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Thursday, 28 January 2016

John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235
Lodged Electronically

Dear Mr Pierce,

RE: ERC0192 Transmission Connection and Planning Arrangements Rule Change, Consultation Paper Submission

The Clean Energy Council (CEC) works with Australian renewable energy businesses across all technologies to accelerate the transformation of Australia's energy system into a clean energy system.

As expressed in our submissions to the Transmission Frameworks Review the CEC generally supports the expansion of contestability for delivery of transmission assets, and expects that savings can be achieved for new connections. This change allows more flexibility for new connection. While it will allow current market conditions to prevail, the introduction of increased contestability and clarification of the rules should allow contestability to occur where the market determines this to be efficient.

Promotion of consistency in approaches across the market

While the rule change request's general intent is to clarify the rules around connections, enhance transparency and promote consistency in planning the approach taken in the rule change request is to 'carve out' the Victorian arrangements where AEMO has declared network functions. As a result, the rule change request drafting does not lead to a clarification of the rules but increases their complexity. The Commission should consider is whether this 'carve out' approach is ideal.

Recent connections in Victoria have managed to achieve significant cost savings in their connections through contestability. However, the contractual environment presented by the presence of AEMO acting as an intermediator that is not willing to take on any risk makes connections extremely challenging to execute. The Commission should consider the opportunity for improvements to the Victorian arrangements that could stem from investigating this rule change.

Appropriate treatment of Dedicated Connection Assets

The proposed treatment of a generator or load's Dedicated Connection Asset for third-party access and transition to the shared network is unnecessary regulation in a space that is non-monopoly and currently creates no barriers to these applications. The NER's presumed 'right to access' does not translate to these assets.

Under the current rules a network extension or augmentation sized to allow additional future connections would have been constructed by an NSP under the SENE rules set out by cl. 5.19. Conversely, connection assets constructed by a generator or load will have been sized by that connecting party to ensure the correct balance of capital expenditure and operating costs for that party. These assets are 'right-sized' by the party investing in them and would almost always require significant investment to allow a new connection or transition to the shared network.

Although there may be situations where a third party may seek access, or an asset may transition to the shared network in time there has been no evidence provided to suggest that this is not possible or occurring inefficiently under current arrangements. It is difficult to see how the proposed rule change is consistent with the Commission's assessment framework as a result.

The initial investment in these assets must not be made under rules that impose inefficient and unnecessary risk. The property rights of incumbent owners must be respected by the rules and the CEC recommends that a very light touch approach to regulation under the rules will be required to ensure transparency and predictability and achieve efficient investment in Dedicated Connection Assets. The NER only needs to specify that nothing in the rules prevents negotiations between the owner of a Dedicated Connection Asset or any other Market Participant to share an established Dedicated Connection Asset or to transition such an asset to form a part of the shared network.

Encouraging contestability

The proposed rule change creates some barriers to contestability in the construction of Identified User Shared Network Assets. In particular, tying a decision on awarding a construction contract to the signing of a connection offer creates unnecessary risk and pressure for the connecting party. The rule change should seek to separate these decisions as far as possible. The timeframes and decision points for awarding the construction contract to the TNSP or any other party could be worked into the connection agreement, keeping pressure from the TNSP in signing the agreement at arm's length.

Information transparency

The CEC supports the proposed information transparency provisions. The Commission has developed experience in the provision of transparency for connections under Chapters 5 and 5A and these provisions are equally applicable to transmission connections.

The remainder of this submission provides the CEC's detailed responses to Commission's questions in relation to connections. Please contact the undersigned for any queries regarding this submission.

Sincerely,

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Current connection arrangements

Consistent use of NER definitions is recommended

Although the CEC agrees that the connection configuration presented in the paper[1] is consistent with that outlined in the Transmission Frameworks Review, the CEC would remind the Commission that the use of these terms is inconsistent with the existing NER definitions. The CEC does not agree that the rules are ambiguous regarding generator connections. In particular, the definition of 'extension' explicitly relates to shared network assets that are owned and operated by an NSP and is not used correctly in relation to Figure 2.1. The CEC provided legal advice to this effect to the Commission during the Transmission Frameworks Review.

