17 June 2014

Mr John Pierce
Chairman
Australian Energy Market Commission
Level 5, 201 Elizabeth Street
Sydney NSW 2000

Dear Mr Pierce

The NSW DNSPs response to the *National Electricity Amendment (Connecting Embedded Generators Under Chapter 5A) Rule 2014 Consultation Paper.*

The NSW Distribution Network Service Providers, Ausgrid, Endeavour Energy and Essential Energy (the NSW DNSPs) welcome the opportunity to provide this joint submission in response to the *National Electricity Amendment (Connecting Embedded Generators Under Chapter 5A) Rule 2014 Consultation Paper*.

The NSW DNSPs were actively involved in the industry consultation on the Chapter 5 Connecting Embedded Generators Rule Change (Chapter 5 rule change). We were satisfied that the final Rule adopted addressed the proponents' concerns in a more practical manner than the original Rule change request (and Draft Determination) and that it better contributes to the achievement of the National Electricity Objective (NEO).

The NSW DNSPs note that this Chapter 5A National Electricity Rule (NER or Rule) change was submitted by the Clean Energy Council (CEC) back in 19 April 2013 and has been delayed for consultation until the Chapter 5 Rule change was finalised. As a result, it predates both the commencement of the National Energy Customer Framework (NECF) and the new Chapter 5 connection process which will commence on 1 October 2014.

We understand that the Rule change was submitted because the CEC considers that embedded generator applicants negotiating a connection to a distribution network under Chapter 5A of the Rules may experience unexpected costs and delays because the negotiated connection process in Chapter 5A of the Rules lacks prescription. However, we note that these claims are untested due to the newness of Chapter 5A of the Rules, which we submit was introduced (for those jurisdictions implementing the NECF) as a means of streamlining the connection process for customer and generator connections. Furthermore, the NSW DNSPs have not had a sufficient number of embedded connection applications requiring the negotiated connection process under 5A of the Rules to be able to identify any particular concerns at this early stage.

Nevertheless, we agree with the AEMC that many issues raised by stakeholders and considered by the AEMC during the Chapter 5 Rule change process are similar to those raised by the CEC. It is therefore appropriate for the AEMC to draw on the relevant work from that Rule change process.

The NSW DNSPs' submission does not aim to provide detailed responses to the AEMC consultation questions. Rather, our submission seeks to comment on the new or expanded issues raised in the CEC Rule change proposal that were not addressed in the Chapter 5 Rule change process. This avoids the need for reproducing material provided by the NSW DNSPs for consideration (and largely accepted) in the Chapter 5 Rule change process. In particular, we seek to comment on proposals that we consider to be the most problematic from a practical and legal perspective. We have also not commented upon the proposed drafting and structure of the

rule change, which in many respects strains the current design and framework of Chapter 5A of the Rules by mixing substantive and procedural requirements.

At this point we have confined our submission to the policy issues raised by the proposed Rule change, leaving the regulatory design and drafting issues to follow the policy decision.

- *Structure and timing of connection process:* We have concerns regarding the introduction of a "negotiated connection application" stage. This is because the DNSP will not be able to provide all the relevant information needed to support a "negotiated connection application" before the connection applicant has provided a detailed project scope including the type and nature of the equipment to be used.

  In addition, we do not support the proposal to provide connection applicants with access to our legal advisers due to conflict of interest concerns.

- *Power transfer capability of the network:* We are unclear about the proposal for DNSPs to use reasonable endeavours to make a connection offer that complies with the connection applicant's requirements in respect of power transfer capability. We are concerned that this could be interpreted as an expectation or automatic right to export electricity.

- *Fees and charges:* We do not support the proposed limitation of DNSPs being able to charge fees to cover the cost of negotiation. We consider that it is appropriate for the DNSP to charge for the reasonable costs of all work anticipated to arise from investigating the application to connect and preparing the associated offer to connect, including the extraction and interpretation of modelling data. Furthermore, we do not support a general exemption of embedded generator connection applicants being charged costs for forecast load growth. This is inconsistent with the AER's Connection Charge Guidelines.

- *Embedded generator liability to the DNSP:* We do not support a general limitation on embedded generators' liability. While no specific detail is provided, we are concerned that such a proposal could be construed as meaning that the network (i.e. its customers generally) should bear the risk of damage to the network (or to adjacent customers) where an embedded generator operator is at fault.

