



UNITED ENERGY
Distribution

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Registered Office

- 46/1 Ricketts Rd
- Mt Waverley Vic 3149 Australia
- Telephone (03) 8540 7800
- Facsimile (03) 8540 7899

Mr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box 11166
Australia Square
Sydney NSW 1215

Dear John

Submission to the AEMC on the Draft Electricity Transmission Rule

Introduction

This submission is from United Energy Distribution Pty Ltd (UED). UED is one of five electricity distribution businesses operating under licence within the State of Victoria. UED's network provides services to some 600,000 end-use customers in Melbourne's southern and eastern suburbs.

UED would like to commend the AEMC on the development of a sound approach to national regulation of electricity transmission companies. Whilst there are a number of issues addressed in this paper UED would prefer to comment on one substantive issue and provide further comments regarding rule development at the time when the distribution rules are being formulated. UED believe there is one major omission such that the AEMC Draft Rule should be made to be consistent with the decisions of the COAG and the Ministerial Council on Energy (MCE).

The Issue of Basing the Rule and the Law and Rules on the Concept of Access

The original approach in the 1990's to electricity transmission and distribution regulation under the Access Undertaking was to deal with "access" as set out in the below publication¹:

Key principles and objectives of the National Electricity Market

- separating transmission elements from other activities;
- non-discriminatory access to interconnected transmission and distribution networks;
- the ability for customers to choose which supplier, including generators, retailers and traders, they will trade with;
- no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply;

¹ Australian Energy News, Issue 2, Commonwealth Department of Industry, December 1996.

- no discriminatory legislative or regulatory barriers to interstate and/or intrastate trade;
- cost reflective transmission network pricing; and
- inter-jurisdictional merit order commitment and dispatch and interstate sourcing of generation where cost effective.

However given the public ownership of the electricity industry in the early 1990's in developing the original National Electricity Code (NEC) it failed to adopt the access arrangement approach such as that established under the later developed National Gas Code (NGC). This situation has now changed with private ownership in the electricity industry in a number of jurisdictions due to governmental privatisations and much greater knowledge of the importance of open access to essential infrastructure.

The AEMC Draft Rule continues this approach despite the change in the ownership of the industry, especially in the distribution and retail sectors. It states that the object of the Rule is to amend the National Electricity Rules (NER) for the following purposes:

- a) to create a new Chapter 6A of the Rules that deals with the economic regulation of transmission services, as required by section 35 of the National Electricity Law;
- b) to make consequential amendments to the Rules, other than Chapter 6, as a result of the creation of the new Chapter 6A;
- c) to consequentially renumber and relocate the provisions of Chapter 6 of the Rules (which will relate only to the economic regulation of distribution services) as a result of removing existing provisions relating to transmission services and creating the new Chapter 6A;
- d) to make consequential amendments to the Glossary in Chapter 10 of the Rules as a result of the creation of the new Chapter 6A;
- e) to adopt a consistent approach to cross-referencing nomenclature in the Rules as part of the consequential amendments required for the new Chapter 6A; and
- f) to provide for the orderly transition from the old Chapter 6 to the new Chapter 6A for transmission services and to ensure that the renumbering of distribution related provisions of Chapter 6 has no effect on existing arrangements relating distribution matters.²

However, these tasks do not fulfil the Ministerial Council of Energy (MCE) policy of establishing the National Electricity Law (NEL) and NER as an access arrangement under the National Access Regime. There is no mention of "access" in the AEMC Draft Rule despite the Rule referring to:

"Specifically, the Proposed Rule prescribed the following elements as part of the revenue cap determination process:

² AEMC Draft Rule Determination, Draft Rule p.2. 26 July 2006.

- A 'propose-respond' process, under which the TNSP submits a Revenue Proposal to the AER for prescribed transmission services and a proposed negotiation framework. The Revenue Proposal and negotiating framework must comply with AER guidelines;"³

Such an approach is entirely consistent with a NEL and NER Access Arrangement providing the text of the Rule refers in a number of key areas to the concept of "access; to transmission infrastructure". This is particularly relevant as the NEL and NER is to be an Access Arrangement under the National Access Regime. The current writing of the Rule preserves the Access Undertaking approach of the old NEC which has been rejected by the MCE as demonstrated below.

For example, in the recent Council of Australian Governments "Notice of Amendment to the Australian Energy Market Agreement" the Premiers and the Prime Minister agreed to a National Approach to Energy Access. In particular the Australian Governments approved the following arrangements in Section 13 of the Agreement:

'The Parties note that third parties have legal rights for access to energy infrastructure services at transmission and distribution levels on reasonable terms and conditions that promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets.

The Parties confirm their commitment to a national approach to energy access whereby:

- a) there is national consistency within the gas access regime and within the NEM access regime, in accordance with this agreement; and
- b) to the extent feasible and where effective regulation is not impeded, there should be consistency and harmonisation between electricity and gas access regimes such that investment in, and use of, energy is not distorted by differing regulatory regimes.

