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Manager, MCE Secretariat
Department of Resources, Energy and Tourism
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Dear Manager

National Framework for Electricity Distribution Networks

EnergyAustralia welcomes the opportunity to make this submission to the Ministerial Council on Energy Standing Committee of Officials' (SCOs') policy response on Electricity Distribution Network Planning and Connection – A National Framework for Electricity Distribution Networks.

EnergyAustralia supports the development of a national framework for electricity distribution networks but considers that the industry needs more time to consider the complex policy issues surrounding connection and capital contributions and their interaction with other energy reforms under way, in particular, the National Energy Customer Framework (NECF). Further, while noting the progress that has been made by SCO, we consider that there would be benefit in further consultation through the establishment of an industry working group of expert practitioners to assist the Network Policy Working Group (NPWG) develop policies in key areas such as connection procedures, technical standards and capital contributions policy. The role of the industry group would be to assist the NPWG on detailed technical and practical issues in relation to network connection and capital contributions.

With over 30,000 new and modified connections and a much larger number of move-in connections processed each year by EnergyAustralia, we are mindful of the need for simple, streamlined but effective connection policies and processes. We have concerns that the changes proposed by the SCO and the transition to them will not result in the simple, transparent and user-friendly approach to connections that the MCE is aiming for. EnergyAustralia requests that the SCO build in flexibility to allow existing practices of businesses to continue where it can be shown that the benefits of moving to national consistency will not be outweighed by the costs.

We do have a number of concerns about the policy approach proposed for network connections and capital contributions. These concerns are in part based on what we consider to be a lack of consistency with recent developments in the economic regulatory processes under the National Electricity Rules (the Rules). This is the case, for example, in relation to the proposal to rigidly apply a "negotiated connection contract" process to services that are classified as direct control services.

Our fundamental concerns are in the following areas:

- NSW currently allows competition to occur for shallow and, in some instances, deeper connections, extensions, modifications and augmentations to the network. The SCO's proposed approach does not adequately take into account the contestability arrangements for the construction of connection and others assets used in the provision of distribution services in NSW. It is not clear whether the SCO's intention is to scale back competition in NSW. If this is the case there will need to be a clear acknowledgement and understanding of that in the NSW jurisdiction. If not, we consider that the connection procedures set out by SCO are unworkable for our jurisdiction on this basis alone.
- We request that the SCO not preclude distribution network service providers from offering their customers a single contract for connection services and the ongoing supply of distribution services. We support the approach outlined by Allens Arthur Robinson (AAR) in its draft report to SCO on Electricity Distribution Networks (February 2009) whereby a new schedule applying to distribution connection for 'retail load customers' cover the connection process and the ongoing provision of distribution services under the National Energy Customer Framework (NECF) by cross referencing and incorporating the model terms under the NECF for the ongoing provision of services.
- In relation to regulating standard connection contracts, the SCO has proposed a type of propose-respond model with the AER performing the approval role. We do not support this. A more appropriate role is one of monitoring compliance of connection contracts to the Rules. We consider that the SCO's proposal for the AER to have a role in approving standard connection contracts is inconsistent with the SCO position for standard contracts set out in the policy response paper on a NECF where the AER is given compliance monitoring and enforcement functions. Under the NECF, the AER's contract approval role is limited to standard contracts that depart from the model terms. The approach taken under the NECF is a more appropriate approach for monitoring compliance to the Rules.
- The concept of negotiated connection contracts for revenue regulated services (Direct Control Services) creates a number of uncertainties. EnergyAustralia fully supports consulting with customers for optimal outcomes and this is currently the approach taken on a range of technical issues regarding physical connection. However, the SCO proposal, together with the recent reforms to the economic regulation of distribution networks, creates a less than transparent framework resulting in a number of uncertainties. Under Chapter 6 of the Rules, a decision to negotiate with a customer has the potential to change the form of economic regulation for that service and exclude the value of the related connection and augmentation assets services from the regulatory asset base.

A negotiated service as defined under the NEL and NER is subject to a negotiation framework under Chapter 6. The SCO's policy response seems to imply that negotiations will occur under Chapter 5 of the Rules which creates a number of uncertainties about which negotiation framework (chapter 5 or chapter 6) is to apply. Further, there are ambiguities in the SCO policy response which makes it less than clear whether a decision to enter into a negotiated connection contract automatically creates a negotiated distribution services contract or whether it remains a direct control service. We seek further clarification from SCO on this matter. As a minimum we would suggest that terminology is clear and unambiguous.

In response the SCO's request for comments, EnergyAustralia has provided detailed comments in the attached report and a copy of a recent letter sent to AAR commenting on its draft report for the NPWG on technical matters. Further, EnergyAustralia will be submitting a supplementary submission with an

alternative approach to the connection procedure to the one set out by SCO. The alternative approach seeks to demonstrate the key stages in a connection procedure and the contractual obligations on distribution network service providers and customers.

Following our submission of the supplementary information we request a meeting with the representatives from the NPWG to present our position on connection policy and procedures.

We would be pleased to provide any further assistance, and if you wish to discuss any of the matters raised in this submission please contact Ms Catherine O'Neill on 02 9269 4171.

Yours sincerely



TREVOR ARMSTRONG
Executive General Manager
System Planning & Regulation

Attachment 1: EnergyAustralia's submission on the MCE SCO Policy Response -National Framework for Network Connection and Capital Contributions.

Attachment 2: EnergyAustralia's letter to Allens Arthur Robinson dated 24 February 2009.



EnergyAustralia submission to MCE Standing Committee of Officials

National Framework for Electricity Distribution Network Connection and Capital Contributions

10 March 2009



1 Overview

1.1 Introduction

EnergyAustralia welcomes the opportunity to make this submission to the Ministerial Council on Energy Standing Committee of Officials (SCO) policy response on Electricity Distribution Network Planning and Connection – A National Framework for Electricity Distribution Networks.

The MCE SCO policy response on the national framework for electricity distribution networks is an important part of the ongoing national reform process and EnergyAustralia's comments are aimed at achieving a nationally consistent framework that is simple and effective. The framework should benefit consumers while minimising unnecessary complexity and cost for distribution network service providers.

While noting the policy objectives set out by SCO for network connection and capital contributions, EnergyAustralia has framed its comments with respect to a number of high level principles. EnergyAustralia considers that national consistency is a valid objective when it can be demonstrated that the outcomes will benefit consumers and will outweigh the costs of making the changes to existing processes. The reforms need to focus on providing protection to consumers through simple but effective processes.

We submit that the SCO should place itself in a similar position as the Australia Energy Market Commission (AEMC) when it is developing the National Electricity and National Gas Rules. In this regard, it should apply the same rule making test and satisfy itself that the proposed rules for the national connection and capital contributions framework will, or are likely to, contribute to the achievement of the national electricity and national gas objectives. In particular, the SCO should be guided by considerations of good regulatory practice including the principles of certainty, transparency, predictability and stability. The AEMC has articulated what we consider to be the correct approach to ensuring that rules contribute to the achievement of the national electricity and national gas objectives.¹ We note that the AEMC considers that regulatory arrangements should aim to:

- achieve good regulatory practice;
- minimise operational intervention in the market; and
- promote transparency.

This is especially relevant in considering what the appropriate approach to the regulation of business processes should be and what role that the AER should have for monitoring standard connection contracts.

This submission provides a summary of EnergyAustralia's key positions, followed by detailed comments on key issues raised by SCO in its policy response.

¹ We refer SCO to the recent comments made by the AEMC - "The Commission has also taken the view that the scope of the national objectives covers the means by which regulatory arrangements operate as well as their intended results. Hence, the Commission seeks to apply the principles of good regulatory design and practice in order to promote stability and predictability of the regulatory framework, minimise operational interventions in the market, and promote transparency. Therefore, regulatory design and practice will be a significant consideration for the Review as it is important that any reforms are robust over the longer term." AEMC, Review into the use of Total Factor Productivity for the determination of prices and revenues: Framework and Issues Paper, 12 December 2008, p.7.

