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**Submission to the Ministerial Council on Energy/Standing Committee of
Officials**

**National Framework for Electricity Distribution Network Planning, Connection
and Connection Charge Arrangements**

Jemena appreciates this opportunity to comment on the MCE/SCO Policy Response Paper on the proposed National Framework for Electricity Network Planning and Connection ('national connection framework').

We recognise SCO's intent, which is to establish a streamlined process for small user connections, particularly micro embedded generators (micro EGs). We also understand SCO's desire to integrate a network connection framework with other key policy developments, including the National Energy Customer Framework.

Jemena supports SCO's overall capital contributions framework, recognising that further detail needs to be worked out. With regard to network connection, SCO has proposed one particular approach to formalising network connections. However, Jemena considers that SCO's policy aims can be achieved with more flexible and adaptive processes.

Jemena looks forward to additional development of the national connection framework and capital contribution arrangements. We would particularly value participating in any industry working group with SCO to progress these matters.

If required, I can be contacted on (02) 9270 4512 or email: sandra.gamble@jemena.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Sandra Gamble".

Sandra Gamble
Group Manager Regulatory



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1 Key messages

1.1 National policy developments

Jemena acknowledges that SCO's Policy Response to the NERA/Allen Consulting Group (NERA/ACG) recommendations of August 2007 has been formulated with regard to some other key policy developments, including:

- alignment of network connection with the National Energy Customer Framework (NECF);
- an appropriate regulatory test for electricity distribution networks;
- an appropriate framework for demand side participation in the NEM;
- climate change policies and renewable energy targets.¹

Jemena recognises that the challenge is to develop a national planning and connection framework which assists the above developments by:

- establishing a 'level playing field' for all potential connections;
- allowing for the expanded role of embedded generation in delivering Australia's energy mix;
- offering integrated and practical connection processes including realistic response timelines;
- allowing for flexible and innovative network practices which will assist in introducing new technology.

1.2 Prescription vs flexibility

In seeking to further national policy developments, Jemena urges SCO to be cognisant that there is a trade-off between:

- regulation to offset networks' perceived bargaining power in connection matters; and
- the need for network flexibility to innovate and develop best practice solutions for connection.

The SCO paper recognises this trade-off when it says:

The intent is to establish balanced connection arrangements which are not overly prescriptive – only regulating when it is deemed necessary and recognising distributors' incentives to gain new customers under price regulation.²

¹ MCE Standing Committee of Officials Policy Response 15 December 2008: *Electricity Distribution Network Planning and Connection*, Part 2 p 9-10.

² Op Cit p 9.

Jemena commends this recognition by SCO. Recognition of a trade-off should guide judgement in balancing (a) what degree of prescriptive regulation might be required under a national connection framework: and (b) the necessity for networks to have flexibility to innovate and develop best-practice solutions. In this regard, Jemena does have some significant issues with elements of SCO's proposed approach in the Policy Response paper.

However, we consider that greater familiarity by SCO with how connections are managed in practice, and the reasons for this, will alleviate any perception about networks' desire to be less than welcoming of all economic connections³, and therefore any need for greater regulatory control and/or surveillance.

1.3 Structure of this submission

The Executive Summary (following) gives a comprehensive overview of Jemena's main issues. However, there are many significant points of detail in SCO's responses to individual NERA/ACG recommendations which were not covered in Part 2 of the SCO Policy Response paper, but which deserve some comment.

Sections 3 and 4 of this submission are therefore concerned with the SCO policy responses to:

- Electricity distribution network connection arrangements (recommendations 10 to 24) – Section 3 ;
- Electricity distribution capital contribution arrangements (recommendations 25 to 30) – Section 4.

In addition, we offer some brief comments on:

- Recommendations made by Allens Arthur Robinson to SCO's Network Policy Working Group – Section 5;
- The impending National Framework for Gas Connections (notified by SCO in the Policy Response paper) – Section 6.

³ Subject to relevant safety and technical matters.

2 Executive Summary

2.1 Background to Jemena and previous consultation

Jemena (formerly Alinta) directly owns the major NSW gas distribution network and an electricity network in Victoria. Through its asset management business, Jemena provides services to major gas and electricity networks and gas pipelines. Overall, Jemena manages \$8 billion worth of gas and electricity assets.

Jemena appreciates this opportunity to comment on the Standing Committee of Officials (SCO) Policy Response Paper on the proposed National Framework for Electricity Network Planning and Connection ('national connection framework').

Jemena has contributed extensively to previous MCE/SCO consultations on electricity network planning and connection.⁴ In general, Jemena has urged a careful introduction of policy initiatives in these matters, based on full consultation with industry. We submitted that a too rapid uptake of consultants' recommendations without a clear understanding of their total implications could be more detrimental to the overall market rather than helpful.⁵

Jemena is therefore pleased to note that, consistent with previous stakeholder submissions, SCO has referred the matter of a national framework for network planning and expansion to the AEMC for comprehensive review. SCO has recognised that the complexity of recent policy developments in the NEM means that a national planning framework cannot be implemented without further analysis and consultation.⁶

2.2 Proposed connection framework

2.2.1 SCO contractual approach and current practice

The SCO paper proposes a standard connection process and a separate negotiated connection process. The standard process would involve the use of a formal contract or contracts to be approved (initially) by the AER.

Jemena appreciates SCO's intent, which is to establish a streamlined process for standard small user connections, particularly micro embedded generators (micro EGs).

⁴ Submission 30 May 2007(Part C) - *Comments on Demand-side Response and Distributed Generation*; and Submission 9 October 2007: *Response to NERA/Allen Consulting Recommendations – Network Planning and Connection Arrangements*.

⁵ Submission 9 October 2007, p 4.

⁶ MCE Standing Committee of Officials Policy Response 15 December 2008: *Electricity Distribution Network Planning and Connection*, Part 1 p 8.

