



20 February 2014

Mr John Pierce  
Chairman  
Australian Energy Market Commission  
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Dear Mr Pierce

## **Re: Connecting Embedded Generators Draft Final Rule**

### **1. Introduction and Background**

The Victorian DBs (CitiPower, Powercor Australia, United Energy, SP AusNet and Jemena Electricity Networks) welcome this opportunity to respond to the publication of the Australian Energy Market Commission's (AEMC) draft final rule<sup>1</sup> regarding the arrangements for embedded generation proponents to connect to distribution networks.

As the AEMC acknowledges, this rule change process has been lengthy. The AEMC has received comments from many stakeholders with diverse and competing interests and therefore the lengthy debate has been necessary to ensure that the rule change is appropriate.

The Victorian DBs consider that the consultation to date has led to a much improved draft final Rule. In particular, the Victorian DBs support the following changes between the draft and draft final Rule:

- removal of the 'agreed project' concept;
- removal of the validity periods; and
- removal of the independent expert appraisal provisions.

However there remain a number of matters of key concern to the DBs, and the following comments are offered to the AEMC before it makes the final Rule.

### **2. Applicability of the Rule Change Connection Process (NER 5.3A)**

In the initial Rule Change proposal, the proponent identified a 'clear gap' in the National Electricity Rules (NER) for connecting embedded 'generators with a nameplate rating of between 10 kW and 30 MW. This includes the vast majority of

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<sup>1</sup> Position Paper, *Connecting Embedded Generators*, AEMC, 30 January 2014

cogeneration plants<sup>2</sup>. The proponent explains that neither Chapter 5 nor Chapter 5A include appropriate connection processes for smaller generators who are eligible for exemption from registration.

However, in the Position Paper the AEMC notes<sup>3</sup>:

*'In summary, the draft final rule provides a new connection framework for **all** generation connections to distribution networks (where they are required to register as a generator)' [emphasis added].*

It is not clear whether 'all' refers to generation connections in both National Energy Consumer Framework (**NECF**) and non-NECF jurisdictions and whether it was intended to cover registered and unregistered generation. Moreover, the AEMC notes<sup>4</sup>:

*'[W]here the generating system's rating is less than the standing exemption from registration, the connection applicant **may elect** to follow the connection process in Chapter 5...' [emphasis added].*

Under version 60 of the NER the new Chapter 5.3A process only applies to unregistered generators if agreed with the Network Service Provider (NER 5.1.2(b)). It may not be practical or efficient to apply the new connection process for small unregistered generators. Where it is more appropriate to follow the embedded generation connection processes in the local jurisdictional instruments for unregistered embedded generators the Victorian DBs may prefer not to apply the new connection process.

The Victorian DBs do not endorse a broader application of the new embedded generators connection process. However, the coverage of the new connection process does not coincide with the types of generators identified in the initial rule change proposal. It is therefore not clear that the draft final Rule does fill the 'gap' in the NER perceived by the proponents. It is also noted that some larger-scale generators participating in the consultation expressed views that the Rule Change should only apply to smaller or unregistered generators<sup>5</sup> (although it is noted that some improvements to the current connection process were suggested).

Given the coverage of the new process is limited to registered embedded generators above 5MW and the compliance costs that this rule change will impose on network businesses, it would be helpful if the AEMC could clarify the purpose of adding this connection process to Chapter 5. Do the incremental benefits of this additional process justify the cost, given that embedded generators subject to the new process are currently subject to the existing Chapter 5 connection process?

Should the AEMC amend the applicability of the rule change connection process to other than the understanding above in relation to the distributor agreement to adopt

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<sup>2</sup> *Proposal to amend the National Electricity Rules for connecting embedded generators*, ClimateWorks, Seed Advisory and Property Council of Australia, April 2012, p10

<sup>3</sup> Position Paper, *Connecting Embedded Generators*, AEMC, 30 January 2014, p.6

<sup>4</sup> *Ibid*, p.6

<sup>5</sup> See submissions to the Draft Determination from the Clean Energy Council, AGL.

the new process for exempt generators then the Victorian distributors would welcome the opportunity to discuss the revised drafting and its clarity.

### 3. Civil Penalty Provisions

The Victorian DBs consider the inclusion of civil penalty clauses in NER 5.3A.8 'Detailed Response to Enquiry' is inappropriate given that the information requirements in the relevant clauses are uncertain, variable on a case-by-case basis and subjective. That is:

- the information required by draft clause S5.4B(f) relating to technical information may vary on a case-by-case basis;
- the information required by draft clause S5.4B(g) relating to prudential requirements is a matter for negotiation between the DNSP and the embedded generator per clause 6.21.1(b) of the NER; and
- the application fee payable required by clause S5.4B(m) is only required to include the reasonable costs anticipated to be incurred by third parties whose participation in the assessment of the application to connect will be required per draft clause 5.3A.4(e)(2)(ii). Therefore a civil penalty provision relating to the application fee payable to be provided at this stage is inappropriate.