- *Dispute resolution:* We do not support amending the definition of a "relevant dispute" in Chapter 5A of the Rules to broaden the scope of issues that can be considered under it.

If you would like to discuss this response further please contact Mr Mike Martinson, Group Manager Regulation at Networks NSW on (02) 9249 3120 or via email at michael.martinson@endeavourenergy.com.au or alternatively Ms Jane Smith, Manager Network Regulation at Ausgrid on (02) 9269 2023 or via email at Jane.Smith@ausgrid.com.au.

Yours sincerely

Vince Graham
Chief Executive Officer
Ausgrid, Endeavour Energy and Essential Energy

Attachment A – Responses to the issues raised in the Consultation Paper

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Structure and timing of connection process

The NSW DNSPs note that the principle proposed change to the Chapter 5A connection process is the introduction of a "negotiated connection application" stage. We have strong concerns about this proposal. Essentially it appears to be placing the onus on the DNSP to provide all the relevant information needed to support a "negotiated connection application" before the connection applicant has provided a detailed project scope including the type and nature of the equipment to be used. The issue is that we are not in a position to provide relevant information (including any technical information specified in the proposed schedule 5A.2) until we have a clear understanding as to the nature of the project. Once we have the definitive project details we could provide the information requirements which would then enable us to conduct our network studies.

We submit that what the CEC is trying to achieve is some investment certainty that the project will be eventually approved for connection. DNSPs are not in a position provide this certainty at this early stage of the process. However, it may be possible to provide a conditional offer during the current "connection offer" stage provided the connection applicant eventually meets all of the current 5A connection process requirements. However, this should be a on a case-by-case basis and not prescribed in the Rules.

In addition, we do not support inclusion of the proposed schedule 5A.2 of the Rules. While it is appropriate to include high level technical schedules in Chapter 5 for larger generators, we submit that the inclusion of technical schedules in Chapter 5A (which as drafted require DNSPs to provide a considerable level of detail) is disproportionate to the type generators envisaged to be connected under Chapter 5A. Moreover, it appears more detailed than the information requirements under Rule 5.3A.3 of Chapter 5.

We submit that creating such an onerous requirement could result in unexpected costs and delays to both the connection applicant and the DNSP. In any event, DNSPs have developed published standards which set out the technical requirements and processes required to safely connect embedded generators to their respective networks. DNSPs can provide further clarification on these standards and explain the minimum technical requirements the connection applicant is required to meet.

Negotiated connection offer

We are concerned about the proposal to amend NER clause 5A.F.4 to include that the DNSP shall be deemed to accept the negotiated connection application should the 65 day period lapse without response. We submit that this requirement essentially amounts to an automatic right of connection (access standard), which was considered in the Chapter 5 Rule change process and rejected. We also note that no other generator (or load) has such a guarantee under the Rules.

In addition to the above, from a practical perspective, DNSPs often do not have a dedicated area within their business for responding to embedded generation enquiries. Rather, embedded generation enquiries are processed by the same areas of the business which are responsible for customer load connections and are as far as possible (subject to technical issues associated with embedded generators), treated in a consistent manner.

Access to legal personnel

The Rule change seeks to require DNSPs to provide an embedded generator connection applicant access to their legal personnel (advisers) in order to negotiate the terms and conditions of an offer, after the offer has been made. It is not clear what is meant by "access" nor the purpose of it, if the "access" is to provide legal support and advice, we consider this proposal to be misconceived as it would create a fundamental conflict of interest for the legal practitioners involved, be they employed by network service providers or retained from an external legal firm.

The primary duty of a legal practitioner is to their client and they are not permitted to act in a situation which would create a conflict of interest for their client. As far as we are aware there is no precedent for this type of provision.

If the proposal is for something different to legal advice and support, insufficient detail has been provided either as to the purpose of the access or why such access is necessary; but again it would seem fraught with difficulty in terms of who bears the cost and what the role of the relevant legal practitioners would be. We strongly recommend that this part of the proposed Rule change not be accepted.

