </ul>

Consultation questions	ENA response
	<p>costs</p> <ul style="list-style-type: none"> <li>• Regard is to be given to the need to reasonably facilitate future connection, and</li> <li>• The specification proposed by the TNSP is consistent with good industry practice and will contribute to a safe, secure and reliable electricity system.</li> </ul>
<p><i>(b) If established, should the independent engineer panel be set up and maintained by the AER? What role should AEMO have in relation to this panel?</i></p>	<p>The preferred outcome is for the negotiating parties to each agree to the choice of an independent engineer. The framework should therefore encourage this to occur. Where agreement cannot be reached it is appropriate for the AER to establish and maintain an independent engineer panel given it already has a similar function for disputes.</p> <p>With respect to connections AEMO is not an independent body and so should have no role in relation to the panel.</p>
<p><i>(c) What criteria should govern the selection of a panel comprised of independent engineers?</i></p>	<p>It is essential that the criteria direct towards the selection of engineers that have sufficient professional competence and experience with respect to connection specification. Further, it is important that this experience has relevance to the NEM. It is important also that the criteria direct selection to engineers that are truly independent.</p>
<p><i>(d) What information would an independent engineer need? What process should be in place for the independent engineer to access such information?</i></p>	<p>The independent engineer should be able to obtain whatever information it considers is reasonably needed in order to make an informed decision. It is noted that TNSPs are already required to be highly transparent in their operations so it is expected that much of the information will already be available.</p> <p>The ENA notes that there is significant precedent from other negotiate / arbitrate frameworks about procedural arrangements for accessing information. The AEMC should be able to draw on this in order to inform itself about appropriate arrangements.</p>
<p><i>(e) To what extent could (or does) the current dispute resolution framework accommodate the seeking of such independent technical advice?</i></p>	<p>The current commercial arbitration arrangements provide for disputes on technical standards to be raised and resolved. This is clear through the reference in Part K of Chapter 6A to clause 6A.1.2(a)(2). The main difference being that the decision of the commercial arbitrator is binding on the parties. As such, it is essential that if the independent engineer proposal is adopted that it not duplicate the role of a commercial arbitrator. In particular, the process must be low cost and fast.</p>
<p><b>Q12: Dispute Resolution</b></p>	

Consultation questions	ENA response
<i>(a) Is the proposal to clarify the arrangements relating to dispute resolution for connections appropriate?</i>	<p>The existing dispute resolution arrangements are robust and the ENA is not aware of any material concerns being raised about these arrangements. While it may be possible to improve the drafting of the rules, the ENA understands that the Chapter 8 arrangements carve out the dispute arrangements of Park K in Chapter 6A; which relate to negotiated transmission services. Further, the ENA understands that the decision of the commercial arbitrator is binding on the parties in accordance with 6A.30.7.</p> <p>The AEMC should first convince itself that there will be a material promotion of the NEO before making substantive changes in this area. This reflects that there is significant potential for unintended consequences to arise from changes in this area. As such, a cautious approach is required. There are clearly significant challenges associated with making the rules for the connections framework clear and workable such that this should be the AEMC's main priority rather than making changes to an already robust dispute resolution framework.</p>
<i>(b) Would this help stakeholders in relation to disputes for negotiating connections and/or technical standards?</i>	<p>An effective dispute resolution framework is one that is never used. This is achieved through sufficiently clear up front guidance such that parties can reasonably predict the outcome of arbitration. In turn, negotiations can be expected to gravitate towards this predicted outcome. This is the case with respect to price matters as well as matters related to technical standards. In that context the current framework can be deemed as successful.</p>
<b>Q13: Cross-regional Investment Options</b>	
<i>(a) What benefits would there be from encouraging TNSPs to consider cross-regional investment options?</i>	<p>There are clearly efficiency benefits to ensuring that a cross-regional investment option is selected when it is the most viable option to meet a network need. It is for this reason that TNSPs already actively undertake joint planning when appropriate to identify where inter-regional solutions are suitable for addressing local needs.</p> <p>The ENA does not consider that there is a need for AEMO to develop guidelines to assess whether an investment need could be met by an investment in another region. The requirement to specifically address the technical and economic merits of a cross-regional option in the Annual Planning Report and subsequent RIT-T, as well as the consideration of inter-regional investments as part of the NTNDP ensures transparency and promotes coordinated planning.</p>
<i>(b) Do the existing economic regulation arrangements sufficiently allow for cross-regional investments to be</i>	<p>Where joint planning aligns with the revenue determination process the framework for economic regulation will support the implementation of cross-regional investment options. Indeed, this is already a feature of the NEM and</p>

