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Tuesday, 31 January 2017

John Pierce
Chairman
Australian Energy Market Commission
Lodged Electronically

Dear Mr Pierce,

RE: Transmission Connections and Planning Rule Change, Draft Rule Submission

The Clean Energy Council (CEC) is the peak body for the clean energy industry in Australia. We represent and work with hundreds of leading businesses operating in solar, wind, energy efficiency, hydro, bioenergy, energy storage, geothermal and marine along with more than 4,000 solar installers. We are committed to accelerating the transformation of Australia's energy system to one that is smarter and cleaner.

As a principle the CEC supports greater contestability, hence supported the full contestability model 'B' as proposed in the Commission's Discussion paper.

As noted by the Commission the CEC expects the potential for capital costs savings through contestability to be significant. However, there is a need to ensure that the final rules do not create barriers to competitive outcomes being realised, undue additional effort that undermines the capital benefit or situations where market power can be exercised by one party.

The CEC's members have expressed concerns with regards to the timing of this rule change and the lack of sufficient time to fully consider the proposed rule. Given its complexity there is a real risk of unintended consequences which require further consideration to understand and address.

The following sections provide feedback on specific aspects of the draft rule. Please contact the undersigned for any queries regarding this submission.

Sincerely,

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1 Identified User Shared Assets (IUSA)

The CEC supports the intended outcome for increase contestability for these shared network assets. However, members have raised some fundamental issues in relation to the proposed IUSA arrangements.

In the first instance we highlight that competition for operation, maintenance and control for shared network assets is already in place in the NEM under appropriate contractual arrangements (e.g. in Victoria). Such arrangements have not been demonstrated to have an impact on system security to date, which appears to be at odds with the Commission's decision to not implement the full contestability model of Option B.

Secondly, we raise a number of issues with the proposed model that we consider require review and need to be managed in the final rule. These are described below.

Issue 1: Contestability and the connection process

The CEC understands that the Commission's view is that an Offer to Connect would include sufficient information to enable a tender to occur for the IUSA works. However, cl. 5.3.6(b2) requires that the Primary TNSP provides the full costs for the negotiated services. A TNSP cannot assess these costs without a view of the tender outcomes.

In addition to this draft cl. 5.3.5(c) and cl. 5.3.6(b4) contradict each other. On one hand 5.3.5(c) calls for the Connection Applicant to alert the TNSP of the successful bidder, on the other cl. 5.3.6(b4) requires the TNSP to provide the information to enable the tender process to occur. This framework creates confusion.

The Commission needs to clarify the process under which contestability would be occurring. To compare, the Victorian model assumes that the response to a connection application covers off all the information required to undertake a tender for the contestable works. If this is the Commission's intent it should be clearly outlined.

The CEC suggests that cl. 5.3.6(b4) should in fact appear in the proceeding clause (5.3.5) to ensure that the information is provided to the Connection Applicant in preparation of the Offer to Connect, rather than once the offer is made. In this way the preparation of the Offer to Connect and the IUSA tender process would clearly be run in parallel.

The CEC also suggests that cl. 5.3.3(b)(6) is expanded to outline the connection process and the stages at which the TNSP will provide information and the applicant expected to provide information, have tenders competed and connection agreements signed.

In addition the CEC suggests that cl. 5.3.4(f)(3) include a note to suggest that clauses 5.3.6(b4) and/or 5.3.7(f1) apply regardless.

Issue 2: Identification of the IUSA

The CEC understands the Commission's view that the IUSA could include an expansion of an existing substation. However, the terms around the identification of an IUSA in cl. 5.2A.4(c) could be read to imply that the expansion of an existing substation would be the reconfiguration of existing assets. This clause would benefit from a clarifying note stating that an IUSA could include the expansion of an existing asset where this is needed to permit a connection.

