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EnergyAustralia™

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Dear Dr Tamblyn

Obligations of Network Service Providers – Connection Applications

I refer to the above Rule Change Proposal submitted by Energy Solutions Australia Pty Ltd.

EnergyAustralia has no objection to the competitive provision of contestable services. However EnergyAustralia is concerned that the proposed rule inappropriately makes individual network service providers responsible for administering a scheme to facilitate a competitive market for contestable services which should, if established at all, be the responsibility of a single, independent body.

The proposed rule change has not adequately considered the scope of existing jurisdictional arrangements and whether there needs to be an appropriate accreditation scheme to underpin any registers. The proposed rule completely ignores the fact that (for distribution networks) New South Wales imposes existing jurisdictional obligations in relation to the accreditation of service providers and the keeping of registers of such persons. Nor does the proposal acknowledge or address the system and other implications of the proposed obligation for NSPs to provide details of connection applicants to accredited service providers.

This letter briefly outlines the existing arrangements in New South Wales in relation to contestable services and raises some jurisdictional issues for consideration by the AEMC.

Under the NSW Electricity Supply Act 1995, the Department of Energy, Utilities and Sustainability (DEUS) is the accrediting agency for service providers who wish to be accredited to undertake contestable works. DEUS provides a list of accredited service providers on its website.

Division 4 of Part 3 of the NSW Electricity Supply Act requires that where a DNSP imposes an obligation upon a customer to fund specified parts of the connection with the DNSP, then customers are entitled to engage an accredited service provider or the DNSP to provide those services.



Partner

The services to which this requirement applies is limited to those which can be imposed under Division 4 of Part 3 of the Act and these are referred to as “contestable services.” There is no equivalent provision in relation to connections with TNSPs. Part 10 of the Electricity Supply (General) Regulation 2001 covers the accreditation of service providers. Clause 84 requires the accrediting agency (in this case the NSW Department of Energy Utilities and Sustainability - DEUS) to make available to the public a list of all persons who are accredited to provide a particular contestable service. This includes the names and contact details of, and any rating assigned to, such persons.

The DEUS website contains a list of accredited service providers (ASPs), as well as information on how someone can apply to become an accredited service provider. EnergyAustralia refers customers to the site where installation involves works that are contestable.

EnergyAustralia believes that the responsibility for preparing and maintaining a list of accredited service providers should not be imposed on each NSP. This is not only duplicative, but only creates potential for further competition issues, such as perceptions of (and potential for) preferential treatment of individual ASPs, the maintaining correct information etc.

Rather, a central body, such as a government department like DEUS, is a more appropriate body for maintaining a register. EnergyAustralia notes that not all jurisdictions operate a register like the one that exists in New South Wales. There is also no equivalent register for Transmission. Nevertheless, the issue is better addressed outside the NSP and most importantly outside the Rules, particularly given that registration is generally the result of an accreditation process which should be administered centrally and independently of NSPs.

In light of the above, EnergyAustralia objects to the AEMC proceeding to treat this Rule change as non-controversial.

Furthermore, EnergyAustralia urges the AEMC to carefully consider whether the subject matter of the Rule proposal is properly a matter upon which it can make a Rule or whether the proposed rule goes beyond the rule making power conferred upon the AEMC by the National Electricity Law (NEL). Whilst section 34 of the NEL confers a broad jurisdiction upon the AEMC, a rule of this nature must relate to the operation of the wholesale market and the networks which form the national electricity system. The rule goes beyond operational matters and beyond that required to facilitate access to the networks and extends into the operation of a competitive market for contestable services.

The Rule proposal clearly places a formal obligation on the NSP to facilitate a competitive market which is beyond the operation of a transmission or distribution network business. Just as Rules only restrict ASPs to the technical attributes of a connection, so too should the Rules not invoke obligations on NSPs outside either the regulation of non-competitive transmission/distribution services or the technical attributes of these services.

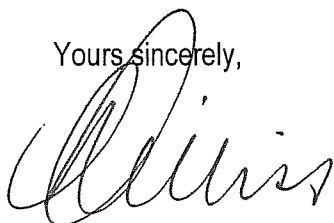
Consideration also needs to be given to the fact that the definition and the application of contestable services differ between jurisdictions, this Rule proposal would be difficult to administer and enforce under the Rules.

The proposed Rule change could be modified to limit the obligation upon NSPs to advise connection applicants whether any of the services being provided by the NSP in relation to the connection are contestable and if so whether there is a publicly available register of persons who are authorised or accredited to carry out the work. This modification would make the proposal consistent with the existing frameworks, and should be contingent upon their not being any jurisdictional arrangements covering the same subject matter.

Without recognition of jurisdictional policies on this matter, the Rule would create further legal and regulatory overlap, and create the potential for small but problematic differences in obligations to arise.

The extension to oblige every NSP to maintain a register of accredited service providers and refer connection applicants to anyone on the register seems to be one step too far for a Rule change.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Lilliss", written in a cursive style.

Geoff Lilliss
General Manager Network