While the proposed rule changes are clarifying in regards to the proposed framework, the CEC expects the rule changes to clearly resolve this issue and that the structure of any new rules should align Chapters 5 and 6 to ensure there cannot be different interpretations of the definitions within the rules.

In addition there are numerous cases in the draft ruling where defined terms are used for generalised purposes. Any final rule would need to resolve these potential sources of confusion.

Application to "Scale Efficient Network Extensions"

Identified User Shared Network Assets could ultimately facilitate a shared connection between two parties that would, for all intended purposes, look the same under the rules as a Scale Efficient Network Extension created under NER cl. 5.19. Although not considered explicitly to date in this rule change the CEC requests that the Commission review the SENE rules to ensure that their scope and application are consistent with the revised rules.

For example, is a SENE intended to apply to a shared Dedicated Connection Asset, or only to the transmission network? Why is the local TNSP the focus of a SENE study given there is new scope for competition? How would competitive construction and ownership be incorporated?

Rule change assessment factors

Opportunity costs from delayed implementation

Australia's renewable energy target is now legislated and the CEC anticipates that somewhere between 30 and 50 large scale generators will be seeking to connect to the NEM

[1] Consultation Paper, p. 9.

by 2020. These projects would be looking to access the opportunities created by this rule change and its development and implementation should be expedited wherever possible.

The potential implementation timeframe should be considered as an explicit assessment factor for this rule change.

Form of regulation for negotiated transmission services

Given the proposed increase in scope of negotiated transmission services to apply to non-monopoly Dedicated Connection Assets, it is critical that the form of new regulation of these services does not undermine economically efficient investment in them. The CEC expects this matter to be of a high priority in the assessment of this rule change.

Connections framework

The objective of the connections framework appears to be complete. However, the CEC is of the view that the premise of a single TNSP being the only measure for retaining clear lines of accountability is not well demonstrated. Alternative models of operation of the shared network should be considered in more detail as it is possible that more efficient outcome could be realised.

Identified user shared network assets

The benefits of increasing contestability for the delivery of these assets is already being realised in Victoria where recent connections have made significant savings on the construction of shared network assets. The CEC believes that these outcomes can also be achieved through the proposed arrangements for Identified User Shared Network Assets. However, the proposed framework for the TNSP to assume the responsibility of high-level design and specification and operation and maintenance of these assets creates some additional concerns.

Appropriate asset scale

The CEC supports the intent of the draft rules' cl. 6A.9.1 to ensure that asset scales need only be efficient for the connecting generator or load making the investment. These parties should not be burdened with costs for over-scaling the assets to allow for future connections.

Treatment of commercial arrangements within the negotiating framework

A single negotiating framework[2] is reasonable but it must consider the effective negotiation of contractual terms for the ongoing operation and maintenance of the assets. For example, the

[2] Ibid.

owner should not be required to fund repairs of an asset if the maintenance regime has not been adhered to. Similarly, the owner of the asset should not be subject to any penalties associated with the TNSP's obligations under the NER given that the TNSP's design specifications and assumed operation and control would dictate how the assets would comply.

Separation of the connection agreement signing and awarding construction contracts will be necessary to ensure competitive tension

The procedures for gaining estimates and awarding a construction contract must be given freedoms to occur in parallel to the connection process and should not be linked to the offer to connect. As currently drafted it would be possible for the TNSP to use the expiration date for an offer to connect to force a decision on awarding the contract to a particular party.

In practice the offer to connect should only rely on whether the connecting party is or is not going to use the TNSP to construct and own the assets. The rules should not presume or force a decision on the awarding a contract at the same time. Further, as the details of the connection's requirements are not completely firm until the connection agreement is signed there may be a need to revisit the quotations after it this point in time to ensure competitive tension. In practice the connectoin agreement is a design specification that needs to be used to inform construction quotes.

There is no clear need for the decision on awarding the successful bidder with a construction contract (by the TNSP or any other provider) to be tied to the signing of a connection agreement. Competitive tension of the Identified User Shared Network Assets would be more effective if these aspects were separated out. A later date for the decision on awarding this contract could easily be included in the terms of the connection agreement.

Jurisdictional transmission licensing needs consideration

It is not clear how the owner of these assets, or the assets themselves would be treated under current transmission licencing regimes. The CEC requests that this matter be considered in more detail by the Commission so that potential changes to state legislation or licensing arrangements can be better understood.

