



Draft National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006

under the National Electricity Law as applied by:

- (a) the National Electricity (South Australia) Act 1996; and
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory; and
- (c) the National Electricity (New South Wales) Act 1997 of New South Wales; and
- (d) the Electricity - National Scheme (Queensland) Act 1997 of Queensland; and
- (e) the Electricity - National Scheme (Tasmania) Act 1999 of Tasmania; and
- (f) the National Electricity (Victoria) Act 1997 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 (Dispute Resolution for Regulatory Test) Rule 2006

1. Title of Rule

This Rule is the *National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006*.

2. Commencement

This Rule commences operation on [insert date].

3. Amendment of the National Electricity Rules

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

Schedule 1 Amendment of National Electricity Rules

(Clause 3)

[1] Clause 5.6.6 Applications to establish a new large transmission network

Omit the clause, and substitute:

5.6.6 Applications to establish new large transmission network assets

- (a) In addition to the process and procedures to establish a connection to a *network* in clause 5.3, all applications to establish a *new large transmission network asset* must conform to the access arrangements in clause 5.6.6 and follow the process set out in clause 5.6.6.
- (b) A person who proposes to establish a *new large transmission network asset* (the **applicant**) must consult all *Registered Participants, NEMMCO and interested parties* about the proposed *new large transmission network asset* in accordance with clause 5.6.6.
- (c) The applicant must make available to all *Registered Participants* and *NEMMCO* a notice (the '**application notice**') which must set out:
 - (1) a detailed description of:
 - (i) the proposed *new large transmission network asset*;
 - (ii) the reasons for proposing to establish the *new large transmission network asset* (including, where applicable, the actual or potential *constraint* or inability to meet the *network* performance requirements set out in schedule 5.1 or relevant legislation or regulations of a *participating jurisdiction*, including *load forecasts* and all assumptions used); and
 - (iii) all other reasonable *network* and non-*network* alternatives to address the identified *constraint* or inability to meet the *network* performance requirements identified in clause 5.6.6(c)(1)(ii). These alternatives include, but are not limited to, *interconnectors, generation options, demand side options, market network service options* and

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options involving other *transmission* and *distribution networks*;

- (2) all relevant technical details concerning the proposed *new large transmission network asset*;
 - (3) the construction timetable and commissioning date for the *new large transmission network asset*;
 - (4) an analysis of the ranking of the proposed *new large transmission network asset* and all reasonable alternatives as referred to in clause 5.6.6(c)(1)(iii). This ranking must be undertaken by the applicant in accordance with the principles contained in the *regulatory test*;
 - (5) an *augmentation technical report* prepared by the *Inter-regional Planning Committee* in accordance with clause 5.6.3(j) but only if:
 - (i) the asset is reasonably likely to have a *material inter-network impact*; and
 - (ii) the applicant has not received the consent to proceed with such construction from all *Transmission Network Service Providers* whose *transmission networks* are materially affected by the *new large transmission network asset*; and
 - (6) a detailed analysis of why the applicant considers that the *new large transmission network asset* satisfies the *regulatory test* and, where the applicant considers that the *new large transmission network asset* satisfies the *regulatory test* as a *reliability augmentation*, analysis of why the applicant considers that the *new large transmission network asset* is a *reliability augmentation*.
- (d) In assessing whether a *new large transmission network asset*:
- (i) is reasonably likely to have a *material inter-network impact* for the purposes of clause 5.6.6(c)(5); or
 - (ii) is a *reliability augmentation* for the purposes of clause 5.6.6(c)(6).

an applicant must have regard to the objective set of criteria *published* by the *Inter-regional Planning Committee* in accordance clause 5.6.3(i) or clause 5.6.3(l) (whichever is relevant), but only if any such criteria have been *published*.

- (e) The applicant must provide a summary of the application notice to *NEMMCO*. Within 3 *business days* of receipt of the summary, *NEMMCO* must *publish* the summary on its website.