Power transfer capability of the network

As noted by the Commission, the requirements in Chapter 5 of the NER on the provision of information regarding power transfer capability are broadly similar to those included in the CEC Rule change request. We submit that the information requirements outlined in Chapter 5 of the NER address connection applicants' reasonable expectations of the level and standard of power transfer capability and we have adopted these for our negotiated connections. Nevertheless we have no issue if the relevant elements of Chapter 5 are incorporated into Chapter 5A if it would provide more clarification.

Beyond the similar arrangements of Chapter 5, the NSW DNSPs are unclear about the details regarding what CEC is seeking to achieve in regard to requiring DNSPs to use reasonable endeavours to make a connection offer that complies with the embedded generator connection applicant's requirements in respect of power transfer capability. We are concerned that this could be interpreted as an expectation or automatic right to export electricity.

The power transfer capability of each part of a DNSP's network can be highly variable depending on the existing capacity and anticipated load growth in the area and other considerations. As such, the Commission determined in the Chapter 5 Rule change process that any export of energy should be based on explicit agreement, relating to the particulars of the connection between the relevant parties, and there should be no automatic right to export. This should apply equally to Chapter 5A.

Fee and Charges

Fees relating to the negotiation process

The CEC seeks to restrict the ability of DNSPs to charge for the provision of information that they are required to maintain. We understand that this relates to modelling data used for planning, design and operational purposes as per NER clause 5.2.3(d)(8).

We note that Chapter 5 clause 5.3.3(c)(5) of the NER allows the DNSP to charge an application fee to cover the reasonable costs of all work anticipated to arise from investigating the application to connect and preparing the associated offer to connect.

In addition, the AER's Framework and Approach for the NSW DNSPs provides for ancillary network service fees for preliminary enquiry services and connection offer services.[1] These services would likely include costs associated with extracting planning information from the particular part of the network to which the connection applicant is seeking to connect.

We submit that it is for the DNSP to clearly articulate to the AER the efficient costs of performing these ancillary services (noting we are unable to recover these costs through Network Use of System Charges) and for the AER to determine whether they are appropriate and cost reflective. Accordingly, we do not support this amendment.

The CEC proposes to expand NER clause 5A.E.2 to require more detail in the itemised statement of connection charges that the DNSP has to provide. While this issue was considered in the Chapter 5 Rule change process, we are concerned that the expansion of this clause envisages the DNSP being able to provide considerably more cost detail then it is able to.

As we submitted in the Chapter 5 Rule change process, the arrangements in NSW are different to those experienced in other jurisdictions in that if a customer is funding the design or construction of connection assets, it can choose an Accredited Service Provider (ASP) to undertake that work. This means that the negotiations relating to the design and construction aspects of the service occur between the connection applicant and the ASP and payment for services is made directly to the ASP under the contract. As such, DNSPs are only able to provide information on connection related ancillary network services charges.

In addition, we are concerned about the proposed amendment to NER clause 5A.D.3(i) which states that a DNSP must not charge a fee to the connection applicant prior to the DNSP acknowledging receipt of a completed negotiated connection application. As noted below there are costs associated with the enquiry stage that require a site specific or written response and the AER in its Framework and Approach for the NSW DNSPs has approved a "preliminary enquiry service"[2] fee in this regard. We submit that this proposed change should not be accepted.

More generally, we are concerned about the absence of the explicit reference to fees in relation to the preliminary enquiry stage of the current Chapter 5A connection process.

Clause 5A.C.4 of the Rules only allows a DNSP to charge a connection applicant a reasonable fee for a negotiated connection to cover expenses directly and reasonably incurred by the DNSP in assessing the applicant's application and making a connection offer. However Schedule 5.4A of Chapter 5 (which will apply from 1 October 2014) allows the DNSP to charge an enquiry fee payable by the connection applicant for the detailed response during the detailed enquiry stage. While we note there is no detailed enquiry stage in Chapter 5A, there are costs associated with the preliminary enquiry stage. These include services provided to connection applicants making a preliminary enquiry requiring a site-specific or written response. In the case of rural areas of the network, there are often multiple connection options each with their own technical and environmental challenges.

We submit that an enquiry fee is necessary to allow a DNSP to recover the reasonable costs incurred in the initial investigations (specific to the enquiry being assessed) for the connection of an embedded generator.

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[1] AER Stage 1 Framework and approach paper Ausgrid, Endeavour Energy and Essential Energy, March 2013, p 81-82.

[2] AER Stage 1 Framework and approach paper Ausgrid, Endeavour Energy and Essential Energy, March 2013, p 82.