Similarly the CEC understands that the Commission expects the scope of the IUSA extends up to the existing transmission line, or Primary TNSP's existing assets. The definition of Cut in Works in cl. 5.2A.4 would benefit from clarity that the non-contestable works are strictly limited to works on or associated with the existing assets. The key reason that this is needed is because the approach differs from that taken in Victoria where any new lines that extend the transmission network to the substation (i.e. an extension) would fall under the Primary TNSP's non-contestable works.

Issue 3: Release of Third Party IUSA provider's intellectual property to the Primary TNSP

A Connection Agreement would necessarily have to include the details of the tender outcome because the Primary TNSP would not be in a position to comply with the rule's expectations for an Offer to Connect until it can price the operating and maintenance components for the IUSA. Should a Third Party IUSA provider win the tender the Primary TNSP would be in receipt of the capital costs and other intellectual property included in its competition's bid in order to price the operating and maintenance component of the offer to connect.

This situation actively discourages competition from entering the market (as their intellectual property would be provided to their competition), and provides an increase in the market power of the Primary TNSP. If unmanaged these matters could undermine any capital cost savings would quickly be eroded by this model.

The Commission should set out principles to support the AER's development of a ring-fencing regime that manages this potential challenge to competitive outcomes.

Issue 4: More prescription for spare parts itineraries

Operating and maintenance costs from the Primary TNSP would be a negotiated service so would be subject to the Independent Engineer and arbitration regime. However, because they are lumpy capital investments spare parts itineraries must be clearly articulated in the

information provided by the Primary TNSP as set out in cl. 5.2A.4. This approach would enable tenderers to provide accurate tenders and remove overheads needed to manage uncertainty.

2 Negotiated Services

The CEC supports the proposed solution to implement the Independent Engineer for advice irrespective of the IUSA and DCA solutions. This will greatly assist access and assessment of negotiated services.

Issue 5: Increased transparency on information to underpin assessment costs

While the draft rules create a more prescriptive arrangement for TNSPs to provide information and identification of charging requirement for information there remains a lack of obligation for transparency on how these charges have been calculated. The CEC suggests that cl. 5.2A.5(b) includes a requirement for fees to provide information are provided along with sufficient evidence that such costs were reasonably required.

This change would inform, and may even prevent the need for, Independent Engineering advice over claims of excessive charging for information provision and would ultimately lead to more efficient outcomes.

3 Contractual arrangements

Our submission to the Commission's Discussion Paper raised concerns about the need to ensure contractual arrangements do not create unnecessary complexity and therefore burden. After reviewing the draft rule the CEC has formed a view that while the draft rule is complex there is scope for simplification, as long as the processes established in the rules manage these opportunities appropriately.