Across jurisdictions, connection processes vary widely, and without any apparent detriment to connecting parties. The Ch 5 Rules provide for an 'offer to connect' to be made available to applicants, and also a protocol for information exchange between the DNSP and applicants. Together these elements can form an 'implied contract' between the two parties, with acceptance of the offer initiating a connection. Some jurisdictions adopt variations of this approach.

In other jurisdictions (eg Victoria) the connection process is supported by a legislative framework designed to standardise the rights and obligations of both the DNSP and end-user in connection matters. There is no 'standing offer to connect'.

Jemena is not proposing that any particular jurisdictional model should apply nationally. However, we observe that the vast majority of connections can be initiated fairly simply without the need for the structured contractual model between applicant and DNSP envisaged by SCO. SCO's highly formalised process would place an inordinate number of relatively simple connections into a 'negotiated' category, with its attendant special timelines and implied exchange of complex technical data – which is not a realistic model.

Additionally, there is some uncertainty in the paper as to who actually initiates a connection request and enters into agreement with a DNSP. The paper refers to 'customer' or 'end user' whereas it is usually an intermediary who applies; eg a retailer or a builder/developer. Under some jurisdictional B2B rules, for example, a retailer has capacity to act as agent for end users in entering into connection agreements, and this function should be recognised in any national connection framework.

2.2.2 Proposed standard contract vs flexibility

Rather than providing for an AER-approved 'standard' contract and potentially a multiplicity of 'negotiated' contracts, Jemena submits that the connection framework should recognise that connection is not a black and white affair between a totally standardised process and total negotiation. Rather, it is the case that most small standard connections may involve some element of negotiation, ranging from very minor to somewhat more significant. Jemena submits that these elements of negotiation can be accommodated in a standard framework by (for example) having a schedule or schedules of specific variations allowed for in the connection agreement. This could include specific arrangements for micro EGs.

This would therefore reserve specialised connection matters to be negotiated between a DNSP and non-small users. Jemena notes that matters of this kind would most probably be formalised in a one-off contract.

Jemena suggests that this simplified approach would minimise any need for SCO's proposed multi-contract model, given that relatively minor variations to basic agreements would generally be required.

2.2.3 Contractual model – 'initial' and 'ongoing' services

SCO has invited comment from stakeholders on whether there should be two separate contracts (one for the initial connection phase and one for ongoing

services) or a single distribution contract governing both initial connection and ongoing services. Our comments are given below.

2.2.3.1 Lack of definitional clarity

In consultation on the NECF, Jemena has had considerable difficulty with the concept of 'ongoing supply services', and has taken the view that the RPWG's proposed definition was unclear and appeared to duplicate obligations on DNSPs under the access frameworks.⁷ This applied especially to the concept of 'ongoing supply'. After connection and energisation, distributors are basically obliged to make transportation (supply) available to third parties (mainly retailers) and this is the key purpose of an access framework.

SCO's Policy Response has, in Jemena's view, perpetuated this lack of clarity between the NECF and access frameworks. For example, SCO's Response to recommendation 14 says that that 'ongoing customer distribution services (eg, supply and connection (energisation) - related services) will be part of the contractual arrangements between retail customers and distributors under the NECF'.

2.2.3.2 Interpretation of 'ongoing services'

It is possible that the concept of 'ongoing distribution services' might be referring to mutual obligations between distributors and end-users designed to support retail activities; eg providing unobstructed access to meters, and providing for no tampering or other interference with network equipment. Jemena understands that some DNSPs would have this interpretation.

If this is SCO's intent, then Jemena submits that these matters must necessarily be separate from the connection agreement. They involve two separate activities (connection to the network and retail support). The only common element between them is the existence of the distributor. Once connection is made, the connecting applicant may well depart the scene, and it would in no way be reasonable for an applicant who is not an end user to enter into matters in a connection agreement which would continue to bind both the end user and distributor.

There are various ways in which these 'ongoing' matters can be handled. First, however, Jemena submits that they should not be referred to as 'supply services' to avoid confusion with network transportation services.

'Ongoing' matters could be the subject of a standardised arrangement (developed by the DNSP under the Rules) with the end user and which applies to their

⁷ Jemena Ltd, A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers: Submission prepared for the Ministerial Council on Energy Standing Committee of Officials, 6 August 2008, sections 1.5 and 1.6.

particular premises. This could take contractual form, and some jurisdictions use this approach. Alternatively, the relevant obligations could be imposed by the Law/Rules or regulations. Whatever approach is adopted, Jemena submits that a connection agreement should deal only with initial connection to the network, and not ongoing matters.

2.3 Connection Timeframes

2.3.1 Timeframes

Jemena also considers that the SCO proposed timeframes do not reflect the practicalities of connection. Specifically:

- The proposed five days in which to advise an applicant that a connection will be either standard or non-standard is too short and Jemena suggests ten days. This would allow the DNSP to evaluate alternate engineering options (within given technical standards) and propose a solution to the applicant;
- For a non-standard connection, Jemena does not agree with the proposal that a DNSP must advise the applicant of any required technical information within fifteen days of application. Greater time flexibility is needed.

2.3.2 Commencement of process

SCO's policy paper takes the position that a connection process commences with a formal application⁸. This is a sensible starting point, given that it can be unambiguously defined in the Rules (eg receipt by the DNSP of a validly completed application). Jemena supports the SCO proposal that the connection process should begin when the DNSP has received a completed application.

However, SCO's explanatory material in Part 2 of the Policy Paper has left out an enquiry phase entirely, yet it is referred to in SCO response 17 in Attachment C. This response recognises an earlier pre-application enquiry phase (which Jemena supports) but sets specific timelines for a DNSP response to an enquiry (which Jemena does not support).

