



Australian Energy Market Commission

**Congestion Management Review**

Exposure Draft

Arrangements for recouping costs for participant  
funded network augmentations

2 May 2008

Interested stakeholders are invited to comment on the Exposure  
Draft by **16 May 2008**.

Send submissions can be sent electronically to:

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## **About the AEMC**

The Council of Australian Governments, through its Ministerial Council on Energy, established the Australian Energy Market Commission (AEMC) in July 2005 to be the Rule maker for national energy markets. The AEMC is currently responsible for Rules and policy advice covering the National Electricity Market. It is a statutory authority. Our key responsibilities are to consider Rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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# Exposure Draft

## 1 Introduction

The National Electricity Rules (Rules) provide for negotiation between a generator and a Transmission Network Service Provider (TNSP) in respect of the provision of connection services. This includes providing for a generator making a capital contribution (or paying higher ongoing charges) to fund a specific network augmentation. A generator might choose to do this in order to reduce the likelihood that network constraints will affect its ability to generate. The Rules also provide for such a generator to recoup some of these costs (or pay reduced ongoing charges) in the event that other generators subsequently connect to the network and make use of that part of the network which was augmented by that first generator. This Policy Paper and Exposure Draft, which forms part of the Congestion Management Review (CMR), recommends amendments to the Rules to clarify further this set of arrangements.

The Rule amendments recommended in this Policy Paper and Exposure Draft did not appear as specific recommendations in the CMR Draft Report. These proposed amendments are in response to issues raised by stakeholders in submissions to the Draft Report. This paper discusses the policy reasoning for the proposed amendments. It also outlines how the current Rules operate, discusses comments from submissions and presents the proposed Rule changes.

The Australian Energy Market Commission (AEMC) is seeking stakeholder comment on the policy outlined in this paper and the proposed legal drafting (Appendix A).

Consultation on this policy paper and exposure draft is limited to two weeks. The proposed changes are not substantive but rather provide clarity around the current arrangements. We are in the final stages of preparing its CMR Final Report. This condensed consultation period is sufficient to consider the proposed changes and for the AEMC to consider stakeholder responses prior to finalising the Final Report.

Interested stakeholders are invited to make submissions by **16 May 2008**.

## 2 Background

In November 2006, we published the Rule determination on the Economic Regulation of Transmission Services.<sup>1</sup> As part of this Rule change, Chapter 6A sets out the economic regulation of transmission services, which includes rules on negotiated transmission services, clause 6A.9.1. Section 4.1.1 provides further detail on these principles.

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<sup>1</sup> AEMC 2006, *Draft National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006*, Rule Determination, 16 November 2006, Sydney.

We noted in the CMR Draft Report, that rules 5.4A and 5.5 allow “connection applicants” to pay negotiated use of system charges that reflect the incremental costs or savings of any augmentations to the network that arise from their new connection.<sup>2</sup> We further noted that we were unaware of any agreements or payments pursuant to these Rules that had been implemented.<sup>3</sup>

In response, a number of stakeholders noted in their submissions to the CMR Draft Report that rule 5.4A was unlikely to be used in its current form because of the perceived “free-rider” problem. This is when a party connects to the network previously augmented by a participant, but does not contribute to the cost of the augmentation. Stakeholders noted the principles set out in 6A.9.1(6)<sup>4</sup> in their submissions, but said that the Rules do not clearly provide for the recoupment of capital costs associated with participant funded transmission network augmentations.

The drafting changes proposed in Appendix A propose consequential changes to the Rules to clarify this intent.

### **3 Submissions and Policy Considerations**

#### **3.1 Stakeholder comments on rule 5.4A**

The key message from submissions on this issue is that rule 5.4A should be strengthened to provide for negotiated access rights to the transmission network to be “firmer”. Some submissions noted that in its current form, rule 5.4A was unlikely to be used.

The NGF submission included a consultant report on Market Access<sup>5</sup> that proposed two methods for improving rule 5.4A. Under the Strong method, generators who augment the network are entitled to defined compensation. Under the Weak method, generators are able to pay to augment the network (by paying TNSPs the difference between the cost of the augmentation and the justifiable cost under the regulatory test). Under this latter method, a new generator would compensate an incumbent generator where:

1. the new generator connects to the same part of the augmented network; and
2. the new generator’s connection reduces the network availability to the incumbent.

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<sup>2</sup> AEMC 2007, Congestion Management Review, Draft Report (CMR Draft Report), 27 September 2007, Sydney, p.131.

<sup>3</sup> CMR Draft Report, p.132.