Dedicated connection assets

The CEC generally agrees with the proposed approach. Investments in these assets will remain efficient if the party who benefits from them has control over their design, construction, ownership and operation. Clarifying current practice for these assets is an improvement as this should remove the risk of incorrect interpretation of the rules, or the prevention of competitive delivery of these assets.

A critical consideration for this rule change request is that these assets are not 'network' and, given appropriate design, operation and protection, should never have an influence on the

safety, security and reliability of supply to other customers via the shared transmission network.

Definition and application of the 'connection point'

As highlighted by the Commission it would be practical to locate the physical connection point as close as practicable to the intersection between the Dedicated Connection Assets and the User Identified Shared Network Assets[3].

Similarly access standards and power transfer capability for a generator are all negotiated under Chapter 5 at a respective connection point. Marginal Loss Factors are calculated at this point too. A further complication is the relationship between metering and the connection point. Clause 7.3.2(a)(1) notes that the metering point shall be as close as practicable to the connection point. In practice there are existing examples of the metering point being located at a generator with the metered energy and other variables transposed to reflect conditions at the connection point.

This example shows that there may be cases where alternative arrangements can be negotiated with AEMO and a TNSP. Although the rule change request states the intent of the TFR to properly define the connection point in each case[4] the rule change drafting has not provided this clarification. Given that a generator can own and operate a Dedicated Connection Asset an underlying principle to apply to the rule should be that they do not inadvertently reduce the freedoms that are available to connecting parties.

Access to the Identified User Shared Network Assets

Given the revised definition of the Dedicated Connection Asset it will be critical that the owner of this asset can be granted access onto the site of the substation or switching yard that forms the Identified User Shared Network Assets. The owner of the connection asset should not be restricted to access its property held within this site, or made subject to unreasonable monopoly pricing by the local TNSP to do so.

Registration exemptions and providing access to third parties

The CEC is concerned that the proposed approach to granting third-party access has not considered that these assets exist outside of the market's monopoly-controlled and open-access networks. In this situation the third party would always have the alternative of building another Dedicated Connection Asset so it is clearly inappropriate for the creation of new rules that grant access 'rights' to these privately held assets by third parties.

[3] Consultation Paper, p. 34.

[4] Rule Change Request and Proposal, p-p. 4-5.

The CEC's view is that neither the Transmission Frameworks Review nor the Rule Change request have contemplated the implications of imposing new regulation these assets. The current framework already allows third party access where the parties can see a benefit and the lack of demonstration of this occurring is not evidence of the need for intervening rules.

The exemption framework for dedicated connection assets should sit within the generator registration

Separate registrations arrangement for a generator and its dedicated connection asset is unnecessarily duplicative. There does not appear to be case for a new registration category for this purpose when the proposed conditions could be incorporated into the registration requirements for a generator or market customer. This option should be explored as it is likely to be able to deliver the same outcomes more efficiently.

Where a TNSP owns a Dedicated Connection Asset it may remain necessary to retain the proposed exemption arrangements.

Reporting on operation and control of identified user shared assets

The framework for reporting and access to these assets would be best placed through an obligation on the TNSP that assumes operation of them.

Right-sizing design must take precedent

Dedicated Connection Assets are designed for single-purpose use. Conductor selection, tower heights and spans and easement widths are specified and sized to enable a generator to deliver a defined power transfer capability, with acceptable levels of losses, to the shared network and to ensure the generator can comply with the performance standards established by a connection agreement.

Recalling the previous points raised in regards to the location of the connection point and subsequent metering arrangements it is critical that any conditions allowing third party access ensure that the incumbent owners operations are not negatively affected.

In practice significant impact may be incurred on the existing access standards and metering arrangements. Those changes would likely void the incumbent connection agreement and require re-negotiation with a rules-based requirement to share information to negotiate the two performance standards collectively, creating a rules-based obligation to share each business' intellectual property. The risks and costs of doing so need to be considered in detail.