2 Summary of key positions

2.1 Key positions

SCO consultation

1. EnergyAustralia considers that more time is needed to consider the complex policy issues surrounding connection and capital contributions. EnergyAustralia requests the MCE extend the consultation process and allow more time for distribution businesses to consider the interaction with network connection and other energy reforms underway, in particular, the National Energy Customer Framework (NECF).
2. Network connection and capital contributions are complex issues which require knowledge about engineering, the regulatory regime and practical administrative issues. We request that SCO consider establishing an industry working group to assist the Network Policy Working Group (NPWG) and SCO in developing its policies. This industry working group should consist of representatives from each of the distribution businesses.
3. EnergyAustralia urges the MCE to ensure that the frameworks currently being developed will be consistent with the proposed Australian Consumer Law and that industry will not be faced with the uncertainty and costs associated with further review and changes once the national frameworks are on place.

Scope of connection contracts

4. We support having a single contract for both physical connection, and move-in connections and the ongoing distribution supply. A single standard contract should apply whether the customer is a generator or load customer.
5. We support a contract process whereby the distribution network service provider's (DNSP's) published standard connection contract is effectively treated as a standing offer to connect and the contractual relationship commences upon the acceptance by the DNSP that the customer's connection can proceed. For a straight-forward application the contract commences on acceptance of the customer's application rather than energisation.
6. We support the AAR proposal for a new schedule applying to distribution connection for 'retail load customers' to cover the connection process and for the same contract to cover the ongoing provision of distribution services under the NECF by cross referencing and incorporating the model terms under the NECF for the ongoing provision of services. A similar simple approach must also be developed for "move in" customers so that the contract for distribution services under the NECF incorporates those provisions relating to the connection arrangements which have ongoing relevance for the connection of particular premises.
7. A DNSP should have discretion to determine whether its standard connection contract for embedded generators should also apply to any load taken by that customer.
8. In relation to embedded networks, a connection contract should be established with the embedded network owner/operator (ENO). The ENO should be responsible for any contractual arrangements with customers connected to its network.

Form of standard connection contract

9. EnergyAustralia considers that the majority of connections for load and embedded generation can be arranged under three types of standard of connection contract (i.e., one for load (including micro generators), one for unregistered embedded generators and one for registered generators).
10. Our current and preferred approach to connection models includes a deemed contract with attached schedules specific to each connection that form part of the deemed contract. Specific arrangements of each connection contract form part of a technical schedule completed at the time of connection.

11. We do not consider it necessary or efficient to have a range of standard connection contracts based on customer size or technical requirements. The proposal to require contract types to be based on technical requirements is at odds with arrangements under the Rules whereby the Rules will specify the technical requirements for customers and embedded generators connecting to the distribution network. Therefore EnergyAustralia can see no need to have contracts based on technical requirements.
12. Likewise with micro embedded generation, we consider that this category of customer can be accommodated under a standard form contract. This is currently the case for micro generators connecting to our network.

Negotiated distribution services

13. EnergyAustralia has no objection in principle with a negotiated contract process where there is a genuine need for the terms and conditions of connection to be specifically tailored for a particular connection. The concern is to distinguish between those customers who are merely seeking to agree on the technical aspects of their connection from those customers who are seeking to negotiate terms and conditions of their contract. The former in our view should be considered standard connection services while the latter should be considered negotiated connection services.
14. We are seeking to ensure that only those customers genuinely seeking negotiated contract terms are required to take the negotiated connection contract process. EnergyAustralia's experience is that the majority of customers do not seek to negotiate contract terms but rather seek to negotiate and agree on the technical aspects of their connection as detailed in the sections above. In many cases, there is an element of interaction between the DNSP and connection applicant but this is regarded as part of a standard connection process and does not require a different type of contract or contract process. That is the 'negotiation' or consultation can be accommodated under a standard contract and standard connection process.
15. The proposed approach, as currently framed, is unclear, ambiguous and unworkable. We consider that the use of the term "negotiated" to describe both the connection contract and the services that are subject to revenue regulation to be confusing and we seek clarification from SCO on the definitions of negotiated connection services. A clearer explanation of alignment between the existing service definitions in the Rules, economic regulation and connection procedures will improve our understanding of what is being proposed.
16. Direct Control Services that have a negotiable component should be treated as a standard connection and not a negotiated connection. Chapter 6 of the Transitional Rules applicable to NSW already have the concept of negotiable component of direct control services. This is explicit recognition that these negotiable elements are part of the core service provided by the DNSP and not a separate service subject to a different form of regulation or a different contractual model. Note that the Transitional Rules categorise some services provided by EnergyAustralia as negotiated distribution services but that this only applies to negotiated services provided by EnergyAustralia transmission assets.
17. SCO must clarify how the negotiating framework currently required under clause 6.7.5 of the Rules is intended to apply given that SCO proposes that a revised connection negotiation procedure set out in Chapter 5 of the Rules will govern the process of "arriving at a connection offer".

Role of the Australian Energy Regulator (AER)

18. We do not support the AER approving standard connection contracts that must comply with minimum terms. SCO has not put forward a policy reason or regulatory purpose as to why the AER should approve standard connection contracts. We consider such a role would be an unnecessary operational intervention in the market and contrary to good regulatory practice. If the regulatory intent is ensuring that the contract addresses key matters and that those matters are addressed to protect the interests of customers, then this would be achieved by ensuring that the minimum terms are cast in such a way that compliance with them will deliver the customer protection, and not only specify the subject matter of the term, but also specify the standard the term must meet.
19. The role of the AER in relation to standard contracts which comply with the minimum terms should be confined, appropriately, to monitoring and compliance (and in case of certain disputes, arbitration) in the same way as proposed under the NECF. The only circumstance in which a contract approval role for the AER may be justified is in

approving should be confined to approving standard contracts developed by DNSPs which depart from the minimum terms.

20. Where AER contract approval is required, EnergyAustralia is concerned about the proposed application of a "fair and reasonable" test by the AER. The application of such a test results in a very uncertain framework for contract assessment which lacks transparency and again has the potential to lead to unnecessary intervention in business processes. Whilst the term "fair and reasonable" is currently used in legislation it is not currently applied in Australia in the context of consumer protection, access regulation or competition law and consequently is not commonly understood in that context. A preferred approach would be for the rules to specify the actual criteria that must be applied by the AER when assessing contracts as to whether they are "fair and reasonable". This will ensure that the policy intent and regulatory purpose of the AER's assessment is transparent and certain.
21. We do not support distributors having to submit standard connection contracts for approval as part of a distribution pricing review. SCO has not provided any rationale for this proposal.

Timeframes for connection procedures

22. The process and timeframes for the connection procedure set out by SCO is not appropriate for the NSW's contestability framework. The timing for the construction of connection assets is a matter between the customer and the accredited service provider who is building/ installing the connection assets.
23. EnergyAustralia considers that 10 days is a more appropriate timeframe for an initial assessment to be made of a connection application. During the initial assessment the DNSP could determine whether the connection could proceed without further investigation or whether further investigation is required. Ten days is considered an adequate period following receipt of a completed application from the applicant for the DNSP to either accept the customer's application (at EnergyAustralia this is demonstrated by issuing a job number to allow the customer's accredited service provider to proceed with the connection) or to indicate that further consideration and investigation is required. It could be expected that all applications for less than 400 amps (where there is no requirement for augmentation or substation on the customer's premises) would be in the first category. Whilst there does need to be flexibility in the timeframes to allow for the proper procedures to be developed for more complex projects where network system capability reports and design information is required to be prepared, generally once these matters have been addressed a standard contract would be appropriate.
24. In addition we do not consider a process whereby the DNSP provides the customer with the standard contract for acceptance after the customer has made an application to connect is practical or beneficial for either party and is likely to lead to delays in connections. The contract formation process must be based on customers being made aware of the standard published contract before making an application for connection. The acceptance of a straightforward application for connection by a DNSP should commence the contractual relationship between the DNSP and the customer.

Technical standards and minimum content

25. We suggest that the Rules contain clear provisions that expressly permit a DNSP to impose technical requirements on a non-registered generator which are necessary to enable the DNSP to comply with the system performance requirements imposed upon it by either jurisdictional legislation, the NECF or the NEL and Rules.
26. We support having separate schedules for minimum content within connection agreements for registered participants, retail load and embedded generators (other than micro generators) that are not registered participants.
27. EnergyAustralia suggests that the SCO consider establishing an industry group of experts to advise the NPWG on technical standards to include in schedules to the Rules.
28. We do not support placing obligations on DNSPs to inform "move-in" customers regarding the terms and conditions associated with micro embedded generators at that supply point.