<sup>4</sup> 6A.9.1(6) of the Rules states that the price for a negotiated transmission service is subject to adjustment over time where the assets paid for by the generator are subsequently used by another party.

<sup>5</sup> Synergies, *Market Access Report*, National Generators Forum submission, 4 December 2007.

## **3.2 Policy considerations**

The current Rules provide for generators who have paid to augment the network to receive contributions from a party who subsequently connects to and benefits from that part of the network. We agree that the arrangements can be clearer than they currently are. In the following section, we explain how the proposed changes to the Rules provide greater clarity around these arrangements.

## **4 Legal Drafting**

### **4.1 Current Rules**

The Rules currently maintain that generators are only required to pay for the costs of their immediate network connection (i.e. shallow connection). Generators are not required to pay for any downstream augmentations, to the extent that (where relevant) the augmentations satisfy the Regulatory Test. However, generators may request, and pay for, downstream augmentations that do not meet the Regulatory Test.

Chapter 6A of the Rules covers the economic regulation of transmission services. In particular, clause 6A.9.1 sets out the principles relating to access to negotiated transmission services, for the purpose of TNSP revenue regulation.

Chapter 5 of the Rules provides the framework for connection to a transmission network or distribution network.

#### **4.1.1 Chapter 6A – economic regulation of transmission services**

Under Chapter 6A, where a negotiated transmission service (requiring a downstream augmentation) has been paid for by an existing generator, a party that later connects to that asset may be required to contribute to the cost of the augmentation. This principle is set out in clause 6A.9.1(6).

The price for a negotiated transmission service should be subject to adjustment over time. This price should allow the TNSP to recover the costs of complying with all regulatory obligations (clause 6A.9.1(7)).

If the price for a negotiated transmission service is adjusted, this should reflect the extent to which the costs of that asset are recovered through access charges to another party (clause 6A.9.1(8)). These access charges are determined under Chapter 5 of the Rules.

Under clause 6A.9.2(b) the TNSP must comply with the requirements of rule 5.4A when negotiating to provide connection services and the associated connection service charges.

### **4.1.2 Chapter 5 – network connection**

Under Chapter 5, new connecting parties to the transmission network negotiate their connection services with the TNSP. This can include the funding of a network augmentation that cannot be justified under the Regulatory Test.

Rule 5.4A outlines the access arrangements for transmission networks. In particular, when arranging transmission network access a TNSP and a connection applicant “must negotiate in good faith” on those charges that are identified in clause 5.4A(f).

## **4.2 Proposed Rule changes**

The proposed changes clarify in the Rules the framework for how participants who fund network augmentations can recoup some of their costs (or pay lower ongoing charges) in the event that new parties subsequently connect.

As discussed above, clause 6A.9.1(6) sets out the principle that the price for a negotiated transmission service should change over time to reflect the extent that others use the service. Such an adjustment should reflect the extent the cost of the asset is recovered through charges to that other person. A new drafting note clarifies that an adjustment under this clause includes the recoupment of costs, like capital costs, for participant funded augmentation, where that asset now provides a service to another party.

Having provided this clarification, we propose a consequential change to rule 5.4A to make the connection between those principles and negotiating access explicit. This is because when negotiating access under rule 5.4A, a new generator and the TNSP should conduct negotiations in a manner that is consistent with the principles set out in clause 6A.9.1. Proposed clause 5.4(A)(h)(3) makes this expectation clear.

Appendix A contains the proposed Rule changes.

## **A Network Augmentations**

### **Draft National Electricity Amendment (Network Augmentations) Rule 2008**

under the National Electricity Law as applied by:

- (a) the National Electricity (South Australia) Act 1996;
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory;
- (c) the National Electricity (New South Wales) Act 1997 of New South Wales;
- (d) the Electricity – National Scheme (Queensland) Act 1997 of Queensland;
- (e) the Electricity – National Scheme (Tasmania) Act 1999 of Tasmania;
- (f) the National Electricity (Victoria) Act 2005 of Victoria; and
- (g) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law

John Tamblyn  
Chairman  
Australian Energy Market Commission



# **Draft National Electricity Amendment (Network Augmentations) Rule 2008**

## **1. Title of Rule**

**This Rule is the Draft National Electricity Amendment (Network Augmentations) Rule 2008.**

## **2. Commencement**

**This Rule commences operation on [insert date]**

## **3. Amendment of National Electricity Rules**

**The National Electricity Rules are amended as set out in Schedule 1.**

## Schedule 1 Amendment of National Electricity Rules

### [1] Clause 5.4A: Access arrangements relating to Transmission Networks

Omit clause 5.4A and substitute:

