

FINLAYSONS

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Your ref

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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.

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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).

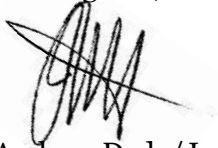
This clause clearly contemplates a person other than a TNSP providing *connection assets* in order to facilitate a *connection*; and

(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,



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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*".