The Parties agree to take all reasonable measures in accordance with each Party's participation under clause 6 to ensure that the energy access regimes embodied in the Australian Energy Market Legislation are certified as effective access regimes and remain certified.

The Parties agree that the relevant Parties will make coordinated and concurrent applications for certification of the current NEM access regimes by 1 January 2007 and for the gas access regimes by 1 July 2007.

The Parties agree that there will be consultation with the NCC on substantial modifications to gas and electricity access regimes...

The Parties agree that if the access regimes for all the natural gas and electricity services which are potentially subject to declaration under section 44H of the *Trade Practice Act 1974* are not certified by 1 January 2008 the MCE will report to COAG on the steps necessary to achieve certification.

The Commonwealth agrees to repeal regulation 4 of the Australian Energy Market Regulations 2005 upon the certification of all NEM electricity access regimes."⁴ (mu underlining)

This statement by COAG makes it clear that energy infrastructure services such as transmission and distribution sectors will national access regimes and should therefore be structured as national access regimes and refer to energy access as the principal function of the NEL and NER.

³ Op Cit, AEMC Rule Determination, p.107.

⁴ COAG Notice of Amendment to the Australian Energy Market Agreement (Between the Commonwealth, States, and Territories) 2006, p. 22.

To remedy this situation the AEMC should clearly indicate that the Draft Transmission Rules and future electricity distribution rules will take the form of access arrangements thus meeting the COAG agreement of 2006 referred to above. UED suggest that the following words in a key part of the Draft Rule may mean that it meets with the MCE framework for an access arrangement which must be approved by the NCC.

Recommendation 1

That the following statement should be placed at the start of the Transmission Rules to ensure that the COAG concept of energy access forms the basis of the Rules and that the remainder of the AEMC Draft Review is changed to reflect this requirement where relevant:

Under the Electricity Transmission Rules (the Rules), the owner or operator of an Electricity Transmission Network is required to lodge an Access Arrangement with the AER according to the guidelines set out by the AER. The AER will seek comments on the Access Arrangement and then may either accept it or reject it and specify amendments it requires to be made to the Access Arrangement. If rejected, the Access Arrangement must be modified and resubmitted.

The Rules have also been designed to provide a clear national access regime, with consistency across different jurisdictions.

This section of the Rules requires a Transmission Network Service Provider (TNSP) to establish an Access Arrangement to the satisfaction of the AER for that particular network. An Access Arrangement is a statement of the policies and the basic terms and conditions which apply to third party access to the electricity transmission network. The TNSP and a User or Prospective User is free to agree to terms and conditions that differ from the Access Arrangement for certain Contestable Services. If an access dispute arises, however, and is referred to a Commercial Arbitrator who must apply the relevant provisions of the Rules in resolving the dispute.

An Access Arrangement must be submitted to the AER for approval. The AER may approve an Access Arrangement only if the Access Arrangement satisfies the conditions set out in the Rules. The AER must not refuse to approve an Access Arrangement solely for the reason that the proposed Access Arrangement does not address a matter that the Rules do not require an Access Arrangement to address. Subject to this limit, the AER has a broad discretion to refuse to accept an Access Arrangement.

An Access Arrangement submitted to the AER for approval must be accompanied by the relevant Access Arrangement Information as set out in the Rules. Access Arrangement Information should enable Users and Prospective Users to understand the derivation of the elements of the proposed Access Arrangement and form an opinion as to the compliance of the Access Arrangement with the Rules. The Access Arrangement Information must include the categories of information identified in the Rules.

The process whereby a compulsory Access Arrangement is approved can be summarised as:

- **a propose/respond process where the TNSP submits a Revenue and Service Proposal to the AER for prescribed transmission services and a proposed negotiation framework. The Revenue Proposal and negotiating framework must comply with any AER guidelines;**

- **the application must be submitted 13 months before the commencement of the next regulatory period;**
- **the AER conducts a preliminary assessment of the TNSP's proposal to ascertain whether it complies with the AER's guidelines;**
- **the AER may require amendments to the Revenue and Service Proposal and the TNSP may resubmit the information;**
- **the AER must publish for consultation the TNSP's Revenue Proposal and proposed negotiating framework (including the proposed Negotiated Transmission Service Pricing Criteria), as well as supporting information;**
- **the AER may publish an Issues Paper;**
- **the AER publishes its draft decision and must call for submissions. The AER must set out the reasons for its Draft Decision and conduct a pre-determination conference to explain its decision;**
- **the TNSP may submit a revised Revenue and Service Proposal and/or revised negotiating framework; and**
- **the AER publishes its final decision.**

Should you wish to discuss any of the above please contact me on (03) 8544 9434.

Yours sincerely

Geoff Towns
Economic Regulation Manager