Impact on a project's future stages

The potential for staging a generation development also needs to be considered. A generator may establish an initial stage of a project with plans for expanding with a future second stage (some examples include selecting a larger conductor or building twin-conductor towers while

only stringing a single side for the first stage). In this instance the incremental cost of building a Dedicated Connection Asset to accommodate both stages is likely to result in an initial design capacity that accommodates both stages, but a connection agreement and access standards that only accommodate the power transfer capability of the first stage.

The rules must not provide an assumed right to this 'reserved' capacity by a third party that seeks a connection to the Dedicated Connection Asset before the incumbent project's second stage progresses. Considering that the draft rules (cl. 2.5.1C) impose potential criminal or civil penalties on this negotiation this condition is likely to result in dispute resolution proceedings being raised by the incumbent owner almost immediately. As a result it is difficult to see how a constructive resolution that allows third-party access could be achieved.

Financing of Dedicated Connection Assets

Financing models for investments in new generation projects require certainty. Currently this is achieved by providing the incumbent owner of a connection asset with control over the terms of access. The proposed arrangement leaves the terms of an exemption open to the AER's determination of what is reasonable for the exemption guidelines.

The potential for changes to these terms increases risk and subsequently financing costs for the consruction of Dedicated Connection Assets.

Consideration of established jurisdictional arrangements

The CEC requests that the Commission undertakes an investigation of current jurisdictional arrangements for third-party access as provided for in electricity generation and/or transmission licences. Consistently with the proposed assessment framework that the rules should ensure transparency and predictability this investigation is necessary to ensure that duplication of NER and jurisdictional regimes is avoided.

Potential terms for third-party access

If a third party-access regime is to be created it should ensure transparency and predictability and efficient investment in electricity services. The rules should clearly state the conditions of third party access to be incorporated into the AER's guidelines. In addition to the draft clauses allowing negotiation and dispute resolution (cl. 2.5.1C), the CEC recommends that draft cl. 2.5.1D should incorporate, as a minimum, provisions which:

- Enable the incumbent generator to establish a firm level of power transfer capability that the Dedicated Connection Asset would be required to provide to its current and any proposed future facilities.
- Enable the incumbent generator to place reasonable charges on the use of the shared Dedicated Connection Asset once constructed.

- Require that a third party seeking access:
    - takes on full accountability for re-negotiating the incumbent generator's access standards, or pay the incumbent generator to do so, and
    - makes best endeavours to not harm the incumbent generators access standards, including its performance standards and power transfer capability, and
    - compensates the incumbent owner for any material changes that may result from this re-negotiation, including any impact to future revenue from changes to a connection point location or metering arrangement, and
    - compensates the incumbent generator for any lost revenues incurred during and after construction as a result of the connection and operation of the third party's facilities.

Summary

A framework for third-party access must recognise that a Dedicated Connection Asset is not monopoly-controlled open access *network*. A third party will always have options to construct a separate Dedicated Connection Asset. Any terms included in the NER must remain as light touch as possible to ensure that the parties involved can negotiate a viable solution where one can be found. Regulation of this competitive market has not been demonstrated to be necessary and the CEC is not aware of any evidence that current practice is failing to achieve the desired outcome.

The practical challenges created by the proposed framework are likely to eliminate any significant efficiency gains for potential investments. In particular increases in financing costs for all new participants must be weighed up against the potential for marginal savings for very few participants.

The CEC does not support a framework that provides an assumed right to third party access to dedicated connection assets. The CEC's view is that a simple aim that the NER does not inhibit these negotiations from occurring on a commercial basis between the parties is all that is required.

If created, the rules must clearly state the terms under which a third party can seek access in order to create certainty (transparency and predictability) and ensure efficient investments in electricity assets.

Transition to the shared network

An arrangement which provides for the transition of a Dedicated Connection Asset to the shared network must consider the following issues:

Case-by-case assessment is necessary

As previously noted the transition for a Dedicated Connection Asset to serve a new purpose is a non-trivial task as each of these assets hold unique application-specific attributes. The considerations noted previously would apply in each case. Although a transition solution may appear ideal it is likely that implementing it could create many more challenges than initially expected. As a result a case-by-case approach is necessary.

