

FINLAYSONS

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Your ref

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Mr. Tom Butler
Network Specialist
Clean Energy Council
Tom@cleanenergycouncil.org.au

Dear Tom

National Electricity Rules: Connection Asset Advice

In response to the Second Interim Report of the Transmission Frameworks Review (**Review**) published by the Australian Energy Market Commission (**AEMC**), you have put forward the following propositions in relation to the National Electricity Rules (**NER**):

1. that the NER do not contemplate a *connection asset* connecting to an *extension*, or that a Transmission Network Service Provider (**TNSP**) provides any particular service to a *connection asset*, other than a *connection service*, which is a *negotiated transmission service* to connect to the network.
2. as the NER is in place to observe the regulated activities of the TNSP, which excludes *connection assets*, *extensions* must only be related to the *network* as the rules state that they are affected by the TNSP (clause 5.3.6(k)).
3. as the system is only comprised of two parts a *connection asset* must be something else that is used to connect to the network and sits outside of the NER. On this basis any party can own a *connection asset*.
4. an *extension* is an extension of the network owned by a TNSP, it has no relationship to a *connection asset*.

You have asked us to advise you on our legal interpretation of the relationship between *connection assets*, *extensions* and the *network* under the NER and confirm that *connection assets* fall outside of the *transmission network* for the purposes of the NER and can be constructed and owned by a person other than a TNSP.

81 Flinders Street, Adelaide
South Australia 5000

Telephone +61 8 8235 7400
Facsimile +61 8 8232 2944

info@finlaysons.com.au
finlaysons.com.au

GPO Box 1244, Adelaide
South Australia 5001

DX152 Adelaide

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1. **Executive Summary**

In our view:

- 1.1 Unless there is a fundamental change in the treatment of the concepts of *transmission network* and *transmission system* under the NER, *connection assets* do not form part of the *transmission network*; and
- 1.2 A *connection asset* can be constructed, owned, controlled or operated by a person other than a TNSP under the NER.

2. **Key NER Definitions**

For ease of reference, the key NER definitions for the purposes of this advice are set out in the Schedule to this letter.

3. **Current operation of the NER with respect to Connection Assets and Extensions**

- 3.1 As you would be aware, Chapter 5 of the NER provides the framework for *connection* to the *transmission network* and access to the national grid.
- 3.2 Clause 5.3 of the NER relates specifically to the process and procedures for establishing or modifying a *connection*. Under this clause, provided that certain statutory criteria are met, a TNSP is required to prepare an offer to *connect* for the establishment or modification of a *connection* to the *transmission network* owned, controlled or operated by that TNSP. This would constitute a *prescribed transmission service* for the purposes of the Act.
- 3.3 By contrast, clause 5.3.6(k) of the NER provides in relation to *extensions* that:

“Nothing in the *Rules* is to be read or construed as imposing an obligation on a *Network Service Provider* to effect an *extension* of a *network* unless that *extension* is required to effect or facilitate the *connection* of a *Connection Applicant* and the *connection* is the subject of a *connection agreement*.”

The construction of an *extension* would constitute a *negotiated transmission service* under the NER.
- 3.4 Importantly, clause 5.1.2(c) of the NER provides that:

“Nothing in the *Rules* is to be read or construed as preventing any person from constructing any *network* or *connection assets*.”

4. **AEMC Proposals**

4.1 In order to obtain clarity around the rules for connection processes, AEMC proposes the following key principles in its Review:

- (a) fundamentally, all services provided by a TNSP can be termed transmission services; distinctions are only required to accommodate different charging arrangements;
- (b) the *transmission network connection point* should be clearly defined as the point at which a generator physically connects its equipment/assets to the relevant *transmission system* (and should be named the transmission system connection point); and
- (c) reflecting certain policy proposals of AEMC in its report, all *transmission system* assets should be subject to the NER.