Definition of micro –embedded generation

29. The definition of micro-generation applied throughout Australia should be consistent for the purposes of creating standard connections and other technical requirements.
30. To ensure consistency in the definition of micro generation, EnergyAustralia would consider it better practice to use the Energy Network Associations (ENA) definitions and indicate that micro generators (<2kW) and mini generators (<30kW over three phases) which are compliant with AS 4777 should be deemed to automatically comply with technical standards to allow connection.

Capital contributions

31. We consider that SCO needs to set out a balanced set of objectives to guide development of a capital contributions policy. In particular, efficiency, equity and simplicity need to be included as objectives along with cost reflectivity.
32. We support the SCO proposal for small customers and micro embedded generators to be required to pay a capital contribution for extension and dedicated connection assets (but not augmentation). This is consistent with the capital contribution and contestability schemes in NSW.
33. We have concerns about increasing the scope of the capital contributions for augmentations to all large customers (including embedded generators) based on the principle of cost reflectivity. Further consideration is required about the thresholds for who should pay and how deep into the network. A related concern is that an increase in the scope of the capital contributions scheme including the scope of the reimbursement scheme would be very difficult to administer and complicated for customers. We prefer a limited capital contributions scheme such as what operates in NSW.
34. We suggest that the method for calculating the capital contributions should be included in the National Electricity Rules rather than included in an AER Guideline.
35. SCO's consultation process would benefit from having an industry working group assist the Network Policy Working Group develop its policy on capital contributions.

Reimbursement scheme

36. We maintain that any reimbursement scheme needs to be administratively effective and equitable and should apply to the current owner of the property.

3 Network Connection Contracts and Procedures

3.1 Services definition issues – new, modified and existing connection

The SCO is proposing that new and modified connections will be governed by the National Electricity Rules (Rules) and that the existing ('ongoing') connections will be governed by the National Energy Customer Framework (NECF). While not discussed in the SCO response, EnergyAustralia understands that the reason for this delineation is because there will be separate legislative frameworks for network and retail services.

We consider that the physical connection is inextricably linked to the ongoing supply/provision of distribution services and must be included in a deemed connection contract. The connection and ongoing distribution services should be agreed at the same time that the design and installation of the assets that support those ongoing services are agreed upon. As an example, if a customer installs additional appliances or plant that increases load above the capacity of the connection, this will reduce the ability of the DNSP to provide ongoing distribution services to the customer. The inclusion of the initial connection service requirements in the deemed contracts recognises a fundamental relationship between initial connection and ongoing distribution services. There also needs to be ongoing obligations on customers to advise distributors on matters such as change to load, equipment or apparatus.

The integral nature of the relationship between the physical connection and the ongoing distribution service forms a key platform for our response to SCO on the form and scope of connection contracts. We discuss our concerns in more detail further on in this submission.

3.2 Proposed model for connection

SCO stated that:

- *The connection related requirements ... pertain to the establishment only of either a new physical connection or modification of an existing physical connection. Once the connection work is completed then those requirements are fulfilled. Ongoing distribution services (customer energisation and supply) are governed by the relevant customer distribution contract under the NEC .²*
- *Connection arrangements will be based on the size of the customer's proposed new load and/or embedded generation capacity.*
- *There will be two types of connection contract options available under the connection framework, which are available to all customers, regardless of the classification of their service under Chapter 6 of the NER. That is, there are only one of two processes which will apply to the development of any new or augmented connection, a 'standard connection process' or a 'negotiated connection process'. Figure 1 on page 15 below depicts these processes. 1. Standard connection process – will apply to all standard connections as defined by the DNSP and agreed by the AER. and 2. Negotiated connection process – will cover negotiated connections.*
- *There will be the requirement that DNSPs must, at a minimum, provide one standard connection service contract for small load customers. The definition of 'small load' would be for the distributor to propose based on technical capabilities and historic practices, but there would be an expectation that the AER should approve a definition that covers the majority of residential and comparable small business customers in the DNSP's service.*
- *SCO invites comments from stakeholders on the regulatory design aspect of the requirements for new connections.*

² Ministerial Council on Energy Standing Committee of Officials (SCO) policy response on Electricity Distribution Network Planning and Connection – A National Framework for Electricity Distribution Networks, 15 December 2008, p13.

EnergyAustralia has a number of concerns with the SCO proposal relating to the scope of connection contracts; the form of standard contracts; the contract process, the negotiated contracts and AER involvement in approving standard contracts that conform to model or minimum standards. We do not believe that SCO has made a sufficient case for its policy position on connection procedures nor have existing processes and practices that currently operate within NSW's contestable environment been given sufficient consideration. These concerns are set out below.

In addition to these comments we will be submitting a supplementary submission on the connection procedures within the next two weeks.

3.3 Scope of connection contracts

EnergyAustralia does not support SCO's approach to the scope and coverage of connection contracts under the Rules applying to new and modified connections. Rather, we support having one contract for both the physical connection and move-in connections and the ongoing distribution supply, whether the customer is a generator or load customer. EnergyAustralia currently has a single contract for connection services and ongoing distribution services which operates effectively. However where a customer's connection requires an augmentation to the network and this is constructed by an accredited service provider, an additional contract is entered into between EnergyAustralia, the customer and the accredited service provider to ensure that the assets are appropriate for EnergyAustralia to take over and operate as part of the distribution network. This contract principally deals with the construction of distribution assets in accordance with safety and other network standards and the transfer of those assets to EnergyAustralia and not to the ongoing connection and or distribution services provided by EnergyAustralia. This contract known as ES9 - Agreement for Connection of Developments is available from EnergyAustralia's website.³

There are many important matters established as part of the connection process that have continuing relevance for the ongoing distribution service. Physical connection and the ongoing distribution supply are inextricably linked as the ongoing supply reliability for distribution services is affected by the supply arrangements put in place during the connection design and construction process. Other more complex arrangements put in place regarding access such as leases and the arrangements for cross property connections also need to be carried forward in some respects. The maximum capacity at the connection point is a simple example of the type of matter established at connection that should continue over when a new customer moves in and "takes over" the connection. We consider that the connection contract should commence on application rather than energisation. This is discussed later in this submission in the connection process section.

The areas of overlap between the physical connection and ongoing distribution services include:

- the warranty and bond period for assets constructed by a customer's accredited service provider, which in EnergyAustralia's case is for three years for large projects;
- lease and easement arrangements which are ongoing;
- liability for assets before and after energisation;
- site access (for maintenance/inspection); and
- responsibility for maintaining the civil works (substation building, duct lines) which commences before energisation and continue for the period of the tenure.

We do not believe that our customers will benefit from having two separate contracts for connection and ongoing distribution services. Customers do not necessarily distinguish between connection and ongoing distribution supply. Our concern is that customers will view the proposed process as bureaucratic and complex if having to arrange two separate contracts for these services which, we envisage, will contain duplicate terms and conditions (for the types of arrangements listed above). A single contract for both stages of the service is preferred because it will be a

³ www.energyaustralia.com.au/energy/ea.nsf/Content/Network+Electrical+supply+standards

simpler process for customers to understand and will require less administration by the distributors in managing the customer connections.

The same considerations apply to embedded generators in that a single contract for distribution services is preferred. However there may be exceptions. In some cases with larger embedded generators there may be a need for two contracts - where load is imported as well as exported - but for most cases we consider it could be covered by one contract. To allow for the consideration of different circumstances we propose that the form of the connection contracts should be a matter for the DNSP to determine whether its standard connection contract for embedded generator should also apply to any load taken by that customer. The only regulatory requirement should be that the contract or contracts comply with the relevant minimum content for connection agreements for embedded generators.

As an alternative to having two contracts, we propose that the SCO consider placing model terms (proposed as part of the NECF) or minimum content requirements in the Rules and allowing the distributor the option to design contractual arrangements that best meets the requirements of the connected party and the DNSP. EnergyAustralia strongly supports the proposal by Allens Arthur Robinson (AAR) for a new schedule applying to distribution connection for 'retail load customers' to cover the connection process and for the same contract to cover the ongoing provision of distribution services under the NECF by cross referencing and incorporating the model terms under the NECF for the ongoing provision of services.⁴ A similar simple approach must also be developed for "move in" customers so that the contract for distribution services under the NECF incorporates provisions relating to the connection process which have ongoing relevance for the connection of particular premises.