- (a) The *Transmission Network Service Provider* referred to in this rule 5.4A is the *Transmission Network Service Provider* required under clause 5.3.3 to process and respond to a *connection* enquiry or required under clause 5.3.5 to prepare an offer to *connect* for the establishment or modification of a *connection* to the *transmission network* owned, controlled or operated by that *Transmission Network Service Provider* or for the provision of *network service*.
- (b) If requested by a *Connection Applicant*, whether as part of a *connection* enquiry, application to *connect* or the subsequent negotiation of a *connection* agreement, the *Transmission Network Service Provider* must negotiate in good faith with the *Connection Applicant* to reach agreement in respect of the *transmission network user access* arrangements sought by the *Connection Applicant*.
- (c) As a basis for negotiations under paragraph (b):
  - (1) the *Connection Applicant* must provide to the *Transmission Network Service Provider* such information as is reasonably requested relating to the expected operation of:
    - (i) *its generating units* (in the case of a *Generator*);
    - (ii) *its network elements* used in the provision of *network service* (in the case of a *Network Service Provider*); or
    - (iii) *its plant* (in the case of any other kind of *Connection Applicant*);
  - and
  - (2) the *Transmission Network Service Provider* must provide to the *Connection Applicant* such information as is reasonably requested to allow the *Connection Applicant* to fully assess the commercial significance of the *transmission network user access* arrangements sought by the *Connection Applicant* and offered by the *Transmission Network Service Provider*.
- (d) A *Connection Applicant* may seek *transmission network user access* arrangements at any level of *power transfer capability* between zero and:
  - (1) in the case of a *Generator*, the *maximum power input* of the relevant *generating units* or group of *generating units*;

(2) in the case of a *Network Service Provider*, the *power transfer capability* of the relevant *network elements*; and

(3) in the case of any other kind of *Connection Applicant*, the *maximum demand* at the *connection point* for the relevant *plant*.

(e) The *Transmission Network Service Provider* must use reasonable endeavours to provide the *transmission network user access* arrangements being sought by the *Connection Applicant* subject to those arrangements being consistent with *good electricity industry practice* considering:

(1) *the connection assets* to be provided by the *Transmission Network Service Provider* or otherwise at the *connection point*; and

(2) the potential *augmentations* or *extensions* required to be undertaken on all affected *transmission networks* or *distribution networks* to provide that level of *power transfer capability* over the period of the *connection agreement* taking into account the amount of *power transfer capability* provided to other *Registered Participants* under *transmission network user access* or *distribution network user access* arrangements in respect of all affected *transmission networks* and *distribution networks*.

(f) The *Transmission Network Service Provider* and the *Connection Applicant* must negotiate in good faith to reach agreement as appropriate on:

(1) the *connection service charge* to be paid by the *Connection Applicant* in relation to *connection assets* to be provided by the *Transmission Network Service Provider*;

(2) in the case of a *Market Network Service Provider*, the service level standards to which the *Market Network Service Provider* requires the *Transmission Network Service Provider* to adhere in providing it services;

(3) the *use of system services charge* to be paid:

(i) by the *Connection Applicant* in relation to any *augmentations* or *extensions* required to be undertaken on all affected *transmission networks* and *distribution networks*; and

(ii) where the *Connection Applicant* is a *Market Network Service Provider*, to the *Market Network Service Provider* in respect of any reduction in the long run marginal cost of *augmenting the transmission network* as a result of it being *connected to the transmission network*; (*'negotiated use of system charges'*); and

(4) the amounts ('*access charges*') referred to in paragraphs (g)-(j).

(g) The amount to be paid by the *Connection Applicant* to the *Transmission Network Service Provider* in relation to the costs reasonably incurred by the provider in providing *transmission network user access*.

(h) Where the *Connection Applicant* is a *Generator*:

(1) the compensation to be provided by the *Transmission Network Service Provider* to the *Generator* in the event that the *generating units* or group of *generating units* of the *Generator* are *constrained off* or *constrained on* during a *trading interval*; and

(2) the compensation to be provided by the *Generator* to the *Transmission Network Service Provider* in the event that *dispatch* of the *Generator's generating units* or group of *generating units* causes another *Generator's generating units* or group of *generating units* to be *constrained off* or *constrained on* during a *trading interval*.

(3) all negotiations between the *Transmission Network Service Provider* and the *Generator* must be conducted in a manner consistent with clause 6A.9.1.