Consultation questions	ENA response
<p><i>made?</i></p>	<p>occurs regularly also with respect to TNSP and DNSP arrangements.</p> <p>The ENA does recognise, however, that if a cross-regional investment has not been forecast or included in the general revenue allowance for a TNSP that additional arrangements may be required. This could arise because the obligation is on the TNSP with the originating need to investigate the technical and economic merits of any cross-regional options rather than the TNSP that would need to incur the expenditure.</p> <p>Under the current arrangements the TNSP would need to bear the financing cost of the investment until the end of the regulatory period and also an associated CESS penalty. As such, it will be necessary for the Rules to be amended to address the funding gap and remove any CESS penalty. Some options to address the funding issue would be for the financing cost of the project to be funded by the TNSP with the originating need until the investment can be rolled into the RAB. Alternatively, a mechanism similar to the contingent projects mechanism could be applied.</p> <p>There may be a particular issue to address with respect to the approach to cross-regional investments that occur in the place of replacement expenditure given the AER's current approach for this expenditure. The AER's current approach to replacement expenditure is a high-level top down approach and therefore does not provide revenue with respect to specific projects. Therefore, it is not clear how adjustments would be made by the AER with respect to the respective revenue allowances in each region. This might expose TNSPs to the risk that the adjustment does not account for the additional cost of a cross-regional investment that is undertaken to in the place of replacement expenditure in another region.</p> <p>The ENA notes that the new arrangements for interregional charging should assist in ensuring that those customers that benefit from the cross-regional investment contribute to its cost over time.</p>
<p><b>Q14: TNSP Input into the NTNDP</b></p>	
<p><i>Do stakeholders consider that it would be useful to formalise TNSP input into the NTNDP?</i></p>	<p>TNSPs are already significantly involved in the NTNDP process given it is in their interests to ensure there is consistency between the NTNDP and their own plans. Each year AEMO engages with industry stakeholders to</p>

Consultation questions	ENA response
	<p>obtain feedback on proposals for the forthcoming NTNDP and planning assumptions. This feedback is further supported through individual AEMO and TNSP Planning Co-ordination meetings. In addition to this, during the RIT-T consultation process AEMO comments on the scope, methodology and outcomes of the RIT-T assessment. Central to this is consideration of the scenarios over which the RIT-T assessment has been developed.</p> <p>It is the ENA's perspective that the level and credibility of the input and consultation between TNSPs and AEMO will remain the same irrespective of whether or not arrangements are formalised. Given this, the AEMC should be cautious to ensure that formal arrangements do not impose unnecessary costs on parties. Nevertheless, one enhancement that the AEMC may wish to consider is to require that AEMO demonstrate how it has considered the feedback from TNSPs is developing the NTNDP. This would provide confidence to stakeholders that AEMO has given proper consideration to all views.</p>
<b>Q15: Consistency of Annual Planning Reports</b>	
<p><i>(a) Do stakeholders still consider it is important for the consistency of APRs to be improved, or have sufficient developments in this area been made?</i></p>	<p>The ENA understands that consistency across APRs can assist stakeholders that work across jurisdictions to understand and analyse the information presented. To this end TNSPs have been working to improve the consistency of the APRs over recent times to this end. The ENA considers that, combined with the support of the AER, substantial progress has been made in this area.</p> <p>Consistency, however, should not mean uniformity. There is no single right way to present information. Therefore, consistency should extend only so far as ensuring that the same types of information will be available across APRs and that this information is easily identifiable.</p>
<p><i>(b) What information would stakeholders consider useful to be presented in a consistent manner across TNSP APRs?</i></p>	<p>The work that TNSPs have been undertaking with the AER to improve the consistency and effectiveness of the APRs, as well as the new customer engagement requirements, has done much to ensure that information that stakeholder's value is included in APRs in a form that is useful to them.</p>
<p><i>(c) What roles should the AER, and AEMO NTP play in promoting consistency of TNSP APRs?</i></p>	<p>As indicated above, the AER has already played a key role in facilitating improvements in the consistency and effectiveness of APRs. In terms of any formal role, this need only be limited to confirming compliance with the rule requirements.</p>

Consultation questions	ENA response
	<p>AEMO's NTP has a functional role with respect to promoting consistency of the APRs in terms of providing information that is an input into APRs. That is, the NTP's role is to consult and respond to TSNP investment needs and planning proposals with respect to potential cross-boarder investments and along national flow paths. This in turn assists in facilitating consistency across APRs. This does not mean, however, that there should be a compulsion for AEMO's NTP and TNSPs to agree on the approach to be taken merely for the sake of consistency.</p>
<p><i>(d) Would AER guidelines addressing the conduct of an annual planning review, or preparation of a report be of assistance?</i></p>	<p>TNSPs have worked towards improving the consistency of APRs over recent times. As such there is a clear willingness for improvement in this area. On that basis the ENA considers that high level rules guidance to promote consistency should be sufficient. AER guidelines are likely to only impose an additional regulatory cost without an observable benefit. However, if the AEMC considers that more detailed guidance is required on this matter it would be preferable that this be contained in guidelines. This is because it is more straightforward for guidelines to evolve over time as necessary.</p>