In addition, the connection of 'embedded networks' and customers within those networks should be specifically addressed. Specifically, consideration must be given to the treatment of metering for end-use customers in these networks and the responsibility for safety. EnergyAustralia currently seeks to address this in a Standard Form Customer Connection Contract (SFCCC) (see clause 18). (The SFCCC is available from EnergyAustralia's website).⁵ Whilst certain protections are currently conferred on these customers through jurisdictional legislation, the National Electricity Rules are not well developed and there are currently gaps in the Rules for determining the Responsible Person for metering points connected to the embedded network.

EnergyAustralia proposes that the connection contract be established with the embedded network owner/operator (ENO) and that the ENO should be responsible for any contractual arrangements with customers connected to its network. Any other approach where the end use customers are deemed to be connected to, or to be a customer of, the regulated DNSP would be unworkable and undermine the concept of an embedded network.

Acknowledging the one exception we identified above, we consider that the customer and DNSP only need one contract. Administering two contracts will make it difficult for EnergyAustralia to:

- separate issues such as ongoing reliability;
- avoid duplication in terms and conditions;
- avoid duplication in administration; and
- prevent unnecessary complexity for customers.

SCO has not provided any rationale for having separate contracts.

EnergyAustralia supports the AAR proposal that a clear distinction needs to be made between connection contracts for load (including micro generation) and those for connection of embedded generators, whether registered or unregistered.

⁴ Allens Arthur Robinson, National Connections Policy Framework for Electricity Distribution Networks, Draft Report, February 2009, p.20.

⁵ www.energyaustralia.com.au/energy/ea.nsf/Content/Standard+Form+Customer+Connection+Contract

3.4 Contract process

We do not consider a process whereby the DNSP provides the customer with the standard contract for acceptance after the customer has made an application to connect is practical or beneficial for either party. We consider that such a process is likely to lead to delays in connections. In NSW, applications for connections are made by the customer or its agent (sometimes this is an accredited service provider but almost never a retailer). A requirement for customers to be provided with a formal contract offer and for that offer to be accepted before a connection could proceed will lead to delays in connections for little or no benefit for customers. The only practical way for connections to be processed quickly and contracts finalised is for customers' contracts to comprise the standard published connection contract and a "customer technical schedule" setting out the technical arrangements for that particular connection. The schedule (at this stage, the design information) will be provided to the customer on the application for connection and either accepted (or amended in consultation with the customer) by the DNSP before being included in the agreed technical schedule (at this stage, the design certification).

The contract formation process must be based on the customer being made aware of the standard published contract before making an application for connection. The acceptance of a completed application for connection by a DNSP should commence the contractual relationship between the DNSP and the customer. The details set out in the customer's application for connection effectively form a schedule part of the customer's contract, the remainder will be the standard terms and conditions. This could be achieved if the customer was provided (directly or through its accredited service provider) with a copy of the DNSP's standard contract prior to an application being made. The application for connection could provide for the customer to acknowledge that they have been provided with a copy of the contract and agree to the terms of that contract. For more complex applications the process should provide for the customer's application and any further arrangements regarding the technical aspects of the connection to form part of the technical schedule to the customer's contract. This process is outlined and explained in more detail in the process diagram being prepared by EnergyAustralia and will form part of a supplementary submission.

In addition DNSPs must be able to unilaterally amend the standard contract from time to time and for those changes to apply to all customers from the date the amendment is published.

EnergyAustralia's position:

- We support having a single contract for both physical connection, and move-in connections and the ongoing distribution supply. A single standard contract should apply whether the customer is a generator or load customer.
- We support a contract process whereby the distribution network service provider's (DNSP's) published standard connection contract is effectively treated as a standing offer to connect and the contractual relationship commences upon the acceptance by the DNSP that the customer's connection can proceed. For a straight-forward application, the contract commences on acceptance of the customer's application rather than energisation.
- We support the AAR proposal for a new schedule applying to distribution connection for 'retail load customers' to cover the connection process and for the same contract to cover the ongoing provision of distribution services under the NECF by cross referencing and incorporating the model terms under the NECF for the ongoing provision of services. A similar simple approach must also be developed for "move in" customers so that the contract for distribution services under the NECF incorporates those provisions relating to the connection arrangements which have ongoing relevance for the connection of particular premises.
- A DNSP should have discretion to determine whether its standard connection contract for embedded generators should also apply to any load taken by that customer.
- In relation to embedded networks, a connection contract should be established with the embedded network owner/operator (ENO). The ENO should be responsible for any contractual arrangements with customers connected to its network.

3.5 The form of standard connection contracts

EnergyAustralia considers that the majority of its connections for load and embedded generation can be arranged under three types of standard form of connection contract (i.e., one for load (including micro generators), one for unregistered embedded generators and one for registered generators). Developing a range of contracts proposed by SCO is unnecessary and administratively complex. As discussed above, variations between customers' technical arrangements can be accommodated by a customer technical schedule. It should be a matter for the DNSP to determine whether more than one standard contract is required for customer load.

In particular, there is no need to base standard customer connection contracts on the size of the customer's load. To be clear, the reference here to load is to the capacity at the connection point not the annual consumption of the customer. Whilst the size of a customer's capacity may have significant bearing on the technical requirements to be met by a customer, it does not bear any relation to formal terms and conditions upon which connection and distribution services are provided. There is no legal or technical reason to base contract types on customer size.

The proposal for contract types to be based on technical requirements is at odds with the proposed arrangements whereby the Rules will specify the technical requirements for customers and embedded generators connecting to the distribution network. Therefore EnergyAustralia can see no need to have contracts based on technical requirements.

Having a range of standard contracts would represent a move to more complex administrative arrangements than currently exists with no benefits to customers. There would be no increased or improvements to protections afforded to customers by having a range of standard connection contracts. The minimum terms and conditions will be set out in the schedules and distribution network prices are already subject to regulation by the AER under Rule 6.18 of the National Electricity Rules. Each year DNSPs submit pricing proposals to the AER in relation to regulating tariffs and tariff classes for direct control services. Having a range of standard connection contracts will not provide any benefits to customers and will only be more costly and complex to administer.

Likewise with micro embedded generation, EnergyAustralia considers that this category of customer can be accommodated under a standard form contract. This is currently the case for generators connecting to our network and it is not necessary to have a separate standard contract for micro generators which technically are considered to be part of the customer's electrical installation. A simpler approach, from the customer's perspective, would be to allow standard connection contract to also apply to micro embedded generators. A single standard connection contract that catered to all the customers requirements is logical and simple. Again the customer's technical schedule could accommodate any requirements relating to the micro generator in place at the customer's premises.

In summary therefore, our current and preferred approach to connection models includes:

- customer agreeing to the standard contract at the time of application – (effectively a deemed contract); and
- scope for specific arrangements of each connection to be reflected in a technical schedule which forms part of deemed connection contract.
- Generally, the contract commences when the application is accepted (included a completed technical schedule). Where the technical schedule cannot be completed at the time of application specific arrangements will need to apply. (This will be addressed in more detail in our supplementary submission).

This approach has been designed to cater to the large volume of new, modified and "move-in" connections processed each year by EnergyAustralia. This model was developed to deal simply with the contestability arrangements in NSW. It can also be applied to connections where there is a micro generator.

EnergyAustralia's position:

- We consider that the majority of our connections for load and embedded generation can be arranged under three types of standard of connection contract (i.e, one for load (including micro generators), one

for unregistered embedded generators and one for registered generators).

- Our current and preferred approach to connection models includes a deemed contract with attached schedules specific to each connection that form part of the deemed contract. Specific arrangements of each connection contract form part of a technical schedule completed at the time of connection.
- We do not consider it necessary or efficient to have a range of standard connection contracts based on customer size or technical requirements. The proposal to require contract types to be based on technical requirements is at odds with arrangements under the Rules whereby the Rules will specify the technical requirements for customers and embedded generators connecting to the distribution network. Therefore EnergyAustralia can see no need to have contracts based on technical requirements.
- Likewise with micro embedded generation, we consider that this category of customer can be accommodated under a standard form contract. This is currently the case for micro generators connecting to our network.