(i) Where the *Connection Applicant* is a *Market Network Service Provider*:

(1) the compensation to be provided by the *Transmission Network Service Provider* to the *Market Network Service Provider* in the event that the *transmission network user access* is not provided; and

(2) the compensation to be provided by the *Market Network Service Provider* to the *Transmission Network Service Provider* in the event that *dispatch* of the relevant *market network service* causes a *Generator's generating units* or group of *generating units* to be *constrained off* or *constrained on* during a *trading interval* or causes the *dispatch* of another *market network service* to be *constrained*.

(j) In the case of any other kind of *Connection Applicant*, the compensation to be provided by the *Transmission Network Service Provider* to the *Connection Applicant* in the event that the *transmission network user access* is not provided.

(k) The maximum charge that can be applied by the *Transmission Network Service Provider* in respect of *negotiated use of system charges* for the *transmission network* is a charge that is determined in accordance with Part J of Chapter 6A.

## [2] Clause 6A.9.1: Principles relating to access to negotiated transmission services

Omit clause 6A.9.1 and substitute:

The following principles constitute the Negotiated Transmission Services Principles:

- (1) the price for a *negotiated transmission service* should be based on the costs incurred in providing that service, determined in accordance with the principles and policies set out in the *Cost Allocation Methodology* for the relevant *Transmission Network Service Provider*;
- (2) subject to subparagraphs (3) and (4), the price for a *negotiated transmission service* should be at least equal to the avoided cost of providing it but no more than the cost of providing it on a stand alone basis;
- (3) if the *negotiated transmission service* is the provision of a *shared transmission service* that:
  - (i) exceeds the network performance requirements (if any) which that *shared transmission service* is required to meet under any *jurisdictional electricity legislation*; or
  - (ii) exceeds the *network* performance requirements set out in schedules 5.1a and 5.1, then the differential between the price for that service and the price for the *shared transmission service* which meets (but does not exceed) the *network* performance requirements under any *jurisdictional electricity legislation* or as set out in schedules 5.1a and 5.1 (as the case may be) should reflect the increase in the *Transmission Network Service Provider's* incremental cost of providing that service;
- (4) if the *negotiated transmission service* is the provision of a *shared transmission service* that does not meet (and does not exceed) the *network* performance requirements set out in schedules 5.1a and 5.1, the differential between the price for that service and the price for the *shared transmission service* which meets (but does not exceed) the *network* performance requirements set out in schedules 5.1a and 5.1 should reflect the amount of the *Transmission Network Service Provider's* avoided cost of providing that service;
- (5) the price for a *negotiated transmission service* must be the same for all *Transmission Network Users* unless there is a material difference in the costs of providing the *negotiated transmission service* to different *Transmission Network Users* or classes of *Transmission Network Users*;

- (6) the price for a *negotiated transmission service* should be subject to adjustment over time to the extent that the assets used to provide that service are subsequently used to provide services to another person, in which case such adjustment should reflect the extent to which the costs of that asset is being recovered through charges to that other person;

Note: An adjustment as referred to in subparagraph (6) may, for example, be appropriate where the cost of providing the negotiated transmission service to a Service Applicant changes because the assets used to provide that service are subsequently used to provide a service to another person and the payment for the service by that other person enables the Transmission Network Service Provider to recoup some of those costs from that other person.

- (7) the price for a *negotiated transmission service* should be such as to enable the *Transmission Network Service Provider* to recover the efficient costs of complying with all *regulatory obligations or requirements* associated with the provision of the *negotiated transmission service*;
- (8) any access *charges* should be based on the costs reasonably incurred by the *Transmission Network Service Provider* in providing *transmission network user access* and (in the case of compensation referred to in rules 5.4A(h) - (j)) on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in rule 5.4A(h)-(j) where an event referred to in those paragraphs occurs;
- (9) the *terms and conditions of access* for a *negotiated transmission service* should be fair and reasonable and consistent with the safe and *reliable* operation of the *power system* in accordance with the *Rules* (for these purposes, the price for a *negotiated transmission service* is to be treated as being fair and reasonable if it complies with principles (1) to (7) of this clause 6A.9.1);
- (10) the *terms and conditions of access* for a *negotiated transmission service* (including, in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between the *Transmission Network Service Provider* and the other party, the price for the *negotiated transmission service* and the costs to the *Transmission Network Service Provider* of providing the *negotiated transmission service*; and
- (11) the *terms and conditions of access* for a *negotiated transmission service* should take into account the need for the service to be provided in a manner that does not adversely affect the safe and *reliable* operation of the *power system* in accordance with the *Rules*.