Jemena notes that Chapter 5 of the NER has provision for both an enquiry and an application, and submits that the SCO framework should make a similar provision. However, given the very broad interpretations that could be given to the nature of an 'enquiry' and its duration, Jemena submits that no timeline should apply to this phase. Jemena submits that the enquiry phase should be completely flexible.⁹

2.4 Submission to the AER

SCO's framework requires a DNSP to submit a 'standard connection contract' to the AER for approval. As noted earlier in section 1.2, it is important to establish to

⁸ MCE Standing Committee of Officials Policy Response 15 December 2008: Electricity Distribution Network Planning and Connection, Part 2 p 13.

⁹ Jemena submits that any negotiation must have a similarly flexible timeline.

what degree prescriptive regulation is required under a national connection framework. Jemena therefore submits that careful consideration should be given to what might need to be reviewed and approved by the AER.

According to SCO's response 14, the proposed 'standard connection contract' is to be designed to basically reflect DNSP obligations drawn from existing or modified Rules (eg Sch 5.6).

DNSPs will have no power under the proposed Rules to formulate connection cost recovery mechanisms - SCO proposes that the AER will develop these mechanisms under a guideline.

The SCO Policy Response document says:

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 (discussed further in Part 3 of this paper under Capital Contributions).¹⁰

In Jemena's view, this brief description suggests that SCO's intent appears much closer to requiring the 'terms and conditions' of connection to be approved by the AER, rather than a connection agreement itself. If the 'minimum content' of the agreement is to be drawn from the Rules, then Jemena suggests that connection agreements containing minimum content should simply be matters of compliance for DNSPs, and to that extent, do not require AER approval.

In this regard, Jemena notes that the frameworks for energy economic regulation require that contractual terms and conditions (including prices and charges) must be approved by the AER, but not the individual contractual arrangements which embody those terms and conditions.

Depending on how general or specific the proposed AER guideline will be on the details of cost recovery for connection, DNSPs may have more or less flexibility to recover connection costs in varying ways. These options would presumably be put forward in a price review. However, Jemena re-iterates that AER approval would be required more for the associated terms and conditions of connection, rather than any connection agreement itself derived from Rules content.

2.5 Capital contributions

In the matter of capital contributions, Jemena supports the SCO proposal that all connecting users should pay for necessary network augmentation on the basis that it is inequitable for all users to subsidise the connecting user. This is in contrast to

¹⁰ MCE Standing Committee of Officials Policy Response 15 December 2008: *Electricity Distribution Network Planning and Connection*, Part 2 p .

the NERA/ACG approach, which was that augmentation should not incur a capital contribution.

2.5.1 Repayment mechanisms

Jemena acknowledges the SCO's equity intent in providing for repayments of capital contributions by subsequent connecting users, but urges that any repayment mechanisms be made as simple as possible. Complex and costly schemes should be avoided.

Jemena also notes that repayment mechanisms vary widely among jurisdictions (to the extent that there are any at all), and that there would need to be a transition to any new national mechanism. The adequacy of past record-keeping would be very relevant consideration.

Jemena suggests that a repayment mechanism should be used only when there is a clear equity case for doing so. We suggest that small extension projects in urban areas may not raise equity issues sufficient to justify a repayment mechanism. On the other hand, we do recognise that capital contributions can raise difficult conceptual and equity and that there are often no obvious answers.

3 Electricity distribution network connection arrangements

3.1 SCO RESPONSE 10

- SCO proposes that network users will pay all applicable connection charges as per the policy response to recommendations 25-30
- SCO agrees that distribution network users must comply with all technical and safety standards applicable to their connection

JEMENA COMMENT

Jemena agrees with these broad proposals, subject to our further comments on individual SCO responses.

3.2 SCO RESPONSE 11

- Schedules to Ch 5 Rules will define technical requirements for micro embedded EGs
- Also Rules will require DNSP (at a minimum) to define a 'standard connection service' and associated technical requirements and seek AER approval for such a standard service
- The 'standard connection service' should apply to most small end users who require 'minimal extension and augmentation'. Figure 1 depicts how the 'standard connection process' will apply.
- DNSP may define other additional 'standard' connection services for approval by the AER
- SCO considers that only micro EGs need technical standards to be defined for the purpose of creating standard connection applications, services and contracts
- Other participants can negotiate terms and conditions
- Negotiating framework applies to all customer types

JEMENA COMMENTS

- **AER approval of ‘standard service’**

SCO response 11 lays the groundwork for the connection framework proposed by SCO and figure 1 in the Explanatory Material gives a visual overview of the framework. Jemena’s comments throughout this section 3 (including the next dot point) suggest that there are significant issues with the concepts of ‘standard connection services’ and ‘negotiated connection services’ developed by SCO and therefore with the proposed connection framework itself.

- **General comments on SCO approach**

Jemena’s concerns with figure 1 are that it is (a) incomplete and inconsistent with SCO’s response to other recommendations; (b) does not appear to appreciate the simplicity of existing jurisdictional connection processes; (c) has unrealistic timelines; and (d) interposes a highly formalised process to cover the majority of simple connections.

- a. *Incomplete and inconsistent***

SCO’s figure 1 takes the position that a connection process commences with a formal application from an applicant. This is a sensible starting point, given that it can be unambiguously defined in the Rules (eg receipt by the DNSP of a validly completed form) and Jemena supports SCO’s position.

- However, figure 1 has left out an enquiry phase entirely. This is inconsistent with SCO response 17, which recognises a pre-application enquiry phase (which Jemena supports) but sets firm timelines for a DNSP response (which Jemena does not support).
- Jemena notes that Chapter 5 of the NER has provision for both an enquiry and an application, and submits that the SCO framework should make a similar provision. However, given the very broad interpretations that could be given to the nature of an ‘enquiry’ and its duration, Jemena submits that no timeline should apply to this phase.

- b. *Simple existing connection processes***

Jemena considers that simplicity of connection processes is a major factor in ensuring that no organisational barriers to connection should emerge. We offer the following Victorian examples.

