

Energy Solutions Australia Pty Ltd

ACN: 106 746 918

PO Box 131,
Wilston, QLD 4051
Phone: (07) – 3356-2626

14 July 2006

Dr John Tamblyn,
Australian Energy Market Commission,
PO Box H166,
Australia Square, NSW 1215.

Dear Dr Tamblyn,

Re: Application for the Making of a Rule

This application by Energy Solutions Australia Pty Ltd (Energy Solutions) for the making of a Rule by the Australian Energy Market Commission (AEMC) is made pursuant to the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* (the NEL).

The details of the proposed Rule are attached. In brief, the National Electricity Rules (the Rules) provide that some services required by Connection Applicants are contestable and therefore can be provided on a competitive basis. However, the Rules presently provide incumbent Network Service Providers with a competitive advantage. The proposed Rule reduces the competitive advantage enjoyed by the incumbents and therefore facilitates the competitive provision of the contestable services, as intended by the Rules.

The proposed Rule is also consistent with the AEMC's focus on increasing opportunities for the competitive supply of services.

Energy Solutions considers that the proposed Rule is non-controversial, and that it should therefore be treated in accordance with clause 96 of the NEL.

I look forward to hearing back from you regarding this application.

Regards,

Dr. A. Cook
Managing Director

This application has been sent electronically and therefore has no signature

1.0 Introduction

The *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* (the NEL) provides that:

‘The AEMC may make a Rule at the request of any person, the MCE or the Reliability Panel¹.’

The NEL further provides that:

*‘A request for the making of a Rule—
(a) must contain the information prescribed by the Regulations; and
(b) may be accompanied by a draft of the Rule to be made².’*

The ‘information prescribed by the Regulations’ is as follows:

*‘(a) the name and address of the person making the request;
(b) a description of the Rule that the person proposes be made, including, if the request is for a derogation, a statement as to whether the derogation is a jurisdictional derogation or a participant derogation;
(c) a statement of the issue concerning the existing Rules that is to be addressed by the proposed Rule and an explanation of how the proposed Rule would address the issue;
(d) an explanation of how the proposed Rule would or would be likely to contribute to the achievement of the national electricity market objective³.’*

This application is set out as follows:

- the name and address of the person applying for the making of the Rule is given in the cover letter;
- Section 2 details the proposed Rule;
- Section 3 highlights the issue addressed by the proposed Rule, while Section 4 explains how the issue is addressed; and
- Section 5 explains how the proposed Rule contributes to the National Electricity Market (NEM) objective.

2.0 The Proposed Rule

This application is for the making of a Rule. It is not a request for a derogation.

¹ The NEL, Clause 91(1)

² The NEL, Clause 92(1)

³ *National Electricity (South Australia) Variation Regulations 2005, Part 2 – Variation of National Electricity (South Australia) Regulations (The Regulations)*, Clause 8(1)

The proposed Rule involves the addition of new clauses to Clause 5.2.3 of the National Electricity Rules (the Rules) and a modification of Clause 5.3.3(b)(3) of the Rules as follows.

A draft of the proposed new clauses 1AA and 1AAA to be added to Clause 5.2.3 is:

‘5.2.3 Obligations of network service providers

.....

(d) A Network Service Provider must:

(1) review and process applications to connect or modify a connection which are submitted to it and must enter into a connection agreement with each Registered Participant and any other person to which it has provided a connection in accordance with clause 5.3 to the extent that the connection point relates to its part of the national grid;

(1AA) maintain a register of the names and contact details of parties who have advised the Network Service Provider that they are able to provide a particular category of contestable service;

(1AAA) subject to the consent of a Connection Applicant, include its name and contact details in a register of current Connection Applicants, which register is to be made available only to parties registered to provide contestable services;

(1A) co-operate with any other *Network Service Provider* who is processing a *connection enquiry* or *application to connect* to allow that *connection enquiry* or *application to connect* to be processed expeditiously and in accordance with clause 5.3;’

The draft of the proposed modification (in bold typeface) to Clause 5.3.3(b)(3) is as follows:

‘5.3.3 Response to connection enquiry

.....

(b) The Network Service Provider must provide the following information in writing to the Connection Applicant within 10 business days after receipt of the connection enquiry and all such additional information (if any) advised under clause 5.3.2(a1) or, if the Connection Applicant has requested the Local Network Service Provider to process the connection enquiry under clause 5.3.2(b), within 10 business days after receipt of that request:

.....