3.6 Negotiated connection services and contracts

SCO stated that:

- *If none of the standard offers match a particular customer's technical requirements then the negotiated connection process used to negotiate a unique or individualised contract for connection.*⁶
- *A revised connection negotiation procedure set out in Chapter 5 of the NER will govern the process of arriving at a connection offer. This route of connection will also be open to non-load customers (i.e. embedded generators) and non-retail customers as per the current NER processes. Both standard and negotiated connection offers would be required to conform to specifications in the previously mentioned schedule to Chapter 5 of the NER.*⁷
- *Negotiated connection contract – this connection service is one which falls outside of the standard class(es) of customer specified by the DNSP, and is provided by virtue of a negotiated contract agreed between the DNSP and connecting party. This can apply to all customer types.*⁸

3.6.1 Negotiated Contracts

EnergyAustralia has no objection in principle to a negotiated contract regime. EnergyAustralia is concerned however to ensure that only those customers genuinely seeking negotiated contract terms are required to take the negotiated connection contract process. EnergyAustralia's experience is that the majority of customers do not seek to negotiate contract terms but rather seek to negotiate and agree on the technical aspects of their connection as detailed in the sections above. EnergyAustralia is very concerned to ensure that the negotiated contract regime as contemplated by SCO is not applied as a matter of course to services which are classified as negotiable components of direct control services.

3.6.2 Negotiable components and Negotiated Distribution Services

Chapter 6 of the Rules now provide for certain services provided by DNSPs to be classified as negotiable distribution services. These Rules do not apply to ACT and NSW DNSPs for the regulatory control period 2009-2014, but it is important that these arrangements as well as the transitional arrangements which apply in NSW are understood in the context of the national connection arrangements now being developed by the SCO.

⁶ SCO p.12.

⁷ SCO p.12.

⁸ SCO p.15.

3.6.3 What are Negotiable Distribution Services?

Under the National Electricity Law (NEL) and Rules, there are two types of services provided by regulated distribution businesses. These are direct control services subject to a distribution determination and negotiable distribution services. If the AER classifies a service as a negotiable distribution service, those services are not subject to regulation under a distribution determination and are only subject to a negotiate arbitrate regime. Part D of Chapter 6 of the Rules sets out that regime, which effectively requires the DNSP to develop and apply a negotiating framework based on Negotiated Distribution Service Principles. These services are outside the core services provided by DNSPs and the assets used to provide these services do not form part of the regulated asset base nor are any costs recovered in relation to those services from the general customer base. All costs associated with negotiated distribution services are recovered by the customers to whom the services are provided. These services, when provided, would most likely be suitable for the negotiated regime contemplated by SCO.

3.6.4 What are Negotiable Components of Direct Control Services?

As indicated above, the Negotiated Distribution Service regime does not apply to ACT and NSW DNSPs for the regulatory control period 2009-2014. Under the Transitional Rules which apply in NSW and ACT for that period, there are no negotiable distribution services which are completely separate from the services provided by the shared network. Rather, the AER may classify components of direct control services as negotiable components. Part DA of the Transitional Chapter 6 which is broadly the same as Part D of the general Chapter 6 applies to the provision of these services. These arrangements were put in place by the MCE in recognition that negotiation really only occurs with respect to aspects of the direct control service provided by the shared network. EnergyAustralia believes that this arrangement should not just be transitional and should be brought into the main Chapter 6 framework.

Under the Transitional Rules, EnergyAustralia (and the other NSW and ACT DNSPs) were required to include in their Regulatory Proposal to the AER the negotiable components of direct control services.⁹ A negotiable component may be a particular component of the direct control service or may relate to the terms or conditions on which a direct control service or a component of a direct control service is provided. Whilst negotiable components of a direct control service will be subject to the negotiating framework under Part DA of the Transitional Rules, they are regulated under the distribution determination as part of the direct control service and are therefore regarded as part of the core or standard service provided by NSW DNSPs. EnergyAustralia is concerned to ensure that the negotiating framework which must be applied in relation to negotiable components of direct control services fits into the regime now being contemplated in relation to the connection contract process. The framework required under Part D and DA and the processes now being developed by the MCE SCO relate to the same matters and must be integrated. This is discussed further in the next section.

In its Regulatory Proposal to the AER, EnergyAustralia's proposed approach to describing the negotiable components of a Direct Control Service was based on a set of criteria against which the component could be tested. The criteria was:

"A negotiable component of a direct control service will be any component of that service (or a condition of the service) where some variability can be applied to the provision of the Direct Control Service without interfering with or in any way compromising EnergyAustralia's ability to comply with any regulatory obligation or requirement as that term is defined in the NEL and may include the following types of matters:

- location of substation to support customer load;
- location of customer's connection to network and point of entry to the premises, and location of metering;
- voltage level of customer's connection;
- assessment of customer's load requirement;

⁹ Transitional Rule 6.8.2(c)(7).

- availability of standby supply from the EnergyAustralia grid when on-site generation unavailable;
- capacity of customer's connection before augmentation or other works will be required; and
- design planning criteria which exceeds the applicable security standard."¹⁰

This approach was designed to allow flexibility to negotiate what were effectively technical aspects of the connection or distribution service. Initial connection to the shared network may involve negotiations of sorts at the margin for the service provided. The negotiable components of the Direct Control Service are in effect consultations between EnergyAustralia and the connection applicant about non-price factors. The consultation on these matters is part of establishing a connection that:

- satisfies the needs of both the customer; and is
- necessary to ensure that the DNSP is satisfied that reliability, security and Rule obligations are met.

EnergyAustralia considers that negotiable components of a Direct Control Service should be considered as a standard connection and not subject to a negotiated service process. We contend that the negotiable components of a Direct Control Service should be subject to a standard connection process and standard connection contract where the results of these negotiations can be reflected in the customer's technical schedule. In many cases, there is an element of interaction and consultation between the DNSP and connection applicant on technical and other minor issues but these are part of a standard connection process. That is, there are negotiable components within the standard connection contract. The SCO proposal for a negotiated contract (where the price is not negotiated nor are the standard terms and conditions affected) for a direct control service is incongruous and not supported.

The AEMC's reasoning and approach to negotiated transmission services supports the contention that the negotiated approach was only appropriate for non-standard non-core services. We refer to the AEMC's Rule Determination where negotiated transmission services were described as services dedicated to, or requested, by specific parties which are characterised by either a lack of homogeneity, limited market power, or material countervailing buyer power. Further that the end users for these services are likely to be larger and better resourced, providing a counter weight to the market power possessed by the TNSP and making commercial negotiation a feasible option.¹¹ Because negotiated transmission services are characterised as those where there are fewer market failure concerns the Rules specify a less intrusive form of regulation.¹²

AEMC's distinction between prescribed and negotiated was based on the economic attributes of the services, users and providers. That is where the TNSP had less scope to misuse its monopoly power than a service may be considered 'negotiated'.

The above characteristics set out by the AEMC are not applicable to distribution services where the users connecting to the network are generally smaller than transmission users. Distribution networks are more homogenous in nature and, in the case of EnergyAustralia's network, highly meshed making negotiation for the service and price impractical if not impossible. In reality the number of circumstances in which negotiation around the terms and conditions of the core distribution or connection services may occur is very small. EnergyAustralia, with 1.5 million network customers, has not to date entered into a negotiated connection contract with a customer.

We are concerned that the SCO proposal for direct control services to be subject to a fully negotiated process may further confuse this difficult and complex area and lead to a situation where the AER may be pressured to classify services which are clearly core and part of the direct control service as negotiable distribution services. This is an area where we seek assurance from SCO that the intention is not to allow or require the AER to classify negotiable components of distribution services as "negotiated distribution services".

¹⁰ EnergyAustralia, Regulatory proposal to the AER, June 2008, p.177.

¹¹ Australian Energy Market Commission, November 2006, Rule Determination, National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006 No.18 p.xvii

¹² Australian Energy Market Commission, November 2006, Rule Determination, National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006 No.18 p.xvii

There is no rationale for Direct Control Services to be subject to the “negotiated contract” process as set out by SCO. The SCO has not provided any reasoning that would justify such a change to the procedures currently under the Rules.

3.6.5 Negotiation procedures under the National Electricity Rules

Under the clause 6.7.5 of the Rules, a distribution network service provider must prepare a negotiating framework setting out the procedure to be followed during negotiations between that provider and a customer who wishes to receive a negotiated distribution service from the provider, as to the terms and conditions of access for the provision of the service. SCO has not clarified how clause 6.7.5 is intended to apply given that SCO proposes that a revised connection negotiation procedure set out in Chapter 5 of the Rules will govern the process of “arriving at a connection offer”.¹³ EnergyAustralia seeks clarification of this issue.

A further ambiguity relates to SCO’s statement that if a connection service is deemed to be a direct control service, then the service is by definition of the regulation, not negotiated and therefore not subject to a negotiated development offer.¹⁴ However SCO also states that the negotiating framework is available to all customer types.¹⁵ These two statements appear to contradict each other making SCO’s intention regarding negotiated distribution services unclear.