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The applicant must, upon request by an *interested party*, provide a copy of the application notice to the *interested party* within 3 *business days* of the request.

- (f) Within 30 *business days* of *publication* of the summary of the application notice on *NEMMCO's* website *interested parties* may make written submissions to the applicant on any matter in the application notice. A written submission may state whether the *interested party* considers that a meeting is necessary.
- (g) The applicant must consider all submissions received in accordance with the requirements of clause 5.6.6(f) within a further 30 *business days*. The applicant must use its best endeavours to hold meetings with *interested parties* who have requested meetings within a further 21 *business days* if:
 - (1) after having considered all submissions received in accordance with the requirements of clause 5.6.6(f), the applicant concludes that it is desirable or necessary to hold any such meetings; or
 - (2) a meeting is requested by 2 or more *interested parties*.
- (h) The applicant must prepare a final report (a '**clause 5.6.6(h) report**') that is to be made available to all *Registered Participants, NEMMCO* and *interested parties* who responded to the application notice. A clause 5.6.6(h) report must set out the matters detailed in clause 5.6.6(c) and summarise the submissions received from *interested parties* and the applicant's response to each such submission.
- (i) The applicant must provide a summary of the clause 5.6.6(h) report to *NEMMCO*. Within 3 *business days* of receipt of the summary, *NEMMCO* must *publish* the summary on its website.
- (j) *Registered Participants, the AEMC, Connection Applicants, Intending Participants, NEMMCO* and *interested parties* may dispute a clause 5.6.6(h) report but only in relation to the contents, assumptions, findings or recommendations of the clause 5.6.6(h) report with respect to:
 - (1) possible alternatives considered and their ranking under clause 5.6.6(c)(4);
 - (2) whether the *new large transmission network asset*:
 - (i) will have a *material inter-network impact*; and
 - (ii) will satisfy any criteria for a *material inter-network impact published* by the *Inter-regional Planning Committee* in accordance with clause 5.6.3(i) that are in force at the time of preparation of the clause 5.6.6(h) report.

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- (3) the basis on which the applicant has assessed that the *new large transmission network asset* satisfies the *regulatory test* but only where that asset is not a *reliability augmentation*;
- (4) whether the *new large transmission network asset* is a *reliability augmentation* and whether the *new large transmission network asset* satisfies the criteria for a *reliability augmentation published* by the *Inter-regional Planning Committee* in accordance with clause 5.6.3(l) provided any such criteria had been *published* by the *Inter-regional Planning Committee* at the time of preparation of the clause 5.6.6(h) report; and
- (5) the finding in a clause 5.6.6(h) report that the *new large transmission network asset* satisfies the *regulatory test* provided the *new large transmission network asset* is not a *reliability augmentation*,

and a dispute under this clause 5.6.6(j) may not be in relation to any matters set out in the clause 5.6.6(h) report which are regarded as externalities to the *regulatory test*, or relate to an individual's personal detriment or property rights .

- (k) The *AER* must resolve disputes raised under clause 5.6.6(j) and applications received by it under clause 5.6.6(n) by way of a determination.
- (l) In making a determination referred to in clause 5.6.6(k), the *AER*:
 - (1) must, subject to clauses 5.6.6(n) and (o), publish its determination in relation to disputes raised under clauses 5.6.6(h)(1)-(4) within 30 *business days* of receiving the dispute notice and in relation to a dispute raised in relation to clause 5.6.6(h)(5) within 120 *business days* of receiving notice of the dispute;
 - (2) must publish reasons for making a determination;
 - (3) may disregard any matter raised by a party in the dispute that is misconceived or lacking in substance; and
 - (4) may request further information from a party bringing a dispute, or from the applicant, if the *AER* is not able to make a determination based on the information provided to it under clause 5.6.6(m).
- (m) a person disputing a clause 5.6.6(h) report under clause 5.6.6(j) must lodge notice of the dispute in writing (the '**dispute notice**') with the *AER* and give a copy of the dispute notice to

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the applicant within 30 *business days* after *publication* of the clause 5.6.6(h) report on *NEMMCO's* website. The dispute notice must specify the grounds under clause 5.6.6(j) for the dispute.