The civil penalty clause in NER 5.3.6 'Offer to Connect' relating to the 4 month timeframe for a DNSP to make an offer to connect for generators under the Chapter 5.3A process is inappropriate given that the timeframe can be agreed otherwise with the connection applicant. For example, the connection applicant has the ability to unreasonably withhold consent from extending the timeframe where network studies need to be undertaken. The DNSP may then be liable for a civil penalty despite an extension being necessary to allow the DNSP to consider the appropriateness of the proposed connection in terms of the risks to the safety, security and reliability of the network and the supply of services to other network users.

For these reasons, the Victorian DBs consider the civil penalty provisions should be removed in the final rule.

### 4. Timeframes

Where timeframes are specified in the draft final Rule for various stages of the connection process the date at which the timeframe is to begin should be clearly set out. For example, more clarity is needed around the time disregarded due to a dispute in the draft final rule 5.3A.2(c). We suggest that an alternative formulation for this paragraph is:

- (c) *Where this rule 5.3A fixes a time limit for the provision of information or a response then, for the purposes of calculating elapsed time, the period that:*
- (1) *commences on the day when a dispute is initiated under clause 8.2.4(a); and*
  - (2) *ends on the day on which the dispute is withdrawn or is resolved in accordance with clauses 8.2.6D or 8.2.9(a),*

*is to be disregarded.*

- (d) *For the avoidance of doubt, the days on which the events referred to in clause 5.3A.2(c) refer to are to be included in the period of time that is to be disregarded.*

In the 'Application for Connection' phase the DNSP has 4 months from the date of receipt of the connection application to make an offer to connect (NER 5.3.6). If the application to connect is incomplete, a DNSP has 5 days to advise the connection applicant of the deficiency (NER 5.3A.9(d)). However, it is unclear whether the time taken for a connection applicant to provide the required information is counted towards the 4 months mentioned above. The Victorian DBs consider that NER 5.3.6 should specify that the 4 months begins when they have received all required information as requested, mirroring NER 5.3A.8(d). This is particularly important given that a civil penalty provision is currently attached to the 4 month timeframe.

In addition, a 5 business day period to confirm the application to connect is complete (NER 5.3A.9(d)) is too short, particularly where the proposed connection is complex. Our experience to date indicates that generator connections greater than 5 MW are generally complex. Detailed analysis may be required to ensure all of the information necessary for the DNSP to prepare an offer to connect has been provided. Allowing 10 business days for a DNSP to request additional information is a more realistic timeframe.

The draft final rule 5.3.6(a2) contains stop-the-clock provisions for instances where a DNSP must consult with a TNSP or AEMO. The Victorian DBs support these provisions as DNSPs do not have direct control over the time taken by third parties to respond to inquiries. Therefore it would be inappropriate to include this time as part of a timeframe that a DNSP is required to meet. In addition, this provision should be extended to include other DNSPs that must be consulted, for the same reasons.

It is noted that the discussion on these stop-the-clock provisions in the position paper is inconsistent with the draft final rule. The discussion explains that these provisions do not need to be retained because there is no longer a fast-tracked process and the timeframe is extendable by agreement between parties<sup>6</sup>. However, due to the lack of control over third party timeframes the Victorian DBs consider the stop-the-clock provisions should be retained. This is particularly important as the timeframes are statutory obligations a DNSP must meet otherwise it will be subject to a civil penalty, unless extended by agreement with the proponent (which would not necessarily be forthcoming).

## **5. Register of Completed Projects**

The Victorian DBs consider that the requirement to provide a register of completed embedded generation projects must be narrowed to remove the onerous information requirements. Draft clause NER 5.4.5 proposes to require DNSPs to publish information relating to all embedded generation units connected to the network in the preceding 5 year period. The definition of embedded generation unit includes small-

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<sup>6</sup> Position Paper, *Connecting Embedded Generators*, AEMC, 30 January 2014, p.31.

scale solar installations; it is not limited to registered embedded generators. This would amount to publishing details of tens of thousands of connections which we believe is unintended and not relevant to the generating plant covered by the draft final rule. We suggest this be narrowed to connections of 5 MW or greater.

The Victorian DBs continue to have concerns about the benefit of publishing details of completed projects give that there are different issues at each connection point of the network. Therefore each proposed generator connection must be reviewed on a case-by-case basis to determine the technical requirements. The Commission has considered this issue and states:

*Importantly, the register is only a guide for potential connection applicants and DNSPs are not obliged to accept an application based on information in the register. This is due to the potential for specific locational, or other requirements that may be unique to a particular connection. Similarly, connection applicants are not limited to the use of equipment listed on the register of completed projects<sup>7</sup>.*

However, even where appropriate guidance and clear disclaimers are provided regarding the use of the information, it risks misleading connection applicants to the extent that they base decisions on the information contained in the register. The benefit to proponents is unclear.