- For at least one DNSP, there is a basic micro embedded generation connection process in place which references AS 4777. Following receipt of a connection request via the B2B process, embedded generators that are compliant with AS 4777 are generally approved by the DNSP for connection;
- For load connection requests, the Victorian process references a DNSPs’ reasonable technical requirements, which are in the Electricity Industry Service

and Installation Rules.¹¹ This affords users a simple connection standard with appropriate technical protection for DNSPs.

The Victorian connection process usually begins with a basic B2B connection request from retailer to distributor. Legislation prescribes 10 days to make a connection to the end user (where no date is agreed between the DNSP and the retailer) provided an adequate supply of electricity is available at the boundary of the new supply address. This process assumes that no technical or commercial issues will emerge to complicate the connection. Should issues emerge, then an (agreed) longer time frame will be required.

c. Unrealistic time lines

Jemena considers realistic timelines to be an important issue.

Under the Victorian example above, when a connection request is accepted by a DNSP via the B2B process, the DNSP is deemed to have made a conditional connection offer and the applicant to have accepted that offer.¹²

The end to end process generally takes 10 business days. Should issues emerge, the DNSP advises the applicant that connection will have to be progressed via a negotiated process. However, SCO figure 1 allows only five days for a DNSP response.

Jemena submits that five days will not always be possible, and that a 10 day response period would better allow for DNSP evaluation. This period would allow the DNSP to evaluate alternate engineering options (within given technical standards) and propose a solution to the applicant; or alternatively, advise whether a fully negotiated process is required.

d. SCO proposed formal process

Across jurisdictions, connection processes vary widely, and without any apparent detriment to connecting parties. Some examples follow.

- The Ch 5 Rules provide for an 'offer to connect' to be made available to applicants, and also a protocol for information exchange between the DNSP and applicants. Together these elements can form an 'implied contract' between the two parties, with acceptance of the offer initiating a connection;

¹¹ (<http://www.victoriansir.org.au/sirs.html>).

¹² The conditions are that::

- a) an adequate supply of electricity being available at the required voltage at the boundary of the new supply address;
- (b) a Certificate of Electrical Safety being provided to the distributor in respect of the customer's electrical installation at the customer's supply address;
- (c) the customer providing unhindered access for connection and to the DNSP's equipment on site;
- (d) the customer complying with reasonable technical requirements required by the distributor.

- In Victoria, the connection process is supported by a legislative framework designed to standardise the rights and obligations of both the DNSP and end-user in connection matters. There is no standing 'offer to connect'.

Jemena is not suggesting that any particular jurisdictional model should apply nationally. However, we observe that the majority of connections can be initiated fairly simply without the need for a structured contractual model between applicant and DNSP envisaged by SCO.

3.3 SCO RESPONSE 12

- SCO will define 'micro' EG and require the DNSP to develop and publish its standard connection requirements for micro EGs to be approved by the AER
- The standard connection process depicted in figure 1 will apply
- SCO agrees with ESC that micro EG connection agreements should transfer upon ownership of premises to new customer/owners in the interests of customer safety.
- To be implemented via NECF direct obligations in the relevant Rules upon energisation

JEMENA COMMENTS

- **Standard EG connection process**

Jemena has provided an example of a standard EG connection process in section 3.2 (b) above.

- **ESC proposed transfer**

SCO has agreed with the ESC proposal that DNSPs should specifically inform a new owner of premises that there are terms and conditions for micro EG at that supply point.

Jemena's first question is: how will a DNSP know of a change of property ownership? Retailers may be aware of changes to their customers, but DNSPs will not be.

To overcome this problem in Victoria, the ESC requires every DNSP to send a notice to each micro EG connection at no more than three-yearly intervals to advise their relevant obligations.

Given that EG is a minor market segment at present, this obligation on DNSPs may not be too onerous. However, the micro EG market is set to expand exponentially over coming years due to government legislative encouragement, yet the onus would still be on DNSPs to advise property owners upon every change of property ownership.

Jemena submits that as the expanded uptake of micro EG is a government initiative, the advice to incoming owners should be dealt with by way of government

action; eg by an encumbrance on the property under appropriate legislation. This would provide a streamlined and efficient process for informing new owners.

Jemena submits that there should also be legislative provision for mandatory labelling at the property switchboard indicating that embedded generation is installed at the premises.

3.4 SCO RESPONSE 13

NER should set out minimum content for standard applications in a schedule to Chapter 5

JEMENA COMMENT

The SCO response to recommendation 14 below clarifies that the AER will *not* have to approve standard application forms, and Jemena agrees.

For reasons given below, we also question whether a standard connection agreement must be submitted to the AER for approval.

3.5 SCO RESPONSE 14

- The minimum contents of a connection contract for both common standard and micro EGs will be in schedule to Ch 5 of NER, including the number of days after ‘finalisation of agreement’ that connection will occur
- DNSPs will be required to submit a standard connection contract to the AER for approval – and may seek approval of additional standard contracts
- SCO seeks stakeholder comments on whether the ‘minimum content requirements’ should be the same as existing terms and condition in Sch 5.6 (modified)
- SCO says ‘expert advice’ on the issue will be made available to stakeholders

JEMENA COMMENTS

- **Submission to AER**

According to the first dot point above, SCO’s proposed ‘standard connection contracts’ appear to be designed to largely reflect DNSP obligations drawn from existing or modified Rules (eg Sch 5.6). Given that the contracts will not formulate connection cost recovery mechanisms (SCO proposes that the AER will develop these under a guideline) the Rules obligations in connection agreements should simply be compliance matters for DNSPs.

The SCO Policy Response document says:

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 (discussed further in Part 3 of this paper under Capital Contributions).¹³

In Jemena's view, this brief description indicates that SCO's intent appears much closer to requiring the 'terms and conditions' of connection to be approved, rather than the connection agreement itself.