- (3) whether any service the Network Service Provider proposes to provide is contestable in the relevant participating jurisdiction **and if so, the names and contact details of service providers who have advised the Network Service Provider that they are able to provide a particular category of contestable service;** and
- (4) a preliminary program showing proposed milestones for connection and access activities which may be modified from time to time by agreement of the parties, which agreement must not be unreasonably withheld.⁷

3.0 The Issue

Chapter 5 of the Rules *‘provides the framework for connection to a transmission network or a distribution network and access to the networks forming part of the national grid’.*⁴

The Rules provide that establishing or modifying a connection to a network should generally proceed as follows:

- The party wishing to establish (or modify) the connection (the Connection Applicant) is required to make a connection enquiry to the relevant incumbent network owner (Clause 5.3.2 of the Rules).
- The incumbent network owner must respond to the connection enquiry consistent with the requirements of Clause 5.3.3 of the Rules.
- The party wishing to establish (or modify) the connection must make a connection application to the incumbent network owner (Clause 5.3.4 of the Rules).
- The incumbent network owner must make an offer to connect consistent with the requirements of Clause 5.3.5 of the Rules.

The services required by the Connection Applicant may include both monopoly and contestable services, with the latter defined as:

*‘a service which is permitted by the laws of the relevant participating jurisdiction to be provided by more than one Network Service Provider as a contestable service or on a competitive basis’.*⁵

Issues arise in the situation where contestable services⁶ are supplied by the incumbent network owner. In particular:

⁴ The Rules, Clause 5.1.2(a)(1)

⁵ The Rules, Chapter 10

⁶ Contestable services may include new connections and augmentations to existing connections, metering services; supply at higher levels of reliability than generally required, public lighting, etc.

- The incumbent network owner has information (regarding potential commercial opportunities) that has been obtained from its unique position, and which is not likely to be available to the competitive market as a whole.
- The incumbent network owners have a competitive advantage through knowing the identity of potential customers (i.e. Connection Applicants) whereas providers of contestable services are required to identify these potential customers through their own devices and at their own cost.
- Connection Applicants are faced with the issue of identifying (often unknown) competing service providers at the same time that they are required to deal with a myriad of other (often complex) issues. In that situation the easiest solution is for the Connection Applicant to simply contract with the incumbent network owner.

That the Rules require the incumbent network owner to advise the Connection Applicant ‘*whether any service the Network Service Provider proposes to provide is contestable in the relevant participating jurisdiction*’⁷ does not address the problem. It also provides the incumbent network owner with a conflict of interest.

4.0 How the Proposed Rule Addresses the Issue

The issue is to address the information asymmetry (and associated competitive advantage) provided to the incumbent network owners through the provisions of Clause 5.3 of the Rules.

The proposed Rule addresses the issue through requiring the incumbent network owners:

1. To add to their existing register of contestable services the names and contact details of service providers who have advised the incumbent network owner that they are able to provide a particular category of contestable service; and
2. To provide the names of registered contestable service providers to Connection Applicants.

Both mechanisms rely on the ‘good will’ of the incumbent network owners. Therefore they do not overcome the existing conflict of interest. However, the Rule is considered an improvement over the present situation.

The proposed conflict of interest is addressed through providing a mechanism i.e. the register of the names and contact details of Connection Applicants, whereby contestable service providers may identify potential customers.

It should be noted that Clause 5.3.8 of the Rules requires that:

- (a) *The data and information to be provided by a Connection Applicant under this clause 5.3 must be:*

.....

⁷ The Rules, Clause 5.3.3(b)(3)

*(2) treated as confidential information;
.....'*

The proposed Rule respects this confidentiality provision through providing that the name and contact details of a Connection Applicant should only be added to the register of Connection Applicants with the consent of the Connection Applicant.

5. How the Proposed Rule Contributes to the National Electricity Market Objective

The National Electricity Market (NEM) objective is to:

'... promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system⁸.'

The proposed Rule contributes to the NEM objective in that it:

- promotes efficient investment in electricity services *'provided by means of, or in connection with, a transmission system or distribution system⁹;*
- provides improved incentives for efficient network investment and for the competitive supply of network services;
- reduces the potential for the exercise of market power in the provision of network services by the incumbent network owners; and
- provides for greater scope for the provision of contestable services.

⁸ NEL, Clause 7

⁹ NEI, Clause 12