4.2 To implement these principles, AEMC makes the following recommendations:

- (a) a *Generator's connection point* should be clearly defined as the point at which the relevant *generating plant* is physically connected to the relevant *transmission system* (a *transmission system* is a *transmission network*, together with the *connection assets* associated with that *transmission network*).
- (b) the definition of *transmission network connection point* should be replaced with a definition of transmission system connection point (TSCP). A *Generator* connects its *generating plant* to *connection assets*, which are owned by the TNSP and part of the TNSP's *transmission system*. *Generating plant* does not connect directly to the *transmission network*.
- (c) the distinctions between *connection assets* and *transmission network* assets should be limited to:
 - (i) who the TNSP should charge for the construction, operation and maintenance of those assets; and

- (ii) the services that a *Generator* can expect from specific assets. While a *Generator* should be entitled to some level of service from *connection assets*, it does not have any entitlement to a specific level of service from *transmission network* assets.
 - (d) *connection assets* should be defined as *transmission system* assets used solely to facilitate a user's access to the *transmission network*. For *Generators*, *connection assets* should also specifically include *transmission system* assets (such as *substations*) used by multiple participants, but "caused" by the *generating plant's* connection to the *transmission system*.
 - (e) *transmission network assets* should be defined as all *transmission system assets* other than *connection assets*.
 - (f) AEMC does not see any compelling reason to separately identify *extensions* in the rules. An *extension* should be treated consistently with any other *connection asset* or *transmission network* asset (as the case may be). The distinction in the requirements on TNSPs when providing the assets can be set out in the *negotiating framework*.
 - (g) All *transmission system* assets should be subject to the NER (including in the case of *connection assets*, the relevant TNSP's negotiating framework). Consideration should be given to whether the concept of *non-regulated transmission services* is required in the NER.
- 4.3 The AEMC recommendations set out in paragraphs 4.2(b) and 4.2(c) above, assume that *connection assets* must be constructed, owned, operated by the TNSP and form part of the TNSP's *transmission system*. Further, the AEMC recommendation set out in paragraph 4.2(g) stipulates that all *transmission system* assets should be subject to the NER (including in the case of *connection assets*, the relevant TNSP's negotiating framework).
- 4.4 The Clean Energy Council is of the view that, for the reasons set out on the first page of this advice, *connection assets* can be constructed, owned and operated by a person other than a TNSP and that they fall outside the scope of certain regulation under the NER.
5. **Do connection assets currently fall outside the regulated transmission network?**

- 5.1 We confirm that the current definition of *transmission network* under the NER clearly excludes *connection assets*, as *network* is defined to mean:

“the apparatus, equipment, plant and buildings used to convey, and control the conveyance of, electricity to customers (whether wholesale or retail) **excluding any connection assets**. In relation to a *Network Service Provider*, a *network* owned, operated or controlled by that *Network Service Provider*”,

(our emphasis).

- 5.2 Supporting this position:

- (a) the definition of *transmission network* under the NER clearly excludes *connection assets*;
- (b) the definition of *connection assets* provides that:
 - (i) a *connection asset* is part of the broader concept of *transmission system* rather than the narrower concept of *transmission network* (although this point is not, of itself, conclusive); and
 - (ii) the function of a *connection asset* is to provide *connection services* to a *connection point*.

Critically, a *connection point* is defined as being “the agreed point of *supply* established between *Network Service Provider(s)* and another *Registered Participant...*”.

On this basis, *supply* to the regulated *transmission network* happens once electricity passes the *connection point*, with the *connection asset* providing the physical mechanism to facilitate that supply into the *transmission network*.

This view is supported by the definition the verb “connect” under the NER, which is defined to mean “to form a physical link **to or through** a *transmission network...*” (our emphasis).

For the purposes of this definition, in our view the *connection asset* would be the “physical link to” the *transmission network*, meaning that the *transmission network* commences after the *connection*.

5.3 Extension is defined in the NER to mean:

“an *augmentation* that requires the *connection* of a power line or *facility* outside the present boundaries of the *transmission* or *distribution network* owned, controlled or operated by a *Network Service Provider*.”

In our view, the effect of this definition is that *extensions* form part of the regulated *transmission network* once that they have been constructed, as the definition of *extension* contemplates the boundary of the network being extended as a result of the construction of the extension. The common English meaning of “extension” also supports this conclusion.

For the reasons stated in paragraph 5.2 above, if an *extension* forms part of the regulated *network*, it cannot by implication fall within the same category as a *connection asset* (which does not form part of the regulated *network*).