In this regard, Jemena notes that the frameworks for energy economic regulation require that contractual terms and conditions (including prices and charges) must be approved by the AER, but not the individual contractual arrangements which embody those terms and conditions.

Depending on how general or specific the proposed AER guideline will be on the details of cost recovery for connection, DNSPs may have more or less flexibility to recover costs in varying ways, and these options would presumably be put forward in a price review. However, Jemena re-iterates that these issues relate more to the associated terms and conditions of connection, rather than the DNSP connection obligations in a connection agreement. This comment is reinforced by our views on connection agreement flexibility in the next dot point.

- **Proposed standard contract vs flexibility**

Rather than providing for an AER-approved 'standard' contract and potentially a multiplicity of 'negotiated' contracts, Jemena submits that the proposed connection framework should recognise that connection is not a black and white affair between a 100 per cent standardised process and negotiation. Rather, it is the case that small standard connections may involve some element of negotiation, ranging from minor to more significant. Jemena submits that these elements of negotiation can be accommodated in a standard framework by (for example) having a schedule or schedules of specific variations allowed for in a standard agreement. This could include specific arrangements for micro EGs.

This would mean that a negotiated agreement would be reserved to deal with matters of major significance between a DNSP and non-small users.

Jemena suggests that this simplified approach would minimise the need for SCO's proposed multi-contract model, given that relatively minor variations to basic agreements are generally needed.

- **'minimum content requirements' in Sch 5.6**

SCO seeks views on whether the requirements in Sch 5.6 are sufficient and has commissioned a report from Allens Arthur Robinson on the matter. Jemena's views are provided in section 5.

¹³ MCE Standing Committee of Officials Policy Response 15 December 2008: Electricity Distribution Network Planning and Connection, Part 2 p 11.

3.6 SCO RESPONSE 15

NERA had recommended that a negotiation framework developed in accordance with modified NER 6.7.5(c) should apply in the negotiated connection application process.

The NERA additional provisions recommended for 6.7.5(c) were:

- *Exchange of technical information between parties;*
- *When considering an application, DNSP is to use ‘reasonable endeavours’ to provide the user with services it requires in accordance with ‘reasonable requirements’ of the user;*
- *Any negotiated offer to be fair and reasonable, consistent with the safe and reliable operation of the power system in accordance with the NER, consistent with the technical requirements schedules in Chapter 5, and must not impose conditions on the user more onerous than those in the schedules [NOTE: this is currently Rule 5.3.6 (d)];*
- *When considering an application, a DNSP must consult with any affected Distribution Network Users and NEMMCO (where relevant) if the DNSP believes that compliance with the conditions of those connection agreements will be affected, in order to assess the application and determine [a number of matters recommended by NERA/ACG];*
- *A ‘cooling off period’ for ‘vulnerable’ users.*

[NOTE: Jemena emphasis inserted above]

SCO acknowledges stakeholder concerns regarding the use of 6.7.5(c), but notes that this Rule ensures that the negotiating framework applies to a negotiated service only, not a direct control service. SCO seeks stakeholder views on this issue.

SCO accepts all other NERA recommendations, except the ‘cooling off’ period.

JEMENA COMMENTS

- **Connection application and connection offer**

Jemena notes that SCO has responded affirmatively to all the recommendation 15 proposals, except for ‘cooling off’. Jemena observes that the NERA/ACG recommendation addresses both the application and the negotiated offer.

- **Duplication of Rule 5.3.6 (d)**

If (as noted by SCO) Rule 5.3.6(d) already sets out the requirements for a negotiated offer, Jemana cannot see why is there any need for the national connection framework to potentially restate these obligations. Jemena’s view is that restating the same obligation in multiple instruments is duplicative and potentially confusing as to where the ultimate obligation lies.

- **DNSPs to consult with affected Distribution Network Users and NEMMCO**

The same issue of duplication arises with the proposed requirement on DNSPs to consult with affected Distribution Network Users and NEMMCO (where relevant). NER 5.3.3(a) deals with the process to involve other affected DNSPs in a connection enquiry, while NER 5.3.4A(b) requires DNSPs to consult NEMMCO following a receipt of proposed negotiated access standards.

- **Use of Rule 6.7.5(c) to provide a negotiation framework**

Regarding the use of Rule 6.7.5(c) to provide a negotiation framework for a connection service, Jemena draws SCO's attention to Part DA of the Chapter 11 Transitional Rules under the NER. This indicates that service providers in NSW and the ACT have negotiable components of their direct control services. We would therefore query SCO's statement that Rule 6.7.5(c) will unambiguously provide a connection framework for all negotiation involved with DNSP services because it cannot apply to a direct control service.

Jemena re-iterates our comment in section 3.5 above - that is, allowing for a basic agreement with provision for variation may offer a much more flexible approach than requiring a negotiation process and a specialised contract for every variation in connection occurrences.

- **'Cooling off period'**

Jemena agrees with SCO's rejection of a proposed cooling off period for connection offers. Acceptance timelines will allow applicants sufficient time to evaluate an offer.

3.7 SCO RESPONSE 16

- SCO has accepted that the relevant schedule or schedules of the NER will be amended to ensure 'connection agreement terms and conditions' will apply to all users including EGs
- Also that the 'non-price' terms and conditions can be modified by agreement where they have no associated cost impacts including NEMMCO.

JEMENA COMMENTS

The SCO response requires that the contents of an amended Schedule 5.6 in the NER (or amended equivalents) will be applied to all network users. This appears to be a corollary to SCO response 14 - ie specifying the minimal contractual conditions which will apply.

Jemena accepts this proposal, subject our preceding comments regarding the benefits of DNSPs having flexibility in connection agreements.

Jemena agrees that modification of 'non-price' terms and conditions should be by agreement.