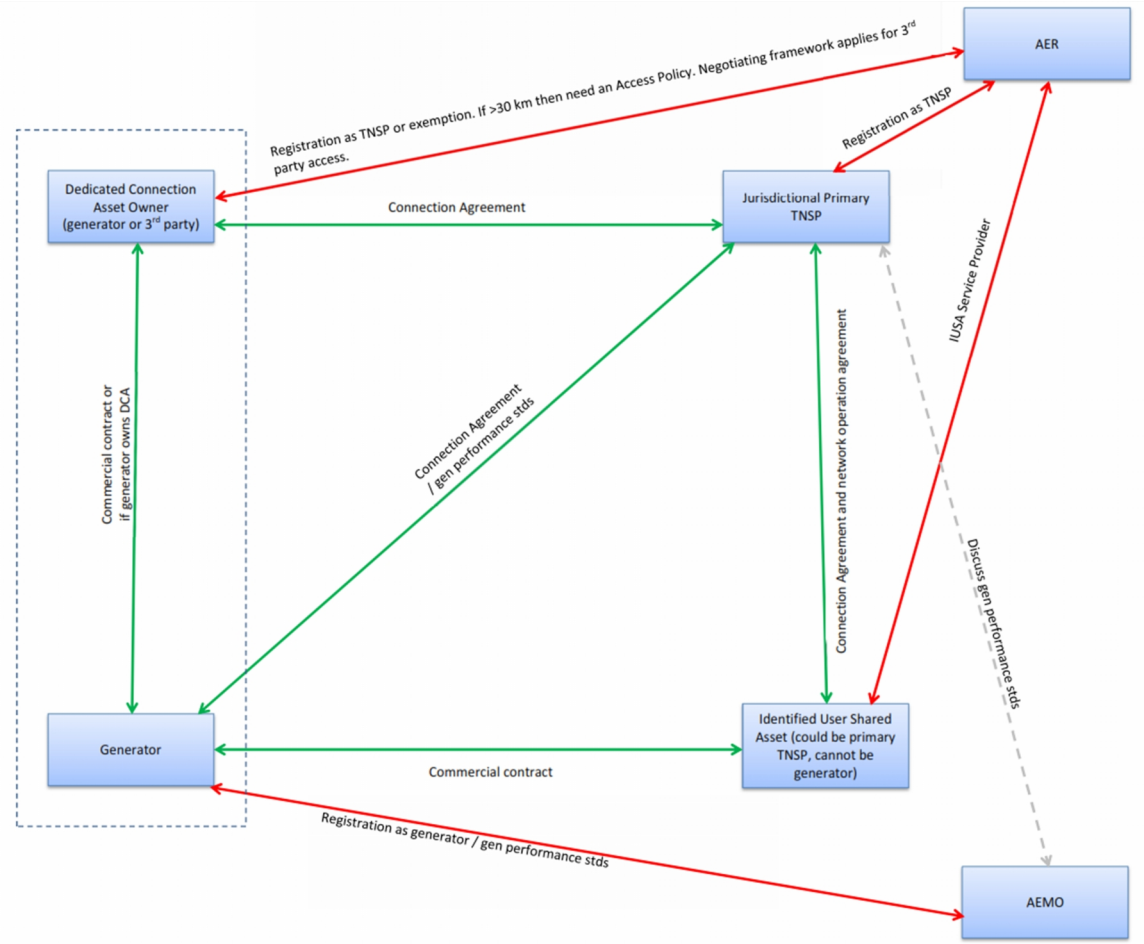
Issue 6: Managing multiple Connection Agreements

Firstly, the draft rule appears to contemplate three separate Connection Agreements, yet the information to undertake a tender is not available until the Offer to Connect is provided. This is unworkable. The CEC expects that the Offer to Connect for a generator would be negotiated in parallel with the tender process for the IUSA service, with the Connection Agreements for each party to be executed at the same time. This approach, with the clarification set out above in Issue 1, would give effect to draft cl. 5.3.7(f1).

In addition to this clarification the draft rules need to be clear that the generator can simplify these arrangements by remaining responsible for the Dedicated Connection Asset, or by engaging the Primary TNSP to deliver the IUSA (or both the DCA and IUSA). Clause 5.3.6

should clearly state that an Offer to Connect can be structured at the discretion of the connecting party. For example the generator should have the discretion to include both the DCA and Generator connection in one connection agreement.

Figure 1: CEC interpretation of contractual and registration requirements to give effect to the draft rule.



Issue 7: Aligning the Network Operating Agreement and the IUSA Connection Agreement

The draft rules should clarify that a Connection Agreement for an IUSA would incorporate the Network Operating Agreement.

4 Dedicated Connection Assets (DCA)

The CEC appreciates that connection assets have not been strictly defined in the rules to date and that the rules clarify that any party can own, operate and control a DCA. In addition the Commission has defined these assets as 'Network' for the purposes of the rules and drafted a third-party access regime consistently with similar network access regimes that

would apply to DCA's extending for longer than 30 km (i.e. Large DCA). We highlight some key concerns with the proposed changes below.

Issue 8: Lack of clarity on the access policies that the AER would approve or exemption terms

Our understanding is that an Access Policy for a Large DCA would provide the DCA Service Provider with the opportunity to minimise the impact that a third party could have on the current and future plans for the use of the asset. However, no guidance has been provided to date on the AER's views on what Access Policies it may approve or reject. While the final rule should provide some guidance on this matter the CEC assumes that the minimum benchmark will be the DCA negotiating principles. As a result these principles must capture sufficient detail.