5.4 Ultimately, unless there is a fundamental change in the treatment of the concepts of *transmission network* and *transmission system* under the NER, *connection assets* do not form part of the *transmission network*.

6. **Can connection assets be constructed, owned and operated by person other than a TNSP?**

6.1 Clause 2.5.1(a) of the NER provide that, unless an exemption is given by the Australian Energy Regulator (**AER**), a person must not engage in the activity of owning, controlling or operating a *transmission system* unless that person is registered by AEMO as a TNSP.

6.2 However, in our view a *connection asset* owned by a *generator* would not constitute a *transmission system* for the purposes of this clause, as the *generator* does not own, control or operate any of the associated *network* which comprises the *transmission system* (i.e. by definition, a *transmission system* needs to be comprised of more than a *connection asset* alone).

6.3 Chapter 5 of the NER supports the contention that a *connection asset* can be constructed by a person other than a TNSP, as:

(a) Clause 5.4A(e) provides that the TNSP “must use reasonable endeavours to provide the *transmission*

network user access arrangements being sought by the *Connection Applicant* subject to those arrangements being consistent with *good electricity industry practice* considering...the *connection assets* to be **provided by the *Transmission Network Service Provider* or otherwise** at the *connection point...*”,

(our emphasis).

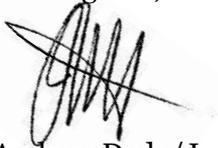
This clause clearly contemplates a person other than a TNSP providing *connection assets* in order to facilitate a *connection*; and

(b) clause 5.1.2(c) of the NER provides that:

“nothing in the *Rules* is to be read or construed as preventing any person from constructing any *network* or *connection assets*.”

Please let us know if you wish to discuss any of the above in further detail.

Best regards,



Andrew Dyda/Jodie Newton
Partner/Senior Associate

andrew.dyda@finlaysons.com.au / jodie.newton@finlaysons.com.au

+61 8235 706/ +618 8235 7803

SCHEDULE**NATIONAL ELECTRICITY RULES****KEY CHAPTER 10 DEFINITIONS**

1. **“connect, connected, connection”** means:

“to form a physical link to or through a *transmission network* or *distribution network*.”
2. **“connection assets”** means:

“those components of a *transmission or distribution system* which are used to provide connection services.”
3. **“connection service”** means:

“An *entry service* (being a service provided to serve a *Generator* or a group of *Generators*, or a *Network Service Provider* or a group of *Network Service Providers*, at a single *connection point*) or an *exit service* (being a service provided to serve a *Transmission Customer* or *Distribution Customer* or a group of *Transmission Customers* or *Distribution Customers*, or a *Network Service Provider* or a group of *Network Service Providers*, at a single *connection point*).”
4. **“connection point”** means:

“The agreed point of *supply* established between *Network Service Provider(s)* and another *Registered Participant, Non-Registered Customer* or *franchise customer*.”
5. **“extension”** means:

“an *augmentation* that requires the *connection* of a power line or *facility* outside the present boundaries of the *transmission or distribution network* owned, controlled or operated by a *Network Service Provider*.”
6. **“negotiated transmission service”** means:

“...*use of system services* provided to a *Transmission Network User* and referred to in rule 5.4A(f)(3) in relation to *augmentations* or *extensions* required to be undertaken on a *transmission network* as described in rule 5.4A...”
7. **“network”** means:

“the apparatus, equipment, plant and buildings used to convey, and control the conveyance of, electricity to customers (whether wholesale or

retail) excluding any *connection assets*. In relation to a *Network Service Provider*, a *network* owned, operated or controlled by that *Network Service Provider*".

8. "**prescribed transmission service**" means:

"...services that are required to be provided by a *Transmission Network Service Provider* under the *Rules*...including such of those services as are:

- (1) required by *AEMO* to be provided under the *Rules*, but excluding those acquired by *AEMO* under rule 3.11; and
- (2) necessary to ensure the integrity of a *transmission network*, including through the maintenance of *power system security* and assisting in the planning of the *power system*...

but does not include a *negotiated transmission service*..."

9. "**transmission system**" means:

"a *transmission network*, together with the *connection assets* associated with the *transmission network*, which is connected to another *transmission or distribution system*".