EnergyAustralia’s position:

- EnergyAustralia has no objection in principle with a negotiated contract process where there is a genuine need for the terms and conditions of connection to be specifically tailored for a particular connection. The concern is to distinguish between those customers who are merely seeking to agree on the technical aspects of their connection from those customers who are seeking to negotiate terms and conditions of their contract. The former in our view should be considered standard connection services while the latter should be considered negotiated connection services.
- We are seeking to ensure that only those customers genuinely seeking negotiated contract terms are required to take the negotiated connection contract process. EnergyAustralia’s experience is that the majority of customers do not seek to negotiate contract terms but rather seek to negotiate and agree on the technical aspects of their connection as detailed in the sections above. In many cases, there is an element of interaction between the DNSP and connection applicant but this is regarded as part of a standard connection process and does not require a different type of contract or contract process. That is the ‘negotiation’ or consultation can be accommodated under a standard form contract and connection process.
- The proposed approach, as currently framed, is unclear, ambiguous and unworkable. We consider that the use of the term ‘negotiated’ to describe both the connection contract and the services that are subject to revenue regulation to be confusing and we seek clarification from SCO on the definitions of negotiated connection services. A clearer explanation of alignment between the existing service definitions in the Rules, economic regulation and connection procedures will improve our understanding of what is being proposed.
- Direct Control Services that have a negotiable component should be treated as a standard connection and not a negotiated connection. Chapter 6 of the Transitional Rules applicable to NSW already have the concept of negotiable component of direct control services. This is explicit recognition that these negotiable elements are part of the core service provided by the DNSP and not a separate service subject to a different form of regulation or a different contractual model. Note that the Transitional Rules categorise some services provided by EnergyAustralia as negotiated distribution services but that this only applies to negotiated services provided by EnergyAustralia transmission assets.

¹³ SCO p.12.

¹⁴ SCO p.53 Recommendation 23.

¹⁵ SCO p.47 Recommendation 11.

- SCO must clarify how the negotiating framework currently required under clause 6.7.5 of the Rules is intended to apply given that SCO proposes that a revised connection negotiation procedure set out in Chapter 5 of the Rules will govern the process of “arriving at a connection offer”.

3.7 Role of the Australian Energy Regulator (AER)

SCO stated that:

- *One of its policy objectives was to integrate regulation of non-price elements of connections with the Australian Energy Regulator's (AER) economic distribution regulation powers.¹⁶*
- *Standard connection arrangements, thus proposed, would be subject to AER approval as part of a distribution pricing review. These standard arrangements may provide for a standard connection asset to be offered to customers (for example, but not limited to, a network span to a premises, or metering equipment) and associated charges.¹⁷*
- *The DNSP is required to gain approval from the AER of a common standard connection definition (and associated technical requirements) and the common standard connection contract and the additional standard connection contracts for their distribution network. The AER will apply a 'fair and reasonable' test to the definitions.*

EnergyAustralia questions integrating the regulation of non-price elements of connections with the AER's economic distribution regulation powers and whether it achieves any benefits for consumers. EnergyAustralia agrees that the AER must be aware of a DNSP's obligations under standard connection and distribution service contracts when it makes a distribution determination. These contracts determine important matters such as the allocation of risk between parties and are relevant to the AER's assessment of the cost of providing distribution services. However this does not mean that the process for the development of such contracts should include the AER's approval of the contract. We consider that SCO's policy intent is not clear and no rationale has been provided for seeking to integrate the connection process with the AER's economic regulation role. We caution against increasing regulatory risk or burden in the national framework for electricity distribution without any apparent reason or benefit.

Our key concerns relate to:

- A move to a propose-respond approach to regulating connection contracts;
- Connection contracts submitted to the AER as part of the regulatory proposal;
- Concerns about using 'fair and reasonable' for assessing connection contracts; and
- Consistency with national reforms for consumer protection.

3.7.1 Propose-respond approach

EnergyAustralia does not support the 'propose-respond' approach to regulating standard connection contracts as set out by SCO. If the regulatory intent is ensuring that the contract addresses key matters and that those matters are addressed to protect the interests of customers, then this would be achieved by ensuring that the minimum terms are cast in such a way that compliance with them will deliver the customer protection. This will require that the minimum terms be cast in such a way that they not only specify the subject matter of the term, but also specify

¹⁶ SCO p.10.

¹⁷ SCO p.11.

the standard the term must meet. A compliance-enforcement approach places an onus on the DNSP to ensure that its connection contracts comply with the Rules and jurisdictional requirements. In NSW, connection contracts are highly regulated and monitored through an annual compliance process that ensures that it develops contracts in accordance with the principles set out in the Rules and the jurisdictional requirements. This arrangement is more appropriate as it allows the distributor the flexibility to develop a connection contract that best suits its customers (rather than the AER) while meeting its regulatory requirements.

A compliance-enforcement approach is more consistent with the AER's compliance role under the Rules for non-economic matters. Further, EnergyAustralia notes that the NECF will contain model terms in the Rules for contracts [and the AAR has set out minimum content for connection agreements]. This approach lends itself more to a compliance regime rather than having contracts to be approved by the AER. At most, the AER's approval of contracts should be confined to standard contracts which depart from the minimum or model terms.

We support a compliance-enforcement approach to regulating connection contracts as it is a more transparent and certain process thus consistent with good regulatory practice.

3.7.2 Revenue determination process

EnergyAustralia does not support the proposal for distributors to submit standard connections for approval as part of a distribution pricing review. The connection contracts set out the legal obligations between the customer and the DNSP. In the case of electricity distribution, the obligations could be considered to be irrespective of the prices because the prices for distribution services are regulated by the AER. Further within NSW, the connection services for dedicated assets are contestable and so the price to the customers are based on the use of the system (shared network) and not for the connection assets.

The economic regulation for distribution in Chapter 6 of the Rules, requires DNSPs to submit a regulatory proposal every five years and to submit pricing proposals on an annual basis. The SCO proposal seems to imply that DNSPs would not be able to amend contracts until the next five year regulatory proposal period. If so this a further concern to EnergyAustralia as we consider that DNSPs need flexibility to amend and develop contracts as required on an ongoing basis to take account of changes to jurisdictional requirements and changes to the needs of the customers.

Network prices for specific tariff classes are determined on an annual basis using the AER's revenue determination. Under EnergyAustralia's current arrangement, the tariff classes for pricing purposes do not correlate with the types of customer connection contracts – nor is it necessary for them to do so. In EnergyAustralia's case a standard contract procedure is used for all of our customers. This is the simplest and most effective means to manage customer connections.

EnergyAustralia maintains that regulation of the standard connection contracts should not form part of the regulatory revenue determination process.

3.7.3 Fair and reasonable test

EnergyAustralia accepts that there may be an approval role for the AER if a DNSP seeks to develop a standard connection contract which does not comply with the minimum terms. However, we object to an unguided "fair and reasonable" test being used as the basis for AER's approval of such connection contracts. The term fair and reasonable does not have an established or commonly understood meaning in the consumer protection, access or competition law or practice. This means that as proposed the AER would be left with a largely unguided discretion to determine what is meant by fair and reasonable in this context. This would lack transparency and certainty two of the key requirements of good regulatory design.

Consequently, the SCO's proposal for the use of 'fair and reasonable' test is not consistent with good regulatory practice and would not result in certainty and transparency in the national framework for network connections. As a minimum, the law or rules must provide criteria against which the contracts must be assessed to determine whether they are fair and reasonable. That criteria should make clear that the test should be applied from the perspective of both the customer and the DNSP.

The AER would no doubt issue guidelines in relation to its approach to assessing whether contract terms are fair and reasonable, but these guidelines would be prepared in what is otherwise a regulatory vacuum. A preferred approach would be to specify the actual criteria that must be applied by the AER when assessing contracts as to whether they are “fair and reasonable”. This will ensure that the policy intent and regulatory purpose of the AER’s assessment is transparent and certain.

3.7.4 Proposed Australian Consumer Law

EnergyAustralia has reviewed the consultation paper “An Australian Consumer Law - Fair Markets Confident Consumers” released by the Federal Minister for Competition Policy and Consumer Affairs on 17 February 2009. EnergyAustralia will be responding separately to that consultation but we note that one of the major initiatives in that paper is the introduction of provision to regulate unfair contract terms in standard form contracts.