Similarly, exemptions to be applied to small DCAs require some additional guidance from the AER in order to understand the material impact of the administrative burden that the draft rules create.

Issue 9: Lack of clarity on the end point for the DCA

The CEC notes that the Commission considers a DCA to extend into a generator substation and potentially to the generator terminals. This approach could create some confusion and even contention about the definition of Large and Small DCA, since some wind farms can easily include 30 km of cable system. CEC members would expect that the DCA would finish at the first isolation point in the generator's substation, unless agreed otherwise defined by the generator and DCA owner (if this is a third party). This would require a clause to this effect to be inserted into the appropriate location in the final rule.

Issue 10: Ambiguity created by Schedule 5.12

As drafted Schedule 5.12(2) refers to the existing generator's connection agreement terms at the time of an application for third-party-access being made. This clause appears to overlook the likely scenario where a generator over-specifies a DCA to provide for future project stages. Because future situations are not captured in the Power Transfer Capability defined in a current Connection Agreement this could be read to imply that the DCASP can only secure a capability up to that stated in a current Connection Agreement. The clause should refer to current and future planned Power Transfer Capability as reasonably required by the DCASP.

Alternatively, clause s5.12(6)(a) should be clear that the connecting party's reasonable requirements could include current and future planned usage.

Issue 11: Contradicting views on multiple parties being accountable for shared network assets

The third party access regime for Large DCAs includes reasonable provisions for a DNSP to connect to a Large DCA (cl. 5.2A.8(m)). In which case the part of the Large DCA used for this connection will become shared network and a defined as a 'Network Connection Asset', which is by definition shared network.

As per draft rule cl. 5.2A.2 only a registered TNSP can operate and control a Network Connection Asset. So, should a DCA transition to a Network Connection Asset the DCASP could register as a TNSP and own and operate these assets as a prescribed service (as per draft cl. 5.2A.8(m)(3)). In other words this rule would allow multiple parties to remain accountable for the shared network, albeit it radial components of it that have a low impact on power system security.

This outcome is entirely inconsistent with the Commission's reasoning to restrict contestability to construction and ownership, rather than pursuing contestable connections Option B. The Commission should reconcile this inconsistency in its final determination.

Issue 12: Transition to the shared network must conform to the access policy

As presently drafted cl. 5.2A.8(m) makes no reference to the fact that a DNSP would be seeking a Large DCA Service. In order to be clear that the DCASP has the same protections in this instance the rules should refer to the DNSP seeking a Large DCA Service, rather than simply connecting to a Large DCA.

Given the protections and cost recovery allowances the rules afford NSPs for negotiated services, it is important that DCASPs are offered equivalent terms as a minimum. However, given the access policy is developed for this purpose this matter could be resolved in the above clause or in the definition of Large DCA Service.

Issue 13: Opportunities to participate in RIT-T or RIT-D processes

Large and Small DCA owners might see an opportunity in lodging a network support proposal into a RIT-T or RIT-D process. As presently drafted it is not clear where or how this could apply to either a Large or Small DCA, despite these assets providing potential credible solutions. The CEC suggests that the rules explicitly state that nothing in the rules prevents a person who owns a Small DCA or a DCASP from providing Potential Credible Options to a RIT-T or RIT-D process if the opportunity arises.

The definition of 'network option' as defined in cl. 5.10.2 would also require amending to be inclusive of the DCAs as suggested above.

We also note that the opportunity to participate in the regulatory investment test processes and provide a service to an NSP could override the transition issues raised in issues 11 and 12 above. Further clarification should be provided by the Commission.