3.8 SCO RESPONSE 17

- The DNSP must within 5 days of receiving a new connection enquiry advise the enquirer of the process and information required for submitting a connection application
- Also advise contestability
- Also advise additional information requirements
- ‘SCO notes that the customer enquiry phase requirements may involve/apply to both/either standard and negotiated distribution connection services’

JEMENA COMMENTS

As noted in Jemena’s comments on the response to recommendation 11, SCO should allow for an ‘enquiry phase’ for a new connection. To that extent, we support response 17.

However, we do not support the imposition of a five day limit for DNSP advice, or any time limit at all, given the very broad interpretations that could be given to the nature of an ‘enquiry’ and when it may have commenced and concluded.

In Jemena’s view, the question of what information should be provided by a DNSP to an enquiry needs more consideration. NER/ACG had recommended that the enquirer be given a copy of the standard contract and an application form. It is not clear from the SCO response what specific information exchange might be contemplated.

However, there also appears to be a presumption that a DNSP’s response to an enquiry will be in writing. If so, SCO should be aware that many enquiries are dealt with by phone. In Victoria, for example, some DNSPs direct phone enquiries to different business functions depending on complexity of the enquiry, without the need for a written response. If the enquirer seeks highly specific information, then this may require a formal request to be made and a DNSP response supplied within an agreed period.

Consistent with our proposal for a flexible agreement which could be adapted to a wide range of connections, it is possible that the enquiry phase could establish unambiguously what kind of connection an applicant may require. If so, this would further reduce the need for the highly formalised process in SCO figure 1.

However, Jemena’s comments on SCO response 12 indicated that it may not be possible to establish initially whether a connection should be standard or non-standard. Therefore, any guidance offered by a DNSP at the enquiry phase may have to be on a ‘no prejudice’ basis.

3.9 SCO RESPONSE 18

- The Rules will provide that, when making a connection enquiry, any ‘user’ may seek:

- a standard connection service
- an additional standard connection service; or
- a negotiated service
- The DNSP will advise the 'customer' if the connection application complies with requirements for a standard connection.

JEMENA COMMENTS

It appears to Jemena that Response 18 is simply re-stating the early phases of the connection process in SCO figure 1, but with recognition of an enquiry phase. Jemena's comments above (especially on Responses 17 and 14) have presented a broader alternative to figure 1. That is:

- The enquiry phase may establish what connection service is required by the applicant, who can then confidently submit an application;
- The use of a flexible basic agreement can be used to provide for a variety of common connection types, without resorting to a formal process of DNSP advice and negotiation with the applicant.

An issue of terminology

Jemena notes an issue of terminology through out the SCO responses, but one particularly evident in Response18. The enquirer and applicant are referred to as the 'user' and 'customer' respectively. In reality, the applying party is frequently a builder/developer (who may want connections to multiple dwellings) or some other third party – but generally not the end user. Our comment on SCO response 11 indicated that in Victoria, the applying party is usually a retailer (via a B2B request).

For consistency and accuracy, Jemena suggests that the terms 'enquirer' and 'applicant' be used in the appropriate contexts for any Rules developed by SCO. The exception would be where the context clearly suggests that 'end user' or 'end user premises' is intended.

3.10 SCO RESPONSE 19

Where a 'user' submits a completed standard connection application, the DNSP within five business days will advise:

- Whether the application should be processed by another DNSP;
- Whether the desired connection is standard or non-standard, and provide the 'user' with necessary technical requirements information.

JEMENA COMMENTS

On the first point: Jemena considers that it is reasonable to require the DNSP to advise the applicant if the application should be processed by another DNSP within 5 business days of receiving a connection request. DNSPs know the extent of their distribution areas and should be able to meet the 5 days period.

On the second point: Jemena's proposal for a flexible basic agreement should facilitate applicants making the correct type of application. If an incorrect application has been submitted, then it should generally be a simple matter to advise the applicant and arrange to have the correct application submitted.

However, it may well take more than 5 days for the DNSP to determine exactly what type of connection should apply either under the flexible basic category or by negotiation. As indicated earlier, Jemena submits that there should be a 10 day period to advise the applicant of alternative arrangements.

3.11 SCO RESPONSE 20

- The NER should require a DNSP to issue a standard connection offer and contract within five days of receiving a standard application
- If the application does not conform to a standard connection service or is otherwise invalid, the DNSP must advise the applicant within five days.

JEMENA COMMENT

See Jemena's comments on the responses to Recommendations 11 and 12, where we note our overall concerns with SCO's figure 1 connection process.

3.12 SCO RESPONSE 21

The NER will provide that a user has a time limit/period of two months to accept a standard connection contract offer, unless the DNSP agrees to extend the period of offer.

JEMENA COMMENT

Jemena accepts a time limit of two months to accept a standard connection offer, subject to the DNSP's agreement to extend the period of acceptance. However, we note that applicants who do not require complicated connections would have expectations of earlier connection than two months.

3.13 SCO RESPONSE 22

- The NER will provide that if a connection application is not for a standard connection and a negotiation process applies, a DNSP must respond to the application within 5 business days
- The DNSP must advise the customer of the required technical information to progress the application within 15 business days of receiving the application

JEMENA COMMENTS

Jemena does not agree with the requirement to advise the customer of the required technical information within fifteen days of receiving a completed application. Complex connection requests may require very substantial negotiation. Neither the user nor the DNSP is properly served by an inflexible 15 days negotiation period, if the connection is complex in nature. Jemena submits that the

connection framework should provide flexibility for the DNSP to extend the 15 days period. We suggest that the NER should require:

The DNSP must advise the customer of the required technical information to progress the application within fifteen days of receiving a completed application unless the user and DNSP agree to extend the period.