The arrangements proposed for the national connection framework (and the linked National Energy Customer Framework) will result in a highly regulated contractual regime for network connections and distribution services. Consideration should be given by policy makers to whether such a highly regulated framework will be consistent with the proposed Australian Consumer Law and in particular the protections provided by the proposed provisions to regulate unfair contracts. Page 14 of the consultation paper notes that the Productivity Commission recognised significant differences in industry-specific consumer regulation and expressed concern that some industry-specific legislation is overly prescriptive and unnecessary given generic consumer protections. The paper goes on to state that COAG has agreed a process for reviewing industry-specific regulation across all Australian jurisdictions with a view to removing differences where possible. EnergyAustralia urges the MCE to ensure that the frameworks currently being developed will be consistent with the proposed Australian Consumer Law and that industry will not be faced with the uncertainty and costs associated with further review and changes once the national frameworks are on place.

If the MCE forms the view that a regime for regulating contracts is necessary in the energy context then it will need to ensure that contracts which have been prepared to comply with national energy frameworks are not subject to being set aside or regarded as banned under the proposed Australian Consumer Law. There must be a presumption that as a matter of policy and principle that contracts prepared in accordance with regulatory requirements would be presumed not to contain unfair terms. A term in a DNSP’s standard contract which complied with the minimum or model term should obviously be allowed and not be banned or subject to being set aside under the proposed consumer law. To this end, the MCE should ensure that the proposed Australian Consumer Law provides that a particular contract term will not be void if the term is required or expressly permitted by law.

EnergyAustralia’s position:

- We do not support the AER approving standard connection contracts that must comply with minimum terms. SCO has not put forward a policy reason or regulatory purpose as to why the AER should approve standard connection contracts. We consider such a role would be an unnecessary operational intervention in the market and contrary to good regulatory practice. If the regulatory intent is ensuring that the contract addresses key matters and that those matters are addressed to protect the interests of customers, then this would be achieved by ensuring that the minimum terms are cast in such a way that compliance with them will deliver the customer protection, and not only specify the subject matter of the term, but also specify the standard the term must meet.
- The role of the AER in relation to standard contracts which comply with the minimum terms should be confined, appropriately, to monitoring and compliance (and in case of certain disputes, arbitration) in the same way as proposed under the NECF. That is, the AER’s role in approving should be confined to approving standard contracts developed by DNSPs which depart from the minimum terms.
- Where approval is required, EnergyAustralia is concerned about the application of a fair and reasonable test by the AER. The application of such a test results in a very uncertain framework for contract assessment which lacks transparency and again has the potential to lead to unnecessary intervention in business processes. Whilst the term “fair and reasonable” is currently used in legislation it is not currently applied in Australia in the context of consumer protection, access

regulation or competition law and consequently is not commonly understood in that context. A preferred approach would be for the rules to specify the actual criteria that must be applied by the AER when assessing contracts as to whether they are “fair and reasonable”. This will ensure that the policy intent and regulatory purpose of the AER’s assessment is transparent and certain.

- We do not support distributors having to submit standard connection contracts for approval as part of a distribution pricing review. SCO has not provided any rationale for this proposal.

3.8 Timeframes for the connection process

SCO stated that:¹⁸

- *A DNSP is required to respond the specific connection enquiries and provide the appropriate technical information within 5 business days.*
- *The DNSP must provide the standard connection contract and applicable business contract within 5 business days of receiving a completed standard application form.*

EnergyAustralia does not support the timeframes proposed by SCO because they are not realistic for a number of reasons:

- To achieve such timelines, EnergyAustralia would have to increase the number of staff processing applications which would significantly increase operating costs. We question whether the benefits outweigh the costs.
- The “one size fits all” approach to the timeframes fails to realise that many connections require network studies and complex design information.
- There is the need for ongoing and reiterative consultation on technical issues. For connections that require complex design and consultations a five day timeframe is not achievable. While the SCO proposal appears to designate such connections to the negotiated bucket, we consider such connections to be standard but with negotiable components.
- The process and timeframes for the connection procedure set out by SCO do not adequately provide for the arrangements under the NSW’s contestability framework. In many cases the construction of connection assets and the timing for completion is a matter between the customer and the accredited service provider who is building/ installing the connection assets – not the DNSP. The connection procedure set out by SCO fails to account for this.

EnergyAustralia considers that 10 days is a more appropriate timeframe for the period between receiving a completed application from the applicant and the DNSP accepting the customer’s application (in EnergyAustralia’s case by issuing a job number) for small customers that are, say, less than 400 amps (where there is no augmentation required or substation on the customer’s premises). The set time frame for a standard connection contract may be appropriate for the average small domestic customer but will be inadequate for larger more complex connections. The determinants for the amount of time required to process a connection application are the size and location of the customers load, the capacity constraints of the adjacent network and whether a decision needs to be made about increasing the voltage of connection (i.e., substation required on the premises). Once the application is received the network may need to undertake a network system capability study. For instance, larger developments will require network system studies and these will take a few weeks to prepare.

¹⁸ SCO p.13.

We consider that there does need to be flexibility in the timeframes to allow for the proper processes for more complex projects where network system capability reports and design information is required to be prepared. EnergyAustralia does not support placing a timeframe for processing connection applications and suggest that the timelines should be tempered with the caveat "or by arrangement with the applicant for connection services". The arrangement could be made by the distributor by email within 10 days." This is necessary given the inherent complexity of connecting a large customer to the network as well as the need to interface with the accredited service providers under the NSW contestability framework.

EnergyAustralia is preparing supplementary information setting out a connection procedure that takes into account the contestability framework, the processes for connections of varying complexity and the obligations on the DNSP and connection applicant. We will submit this information within the next two weeks.

EnergyAustralia's position:

- The process and timeframes for the connection procedure set out by SCO is not appropriate for the NSW's contestability framework. The timing for the construction of connection assets is a matter between the customer and the accredited service provider who is building/ installing the connection assets.
- EnergyAustralia considers that 10 days is a more appropriate timeframe for an initial assessment to be made of a connection application. During the initial assessment the DNSP could determine whether the connection could proceed without further investigation or whether further investigation is required. Ten days is considered an adequate period following receipt a completed application from the applicant for the DNSP to either accept the customer's application (by issuing a job number to allow the customer's accredited service provider to proceed with the connection) or to indicate that further consideration and investigation is required. It could be expected that all applications for less than 400 amps (where there is no requirement for augmentation or substation on the customers site) would be in the first category. Whilst there does need to be flexibility in the timeframes to allow for the proper procedures to be developed for more complex projects where network system capability reports and design information is required to be prepared, generally once these matters have been addressed a standard contract would be appropriate.
- In addition we do not consider a process whereby the DNSP provides the customer with the standard contract for acceptance after the customer has made an application to connect is practical or beneficial for either party and is likely to lead to delays in connections. The contract formation process must be based on customers being made aware of the standard published contract before making an application for connection. The acceptance of a straight-forward application for connection by a DNSP should commence the contractual relationship between the DNSP and the customer.

3.9 Technical standards and minimum content

SCO stated that:

- *It agrees that the NER will also provide that distribution network users must comply with all technical and safety standards in relation to their connection.¹⁹*
- *Schedules to Chapter 5 of the NER should include a definition of the technical requirements for micro embedded generators*
- *DNSPs will be required to specifically make the new occupant aware that there are terms and conditions associated with micro EG for that supply point. This requirement will be implemented under the NECF via direct obligations on DNSPs in the relevant rules.²⁰*

EnergyAustralia supports having greater clarity in the Rules to enable a DNSP to impose technical requirements on registered and non-registered generators. The Rules need to contain clear provisions that expressly permit a DNSP to impose technical requirements on non-registered generators in particular. This is necessary to enable the DNSP to comply with the system performance requirements imposed upon it by either jurisdictional legislation, the NECF or the NEL and Rules. The provisions should permit a DNSP to obtain all necessary information and assurances in relation to the impact of the embedded generator on the performance and reliability of the network; and ensure ongoing compliance by the non-registered generators with the technical standards in the connection agreement.

We support having separate schedules for minimum content within connection agreements for registered participants, retail load and embedded generators (other than micro generators) which are not registered participants. Where a DNSP has specified a requirement from Schedule 5.2 in the Rules should apply then it will be a compliance obligation upon the embedded generator as it is necessary to support the wider NEM system and enforcement should not be a matter for the DNSP. EnergyAustralia considers it would be beneficial to develop nationally consistent technical standards for each generation class below 30MW. This could be achieved by establishing an industry code which we suggest could be developed through the Energy Network Association (ENA) or Standards Australia (SA).