5 Other matters

Issue 14: Civil penalties to ensure connected plant reflects the Connection Agreement

Added civil penalties to require that the content of a Connection Agreement reflects the plant installed at a site appear to be unnecessary. In practice an NSP can control the terms of connection agreements so it is not clear that civil penalties set out in cl. 5.6.2 provide any benefit. Failure to comply would result in the NSP considering the Connection Agreement void and refusing to commission the plant. The risk of getting the information accurate and correct lies with the generator or the IUSASP, not the TNSP so the need for these safeguards is not apparent.

Issue 15: Deletion of Rule 5.4A

We understand that the Commission considers that the entirety of Rule 5.4A creates confusion over the firmness of access to the transmission network and is recommending that the clause is deleted in its entirety. However, we note that the consultation papers only refer to the deletion of those elements that refer to financial implications of access and that this can be negotiated between a TNSP and a Connection Applicant. On these grounds it is only clauses (f) to (k) that relate to the financial implications of access and that have primarily raised concern.

Clauses (a) to (e) do not refer to a financial implication and therefore do not infer 'firmness' of network capability. That is they do not imply any obligation on the TNSP for firm access, nor do the definitions of either Power Transfer Capability or User Access Arrangements. It is only clauses (f) to (k) that infer this.

It is worth noting that the clauses (a) to (e) are used materially when negotiating a connection with a TNSP. They define the obligation for a TNSP to provide information that supports an assessment of the possible non-firm User Access Arrangements which is critical to assessing a project's viability through assessment of short- and medium-term access to market.

These clauses provide the connection applicant with leverage to require that the TNSP informs them of the network's capability and constraints such that the Connection Applicant can assess the extent of any impact these physical limitations may have on the business case for their project (i.e. the 'commercial significance' of the User Access Arrangements).

This information permits the connection applicant to make informed decisions about the costs and benefits of funding works to alleviate any constraints.

As highlighted in our submissions to the Transmission Frameworks Review[1] the CEC believes that removing clauses (a) to (e) would be regressive as to do so removes the obligation on a TNSP to provide information that is critical to generator investment decisions. Further, because the risk that a TNSP will not cooperate increases where the Primary TNSP is not awarded IUSA works the importance of retaining these clauses increases under this rule change.

In addition we note that the Commission's consultation to date has not referred to the removal of 5.4A. Further, determinations made on this matter have only expressed the Commission's view that the compensation arrangements in 5.4A are unworkable[2]. While this may have been discussed as an option during the Commission's work or working groups in relation to Optional Firm Access the decision to delete the whole clause has not been included in any determination to date. to do so appears to be inconsistent with normal consultation procedures.

The CEC recommends that clauses 5.4A(a)-(e) are retained in order to support effective negotiation that allows a generator to establish a business case for a project. The justification for deletion of clauses 5.4A(f)-(k) is weak because an NSP would always have the ability to reject a proposal for payments and compensation in the negotiations. However, should these clauses be deleted they should simply be replaced with a clause or note that states that nothing in these rules requires a TNSP to provide any form of firm or financial access rights on its transmission network as a part of the User Access Arrangements negotiated under this Rule 5.4A.

Issue 16: Publication of information

The CEC supports the information to be published under Schedule 5.10 and the proposal for additional charges where the information requires a site-specific element.

[1] CEC submission to AEMC Transmission Frameworks Review, First Interim Report, February 2012; CEC submission to AEMC Transmission Frameworks Review, Second Interim Report, October 2012.
[2] AEMC, Transmission Frameworks Review, final report, April 2013, p. 98; AEMC, Optional Firm Access, Design and Testing, final report, volume 1, p. 23-24.

Issue 17: Avoided TUOS payments

The CEC supports the addition of civil penalties for the assessment and payment of avoided TUOS charges under cl. 5.3AA for embedded generators. Access to this information has always been challenging for these connecting parties.

Issue 18: Moving commercial arbitration and negotiating principles to Chapter 5

The CEC supports retaining those matters related to negotiated services to Chapter 5A as these matters have a close relationship to connections. This clarification should increase the transparency of the rules and enhance the efficiency of connection negotiations as a result.