3.14 SCO RESPONSE 23

NERA recommendation 23 contains several elements for the NER. Broadly these are:

- The NER should combine the technical, price and non-price negotiation phases currently set out in the 'application for connection' and 'offer to connect' phases
- Remove Rules provisions which will be captured by the Rule 6.7.5 negotiation framework
- Require the DNSP to commence negotiations as soon as an application is submitted;
- The NER should reference access standards including the relevant schedules in Chapter 5;
- The NER should require DNSP to develop an offer containing the information specified in Schedule 5.6 and specify the outcomes of negotiations related to access standards and other terms and conditions within the time specified initially or later (if access standards have been negotiated).

JEMENA COMMENTS

First dot point: Jemena understands this to mean that the Rules should set out the requirements in SCO figure 1 (page 14) in a comprehensive manner to provide an 'end to end' application and connection offer framework.

Whatever framework is eventually adopted, Jemena would support it being provided for in the Rules. Jemena has suggested a broader alternative framework which captures the elements of figure 1 without the need for an iterative formal contractual process.

Second dot point: Regarding the proposed use of the Rule 6.7.5(c) negotiation framework, see Jemena comments on SCO recommendation 15. Jemena has suggested that any significant negotiation with small users can be minimised by having an enquiry phase and by adopting flexible basic agreements.

To the extent that some negotiation may be required for medium to large users (ie not micro EGs) then a requirement in the Rules that negotiations be subject to a 'fair and reasonable' test and with provision for arbitration should suffice.

Remaining points: these appear to mainly cover matters already provided for in the Rules.

3.15 SCO RESPONSE 24

SCO considers that a two month standing offer period for a negotiated connection service is unnecessary, and proposes one month (unless the DNSP agrees to extend the offer).

JEMENA COMMENT

Jemena supports the SCO response, especially the provision for flexibility to extend the offer period.

4 Electricity distribution capital contribution arrangements

4.1 SCO RESPONSE 25

SCO first contrasts the situation where there contestability of connection services in some regions (eg NSW) but not others (eg Victoria). This gives rise to differing policy responses for DNSP recovery of connection charges for all connection assets under SCO Responses 27- 29.

JEMENA COMMENT

Jemena agrees with the general principle of cost recovery for connection services, noting the later SCO discussion on what connection assets should be included.

4.2 SCO RESPONSE 26

- To the extent necessary, the NER will appropriately define the terms for the purposes of calculating a connection asset charge. It is accepted as a valid concern that terminology used throughout both transmission and distribution networks should be as consistent as possible to avoid confusion.
- SCO proposes that the existing terminology used in the NER should be used to implement the recommendations and their principles

JEMENA COMMENT

Jemena agrees with the SCO response that appropriate terms should be addressed in the drafting stages, and that the existing NER terminology can be adopted.

4.3 SCO RESPONSE 27

- SCO has disagreed with NERA/ACG recommendation that mandated connection costs should not include the cost of any shared network augmentation, instead maintaining that the connecting user should pay.
- The exception will be small users defined in the NECF and micro EGs whose costs will be recovered through DUOS charges.
- The NER will require the AER to develop a guideline detailing the methodology for calculating augmentation charges. The new capital contributions framework will be aligned with revenue rests to ensure a smooth transition.

JEMENA COMMENTS

- Jemena fully agrees that connecting users should pay a charge for augmentation of the shared network, and supports SCO's arguments for this position.

- Jemena also commends SCO's recognition that there is an intimate link between DNSP cost recovery through capital contributions and the regulatory review process which sets network usage tariffs.
- Regarding an AER guideline, Jemena would wish to see the complete listing of principles in the Rules necessary to guide the AER in developing the guideline (see response 28 following). Further, it is not clear whether SCO would propose the AER developing a guideline that will be extremely detailed and/or mandatory, or set at a higher level of guidance. It is also not clear whether a DNSP could propose variations from the guideline for augmentation cost recovery which would still be consistent with the Rules.

4.4 SCO RESPONSE 28

The NER will outline a basic set of principles outlining the calculation of capital contributions. These will include:

- Large customers to pay a contribution for the cost of any network extension and augmentation required to connect the customer, and the cost of dedicated connection assets;
- Small (NECF) customers to pay a contribution for extension and dedicated connection assets. Augmentation to be recovered through DUOS;
- Customers will receive a repayment of capital contributions for [initially] dedicated assets proportional to the new customers' utilisation of the assets.

The NER will require the AER to develop a guideline based on these principles and the key objective of cost reflectivity. The guideline will address other matters, including a standard connection charge for a standard connection asset;

The AER will be required to consider existing connection charge arrangements in jurisdictions where contestability does not exist.

JEMENA COMMENTS

- SCO's high level set of principles seems reasonable. However, as noted, it is not possible for Jemena to give a definite view until we have sighted the full listing of the necessary principles.
- Jemena welcomes clarification from SCO that a 'dedicated' asset referred to above is to be regarded as one that is initially for the sole use of a connecting user, but is later shared with other connecting users (i.e. a shared network). Only when it becomes a shared network will repayment of a capital contribution apply.
- Jemena also welcomes SCO's proposal that the AER will be required to consider existing connection charge arrangements in jurisdictions where contestability does not exist. As an example, contestability does not apply to small customer connections in Victoria. Contestability only applies to large customer connections requiring a capital contribution.

4.5 SCO RESPONSE 29

- The NER will provide a framework for the repayment mechanism noted above, including a partial repayment methodology. The AER will develop a guideline for the treatment of [initially dedicated] extension assets;
- Provision will also be made for the repayment of relevant augmentation charges, including for augmentation assets that become general network assets. This will also be the subject of an AER guideline.

JEMENA COMMENTS

Jemena acknowledges the SCO's equity intent in allowing for repayment mechanisms, but urges that any repayment mechanisms be made as simple as possible. Complex and costly schemes should be avoided. . On the other hand, we do recognise that capital contributions can raise difficult conceptual and equity questions and that there are often no obvious answers.

Jemena also notes that repayment mechanisms vary widely among jurisdictions (including no mechanism), and that there would need to be a transition to any new national mechanism. The issue of the adequacy past record-keeping of contributions would be very relevant.