Our comments on technical issues are set out in the response to the AAR draft report which is attached and forms part of EnergyAustralia's submission.

The definition of micro-generation applied throughout Australia should be consistent for the purposes of creating standard connections and other technical requirements. To ensure consistency in the definition of micro generation, EnergyAustralia would consider it better practice to use the ENA definitions and indicate that micro generators (<2kW) and mini generators (<30kW over three phases) which are compliant with AS 4777 should be deemed to automatically comply with technical standards to allow connection but not automatic access. Embedded generators that complied with this definition would still be required to apply for connection to the DNSP.

EnergyAustralia does not support placing obligations on DNSPs to inform "move-in" customers regarding the terms and conditions associated with micro embedded generators at that supply point. Instead, EnergyAustralia's view is that this should be dealt with through processes associated with the transferring the property together with notices on the meter box that made the customer aware that an micro generator was part of the installation and informing them where to find relevant information about their obligations. EnergyAustralia supports the comments made by ENA in its submission.

¹⁹ SCO p.47.

²⁰ SCO pp. 47-48. In response to recommendations 11 and 12.

EnergyAustralia's position:

- We suggest that the Rules contain clear provisions that expressly permit a DNSP to impose technical requirements on a non-registered generator which are necessary to enable the DNSP to comply with the system performance requirements imposed upon it by either jurisdictional legislation, the NECF or the NEL and Rules.
- We support having separate schedules for minimum content within connection agreements for registered participants, retail load and embedded generators (other than micro generators) that are not registered participants.
- We suggest that the SCO consider establishing an industry group of experts to advise the NPWG on technical standards to include in schedules to the Rules.
- The definition of micro-generation applied throughout Australia should be consistent for the purposes of creating standard connections and other technical requirements and we support using ENA's definition whereby micro generators (<2kW) and mini generators (<30kW over three phases) which are compliant with AS 4777 should be deemed to automatically comply with technical standards to allow connection.
- We do not support placing obligations on DNSPs to inform "move-in" customers regarding the terms and conditions associated with micro embedded generators at that supply point.

4 Capital contributions

SCO stated that:

The SCO position on capital contributions was principally guided by the key objective of cost reflectivity.²¹

SCO proposes that the AER will develop a guideline detailing the methodology associated with the calculation of the augmentation component of a connection charge. The NER will outline a basic set of principles for the calculation of capital contributions. These principles include:

- *large customers (including large embedded generators) will be required to pay a capital contribution for the cost of any network extension and augmentation assets required to connect the customer and for the cost of dedicated connection assets;*
- *small customers (as defined in the NECF) and micro EG will be required to pay a capital contribution for extension and dedicated connection assets. Augmentation costs for these customers will be recovered, where appropriate, through DUOS; and*
- *customers will receive a repayment of capital contribution payments for previously dedicated assets (including augmentation assets for large customers) proportional to new customers' utilisation of that asset.²²*

²¹ SCO p.18

²² SCO pp.19-20

4.1 Capital contributions

EnergyAustralia supports SCO's proposal for small customers and micro embedded generators to be required to pay a capital contribution for extension and dedicated connection assets (but not augmentation). This is consistent with the capital contribution and contestability schemes in NSW.

We support the proposal for large customers to pay for dedicated connection assets and extension assets but have concerns about the lack of detail about the scope and approach for calculating augmentation charges. SCO has not provided any detail about the definition of a large customer and EnergyAustralia would be concerned if there was an increase in the scope of the capital contributions policy beyond the limited scheme in place in NSW. Further, there is no detail about how "deep" into the network the augmentation should be. Again we would be concerned if there was an increase in the scope of capital contributions from the current arrangements in NSW.

EnergyAustralia is not satisfied with the principles set out by SCO on capital contributions. SCO stated that the AER will be required to develop a Guideline based on the key objective of long run cost reflectivity but we are concerned that this will not provide sufficient policy guidance or certainty for determining the method for calculating capital contributions. For instance, SCO is proposing that reimbursement scheme will apply for 7 years. EnergyAustralia is concerned that potential changes to the principles in the AER Guidelines will cause greater complexity in administering a scheme that we consider will be complicated enough. Therefore we consider that it is more appropriate for the principles of the reimbursement scheme to be contained in the Rules.

Our concern is that in relation to augmentation the objective of cost reflectivity may not result in equitable or efficient outcomes. As stated by IPART:

"any framework for determining how much customers contribute to the capital costs of connecting them to the electricity network should provide an economically efficient pricing signal to customers and treat customers equitably."²³

Further, that:

"the efficiency arguments for signalling costs to new users are weak for existing assets. For the most efficient utilisation of the capacity, the principle is that if capacity is scarce the costs of rationing or expanding that capacity should be signalled to all users not just some".²⁴

That is, all network users are contributing to utilisation of the shared network and so it is not equitable for the marginal customer to fund network augmentations. A capital contributions policy based on cost reflectivity in its strictest sense of marginal cost pricing for augmentation may lead to inequitable results – leading to disadvantages for the "first mover".

We consider that SCO needs to provide a more balanced set of objectives to guide the development of a capital contributions policy. The principles for the method for calculating the capital contributions should be included in the National Electricity Rules rather than included in an AER guideline. Principles need to be set out in the Rules so as to provide more certainty and transparency.

4.2 Reimbursement scheme

EnergyAustralia would be concerned if an increase in the scope of the capital contributions policy resulted in a larger reimbursement scheme. In a meshed network such as EnergyAustralia's area any reimbursement scheme

²³ IPART Capital Contributions and Repayments for Connections to Electricity Distribution Networks in NSW: Final Report, 2002 p 5.

²⁴ IPART Capital Contributions and Repayments for Connections to Electricity Distribution Networks in NSW: Final Report, 2002 p 4.

would be very complex to administer.²⁵ A further complication is because connection services are contestable and NSW DNSPs do not have information on the actual cost of connection assets.

We maintain that any reimbursement scheme needs to be administratively effective and equitable and should apply to the current owner of the property not the original owner as the cost of the capital contribution would have been capitalised in the sale price.

4.3 Industry working group

Capital contributions and reimbursement schemes are complex issues and we consider that SCO needs to undertake more detailed consideration of the issues raised by EnergyAustralia including the scope and method for calculating capital contributions. We are seeking further formal consultation by SCO and ask for the establishment of an industry working group to assist the Network Policy Working Group develop a more detailed policy on capital contributions.

At this stage, we would prefer greater policy guidance from SCO, with assistance from the proposed working group on the scope and the method for calculating capital contributions rather than having the AER develop a guideline. Further, we suggest that the method for calculating the capital contributions should be included in the National Electricity Rules rather than included in an AER guideline. This would provide greater certainty to the industry.

EnergyAustralia's position:

- We consider that SCO needs to set out a balanced set of objectives to guide development of a capital contributions policy. In particular, efficiency, equity and simplicity need to be included as objectives along with cost reflectivity.
- We support the SCO proposal for small customers and micro embedded generators to be required to pay a capital contribution for extension and dedicated connection assets (but not augmentation). This is consistent with the capital contribution and contestability schemes in NSW.
- We have concerns about increasing the scope of the capital contributions for augmentations to all large customers (including embedded generators) based on the principle of cost reflectivity. Further consideration is required about the thresholds for who should pay and how deep into the network. A related concern is that an increase in the scope of the capital contributions scheme including the scope of the reimbursement scheme would be very difficult to administer and complicated for customers. We prefer a limited capital contributions scheme such as what operates in NSW.
- We maintain that any reimbursement scheme needs to be administratively effective and equitable and should apply to the current owner of the property.
- We suggest that the method for calculating the capital contributions should be included in the National Electricity Rules rather than included in an AER Guideline.
- SCO's consultation process would benefit from having an industry working group assist the Network Policy Working Group develop its policy on capital contributions.

²⁵ Consider a new 50MVA substation costing \$50 million driven by six customers totaling 3MVA of load. Should these customers be charged \$50/6 each to start and then compensate every year as other customers take load. Or should the six customers be charged collectively 1/6 of 3/50 which will be their share of the asset capacity. These are the type of questions that require consideration in developing a capital contributions and reimbursement schemes.