In addition, the information that is required to be contained in the register of completed projects may be confidential. The Victorian DBs consider that permission may need to be sought from connected parties before the details listed in NER 5.4.5(b) are published, utilising further valuable resource. Therefore, sufficient time should be provided for implementation of the new rule.

## **6. Provision of Information**

The Victorian DBs support the AEMC's changes with respect to the amount of information required to be provided by the DNSP at each stage of the connection process. However, the following suggestions are offered on the preliminary and detailed response phases.

### ***Preliminary Response***

Given the 15 day time period and the availability of an information pack the information required to be contained in the preliminary response should be high-level. There could potentially be a high volume of enquiries and the DNSP should not be disproportionately burdened by this process, particularly as no fee will be charged.

The following comments are provided on the preliminary response phase:

- Draft Schedule 5.4A(n) requires the DBs to produce detailed information that require analysis of potential connection options. This may not be possible in

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<sup>7</sup> Position Paper, *Connecting Embedded Generators*, AEMC, 30 January 2014, p.34

the short timeframe, and is not necessary in the preliminary response phase. We propose that the clause (n) be excluded from Schedule 5.4A.

- Clause 5.3A.5(g) enables the proponent to seek to bypass the preliminary response stage and request that the NSP provide a detailed response to the enquiry. The NSP has 5 business days to acknowledge receipt of the enquiry and to request further information if the enquiry is incomplete. If the material provided in the enquiry is to be assessed for suitability for a detailed response then a 5 business day response period is inadequate as specialist resources must be assigned to the project and assess the proponent information. NSPs should be provided a longer timeframe to assess the request, such as 10 business days, consistent with the review undertaken by the NSP in 5.3A.8(b).

### ***Detailed Response***

The Victorian DBs consider it is inappropriate for the DNSP to be required to include advice on risks and obligations with respect to planning and environmental laws in the detailed response to the enquiry (draft final NER S5.4B(j)). As the AEMC acknowledge, these requirements are currently an aspect of the existing Chapter 5 process<sup>8</sup>. However, this is not a strong reason to mirror these provisions in the connection process that is the subject of this Rule Change. As the connection applicant is responsible for complying with planning and environmental obligations, it should seek its own legal advice on these matters. The proponent is better placed to recognise the risks and obligations relevant to its proposal and it is inappropriate for a DNSP to provide advice on these matters. If the AEMC determines to retain this provision in the final rule it should set out the expectations in relation to the provision to better clarify responsibilities and assignment of risk.

### **7. Commencement Date**

The position paper specifies that the rule will commence six months from the publication of the final rule determination<sup>9</sup>. This has been reduced from 9 months provided in the AEMC's draft determination<sup>10</sup>. Given the requirements for DNSPs to create and publish new documents and obtain permission from existing generators to publish details of these connections, the Victorian DBs consider it is most appropriate for the new Rule to commence on 1 January 2015, which allows an 8 month implementation period.

### **8. Other**

Generally headings are for convenience only and do not have meaning. The new Part 5.3A is intended for the connection process for embedded generation connection. To ensure that the term connection applicant is read down in all of 5.3A

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<sup>8</sup> Position Paper, *Connecting Embedded Generators*, AEMC, 30 January 2014, p.26

<sup>9</sup> Ibid, p.41

<sup>10</sup> Draft Rule Determination, National Electricity Amendment (Connecting Embedded Generators) Rule 2013, AEMC, 27 June 2013, p.88

and Schedules 5.4A and 5.4B suggest that the drafting approach is similar to that used in 5.3A.2 to ensure that all instances of connection applicant are read to mean a connection applicant seeking to connect any generating units.

Schedule 5.4A (k) refers to the contact details for the person managing a connection enquiry. Given that turnaround times are specified as 5 days etc. it may be useful if staff were sick or on leave that emails were attended to via a generic group email address so that other team members could provide the service in the absence of the key contact person. The Victorian DBs suggest that the drafting is amended to refer to the relevant contact point within the business. This would also allow all information to be available to other team members should staff resign and enables more continuity in the process for the connection applicant.

The following minor comments are offered:

- the drafting in clause 5.3A.1(a) and (b) is confusing as the drafting in (a) refers to the notion of connecting an embedded generating unit and does not link this connection processes to the definition of embedded generator or generator which limit the connection process to registered units;
- Schedule 5.4A(l) refers to clause 5.3A.5(b)(1) – this should refer to clause 5.3A.5(c)(1);
- 5.3.7 inserted text needs a space between clause and S5.4A(d); and
- 5.3A.2(a) zones substation should be amended to zone substation.

The Victorian DBs would be pleased to discuss any aspect of this submission with the AEMC. If you have any questions, please contact Charlotte Coster, Regulatory Economist, SP AusNet on (03) 9695 6309.

Yours Sincerely,



Kelvin Gebert

**Manager Regulatory Frameworks, SP AusNet**

on behalf of the Victorian Electricity Distribution Businesses