To the extent that a DNSP incurs significant costs in facilitating repayment mechanisms, Jemena submits that these costs should be recovered, possibly through a project fee.

Jemena notes the example of the "pioneer scheme" in Victoria which requires a repayment of connection asset charges associated with extension assets within a limited period of ten years. The trigger for repayment only arises when the extension asset is used by other customers connecting to it – i.e. it becomes shared. These situations are common in rural areas. However, Jemena suggests that repayment mechanisms should be used only when there is a clear equity case for doing so; for example, to avoid significant 'free rider' issues. Small extension and augmentation projects in urban areas would not appear to raise equity issues sufficient to justify a repayment mechanism.

4.6 SCO RESPONSE 30

SCO has not accepted this NERA/ACG recommendation.

5 Recommendations by Allens Arthur Robinson (AAR) to Network Policy Working Group

The AAR report¹⁴ covers a number of matters, but Jemena wishes to comment only on two at this point:

- Whether a connection agreement should cover both the initial connection and the ‘ongoing provision of distribution services’;
- Whether there should be a new schedule for distribution connection agreements separate to the existing schedule 5.6.

5.1 Initial connection and ‘ongoing distribution services’

5.1.1 Jemena view

If, as discussed in section 2.2.3.2 above, ‘ongoing services’ refers to facilitation matters for retailers, then Jemena observed that these matters could be addressed:

- in a standardised arrangement (developed under the Rules) between the DNSP and the end user which applied to the user’s particular premises;
- by the insertion of relevant obligations in the Law/Rules or regulations applying to the DNSP and end users.

Whatever approach was adopted, Jemena submitted that a connection agreement should deal only with initial connection to the network, and not ongoing matters.

5.1.2 AAR view

AAR suggests (page 21) that distribution connection agreements entered into between distributors and customers pursuant to the process to be established in chapter 5 of the NER may take a number of alternative forms:

- first, a connection agreement for a retail customer may simply cover the connection process, following which it would be replaced by a ‘deemed distribution contract’ for the ongoing provision of distribution services;
- alternatively, a connection agreement for a retail customer may cover both the connection process and the ongoing provision of distribution services, where the terms for the ongoing distribution services are negotiated between the customer and the distributor. This would also be the case for customers other than retail customers (ie. market customers).

¹⁴ Allens Arthur Robinson: Network Policy Working Group - National Connections Framework for Electricity Distribution Networks, Draft Report - Micro embedded generation, Minimum content requirement for connection agreements, February 2009.

On balance, AAR submitted that any customer seeking a new or modified connection under chapter 5 of the NER would enter into an agreement with the distributor covering both the connection process and ongoing provision of distribution services, but then to ensure that the NER dovetails with the requirements of the NECF in relation to the terms of that agreement.

5.1.3 Jemena comment

AAR's first option would appear to broadly align with Jemena's proposal that the agreements should be separate. The exception is AAR's view that a 'deemed contract' should apply, rather than a Rules guided agreement to be developed by the DNSP. As Jemena has observed in other consultations, a 'deemed contract' which mirrors legislated Rules is not a genuine contract – it is simply a complicated way of expressing Rules obligations.

A major issue with both AAR options (but particularly the second) is that they consistently refer to the 'customer' entering into an agreement with the DNSP for connection and 'ongoing services'. But as Jemena has noted in section 2.2.3.2, the party seeking a connection agreement and the end user customer may be quite different. We have submitted that it would in no way be reasonable for an applicant which is not an end user to enter into matters in a connection agreement which would continue to bind both the end user and distributor.

5.2 A new schedule for distribution connection agreements

AAR was asked to consider the minimum content requirements that should be specified in chapter 5 of the NER for both standard and negotiated distribution connection agreements, and whether this content should be specified by modification to existing schedule 5.6 or by the creation of a new schedule specific to distribution connection agreements.

AAR has suggested creating a new schedule for distribution connection agreements for retail customers separate to the existing schedule 5.6.

AAR argues that while schedule 5.6 generally covers network connection, it also applies more generally to the ongoing provision of network services. As it is proposed that, for retail customers, these matters would be addressed by cross referencing the requirements of the NECF, the schedule of minimum content requirements for connection agreements for retail customers will be limited to those matters relevant to the connection process.

5.2.1 Jemana comments

While Jemana does not support the AAR recommendation for a single agreement to cover connection and 'ongoing services', we do see merit in having a sub-set of schedule 5.6 which deals with connection only. This appears to be what AER is proposing. In Jemena's view, the concept of a separate schedule for connection also aligns better with the concept of having a stand-alone connection agreement.

6 Impending national framework for gas connections

The SCO Policy Paper has signalled that a policy paper for gas connections will be developed parallel to the Network Policy Working Group paper for electricity connection. The Policy Paper correctly observes that a National Framework for Gas Connections (NFGC) will need to address the different circumstances of gas:

Connection arrangements for gas distributors vary more between jurisdictions than in electricity, with some jurisdictions not imposing an obligation to connect customers. The NFGC will have to be mindful of the degree to which gas is seen to be an essential service, but will attempt to harmonise the procedural aspects of connection. The NFGC will also be consistent, where possible, with the approach taken for electricity.¹⁵

As SCO implies, the gas sector has not been subject to the same level of regulatory prescription as seen in electricity. There are many practical reasons for this, including safety. Gas has also had a much more coherent national access framework than electricity (at least until recent amendments to the NEL).

Jemena therefore cautions against narrowly focused attempts to harmonise gas connection procedures nationally, or to force alignment with electricity. This submission has raised a number of significant issues with SCO's contractual model for electricity connection, and this is therefore not a model which we consider suitable for gas.

¹⁵ MCE Standing Committee of Officials Policy Response 15 December 2008: *Electricity Distribution Network Planning and Connection*, Part 2 p 17.