- (n) Where a *new large transmission network asset* is not a *reliability augmentation* and the finding in a clause 5.6.6(h) report is not in dispute, the applicant may apply in writing to the *AER* for a determination whether the *new large transmission network asset* satisfies the *regulatory test* and the *AER*:
 - (1) must, subject to clauses 5.6.6(o), make a determination within 120 *business days* of receipt of the request from the applicant; and
 - (2) must use the findings and recommendations in the clause 5.6.6(h) report; and
 - (3) may have regard to any other matter the *AER* considers relevant.
- (o) The relevant period of time in which the *AER* must make a determination specified in clauses 5.6.6(l)(1) and clause 5.5.6(n)(1) will be automatically extended by the period of time taken by an applicant to provide any additional information requested by the *AER* under 5.6.6(l)(4), subject to the following:
 - (1) that the *AER* makes the request for the additional information at least 7 *business days* prior to the expiry of the relevant period under clause 5.6.6(l)(1) or 5.6.6(n)(1) as the case may be; and
 - (2) that the applicant provides the additional information within 14 *business days* of receiving the request.
- (p) The *AER* may, in making a determination under clause 5.6.6, include a determination (a '**costs determination**') in relation to the costs incurred by the *AER* in engaging a consultant to assist the *AER* in making a determination under clause 5.6.6.
- (q) Where a costs determination is made as referred to in clause 5.6.6(p), the *AER* may:
 - (1) render the applicant an invoice for the costs; or
 - (2) determine that the costs should:
 - (i) be shared by all the parties to the dispute, whether in the same proportion or differing proportions; or

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- (ii) borne by a party or parties to the dispute other than the applicant whether in the same proportion or differing proportions; and
the *AER* may render invoices accordingly.
- (r) If an invoice is rendered under clause 5.6.6(q), the *AER* must specify a time period for the payment of the invoice that is no later than 30 *business days* from the date the *AER* makes a determination under clause 5.6.6.

[2] Clause 8.2.1 Application and guiding principles

Omit clause 8.2.1(a)(3) and insert:

[Deleted]

[3] Clause 8.2.1

At the end of clause 8.2.1(h)(11) omit the word “or”.

At the end of clause 8.2.1(h)(12), omit “,” and insert:

; or

- (13) a dispute of a kind referred to in clause 5.6.6.

[4] Chapter 10 Glossary

After paragraph (1) of the definition of **interested party** insert:

- 1A. Notwithstanding the definition in 1. above, in clause 5.6.6(j), a person including an end user or its *representative* who, in the *AER*'s opinion, has or identifies itself to the *AER* as having, the potential to suffer a material and adverse market impact from the *new large transmission network asset* identified in the clause 5.6.6(h) report.

[5] Chapter 11 Savings and Transitional Rules

After clause 11.2 insert:

11.3 Rules consequent on making of the National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006

11.3.1 Continuation of things done under old clause 5.6.6

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- (a) For the purposes of clause 11.3.1:

commencement date means the date of commencement of the National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006;

new clause 5.6.6 means clause 5.6.6 after the commencement of the National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006;

old clause 5.6.6 means clause 5.6.6 before the commencement of the National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006;

- (b) On the commencement date:

(1) any dispute commenced under the old clause 5.6.6 and not completed before the commencement date, must continue to be conducted and completed as if it were a dispute commenced in accordance with the old clause 5.6.6.

(2) Subject to clause 11.3.1(b)(1), any action taken under the old clause 5.6.6 is deemed to have been taken for the purposes of the corresponding requirement in the new clause 5.6.6 and continues to have effect for those purposes.