Chapter 5A of the NER provides for these fees to be charged to retailer customers for load connections and no basis has been put forward which supports a different approach for generator connections.

Charges for capital expenditure

The CEC is proposing to amend NER clause 5A.E.1(c)(4) to exempt embedded generator connection applicants from being charged costs for forecast load growth. This is because the CEC believes it creates the opportunity for DNSPs to transfer the financial risk of network expansion for load growth to embedded generators.

The NSW DNSPs do not support altering this clause and we note that under the AER's Connection Charge Guidelines (which have been prepared to be in accordance with Chapter 5A of the Rules) that *non-registered embedded generators* are not exempt from the payment of augmentation charges (which can include those relating load growth). Furthermore, the AER states that "Non-registered embedded generators which seek to remove a specific network constraint should pay for the cost of removing the constraint"[3].

Notwithstanding, if the connection applicant has a concern about paying for forecast load growth, then the DNSP and connection applicant are able to negotiate a contract for the *current* load requirements. However, in these circumstances, the connection applicant bears the risk if the current load requirements agreed to prove inadequate in the future, in which case the generator would need to re-negotiate the terms of connection. We submit that this would not be an efficient outcome for most connection applicants and, in reality, it is in both the DNSP and the connection applicant's interest to accommodate load growth to avoid a circumstance where the embedded generator would need to be curtailed due to load constraints and potential impacts to other customers.

We consider that the current arrangement represents an appropriate mechanism to balance the risks to the existing customers while minimising the administrative burden.

In regards to the proposed insertion of a new NER clause 5A.E.1(c)(7) which limits charges for negotiated connections to those which can be determined through the information provided to the connection applicant, for the reasons outlined above, it is important that DNSPs be able to cover the reasonable costs of all work anticipated to arise from investigating the application to connect and preparing the associated offer to connect. It should also be recognised that information provided by a DNSP at the initial application stage under NER clause 5A.C3 is based on the application as submitted to the DNSP and in regard to connection charges can only be an estimate based on information provided by the applicant.

The intent of this clause appears to be punitive upon the DNSP, but in practice it would transfer costs that should properly be borne by an embedded generator connection application, which we submit is fundamentally inconsistent with the AER Connection Charge Guidelines and the principles which underpin them. Accordingly, we do not support its insertion into the Rules.

Embedded generator liability to the DNSP

The CEC proposes to amend Part B of Schedule 5.1 of Chapter 5A of the NER to require a connection offer involving an embedded generator to contain general limitations on the embedded generator's liability.

[3] Final Decision Connection charge guidelines: under chapter 5A of the National Electricity Rules for retail customers accessing the electricity distribution network, 20 June 2012, p 9.

While no specific detail is provided, we are concerned that such a proposal could be construed as meaning that the network (i.e. its customers generally) should bear the risk of damage to the network (or to adjacent customers) where an embedded generator operator is at fault. We would submit that such a limitation would not contribute to the achievement of the NEO in respect of the long term interests of *all* electricity consumers.

As a general principle, risk should be borne where it can be best managed, and as such it is inconsistent with this principle to require a party to bear a risk that it can not manage and is unlikely to be able to effectively insure against. It is for this reason that the current Rules quite properly leave it to the parties to agree the liability arrangements. For the reasons set out above, we do not support any proposal for networks and their customers more generally to bear a risk for the consequence of actions over which networks have no control or influence or where networks have not acted negligently or are otherwise at fault.

Dispute resolution

We note that CEC proposes to amend the definition of a "relevant dispute" under Part G of Chapter 5A of the Rules to broaden the scope of issues that can be considered under it. Specifically, to include in the definition of a "relevant dispute" a dispute between a customer and a DNSP about the requirements of Chapter 5A and any material produced by a DNSP that is a consequent of Chapter 5A.

As previously submitted in the context of the Chapter 5 Rule change we consider that Chapter 5A provides an appropriate mechanism for dispute resolution as it provides for disputes regarding the terms and conditions of connection and connection charges to be treated as access disputes for the purposes of Part 10 of the National Electricity Law. This has the advantage that all disputes regarding the terms and connection of non-registered participants, either load or generation, would be dealt with under the same regime. Accordingly, we see no need to amend the definition of "relevant dispute".