Non-mandatory transition

Any transition of an asset to a TNSP-owned shared network should be done on a non-mandatory basis that allows the owner to select how their assets are treated. As the incumbent owner has already taken on the risk of the initial investment this party must reserve the right to retain ownership and contract the local TNSP to operate and maintain the assets, or even to select to register as a TNSP and register the assets for regulation under Chapter 6A if that is the most economically sensible solution for their needs.

Flexibility is required to negotiate a transition

Further, the proposed approach to allow any party to apply to a 'regulatory body' or the local TNSP to have an asset transferred is deeply flawed. If it does not own the asset the local TNSP would have no oversight of it and should not be provided with powers to declare an assumed right over a Dedicated Connection Asset. The CEC also contends that the AER is not the appropriate body to decide on whether a Dedicated Connection Asset can transition to the shared network. This should only occur as a result of negotiations between the owner and the third party.

Both of these approaches contradict the objective of transparency and predictability, creating significant risk for the incumbent owner.

Any framework that supports a transition to a shared network must retain the rights of the incumbent owner and ensure flexibility in negotiating outcomes. However, given that the previously outlined significant changes would be required for the Dedicated Connection Asset, the incumbent owner must be provided with certainty under the rules in order to ensure investments remain efficient.

An underlying principle should be that the incumbent owner is not disadvantaged by the transition process and that they reserve the right to earn a reasonable return from the transition. The provisions outlined above for third-party access should also be applied to any transition process.

Requests for transition

Although requests for a transition are more likely to be received from a Distribution or Transmission Network Service Provider, it may be the case that a new load could make the

request. In any case the framework must ensure that the owner of the assets is the recipient of such a request as this information will be critical to the incumbent owner managing their risk.

In the instance of the consideration of the Dedicated Connection Asset in a NSP's planning process the rules must allow for advice to be provided to the owner of the asset upon the identification of a transition as a credible investment option.

In the instance of a load seeking a connection the local TNSP or DNSP should be required to advise the load of the ownership and provide contact details immediately upon the identification that a connection to a Dedicated Connection Asset has been sought.

Summary

The proposed framework for the transition of a Dedicated Connection Asset to the shared network is inconsistent with the stated rule change objectives of increased transparency and predictability. The resulting risk-adjusted costs of financing for investments in these assets across the market are likely to exceed the incremental benefits of transitioning a very low number of these assets to the shared network under the proposed regulated approach.

Rather than the rule change request's proposed approach, the CEC recommends that a framework which respects the established ownership and operation rights of the incumbent owner and simply states that nothing in the rules prevents these negotiations from occurring. Should a transition framework be created it must establish a minimum set of protections for the incumbent owner and allow access to the NER's negotiating and dispute resolution procedures.

Negotiating principles

The CEC supports the proposal for a simplified and rationalised negotiating framework to be incorporated into the NER and sees no specific reason for retaining the current approach to TNSP-specific frameworks. The current approach to revising these documents during a regulatory reset creates an unnecessary inertia to a flexible and adaptive electricity market (as a rule change would not take effect until the following regulatory reset).

Introducing an NER-based framework would enable the market to more readily adapt to changing conditions. Proposed changes that are consistent with market objectives would take effect over a shorter transition period allowing the market to more expeditiously achieve increases in efficiency.

Application of the framework to Dedicated Connection Assets is unwarranted regulation

Applying these same conditions to owners of Dedicated Connection Assets is unnecessary intervention into a competitive non-monopoly market. The framework is designed around an assumed right to access the shared open-access network, while the definitions of the

services specifically permit the AER to control pricing through the Cost Allocation Methodology.

As a non-regulated entity in a non-monopoly scenario the case for regulating an incumbent Dedicated Connection Asset owner in this way is very weak. Such restrictions have not been proven to be necessary.

Dedicated Connection Assets are not open-access network so a far less prescriptive approach is required to minimise the risk of investments in them. Related terms in the NER should be limited to specifying that nothing in the rules prevents negotiations between the owner of a Dedicated Connection Asset or any other Market Participant to share an established Dedicated Connection Asset, or to transition such an asset to form a part of the shared network.

Clarification sought on the intent of the rule change request and the negotiating framework

The Commission has clearly stated the rule change request's intent to apply this new framework to any connection to a *transmission network* under Chapter 5[5]. The CEC's view is that the draft rule reasonably excludes the application of the framework to Dedicated Connection Assets because these assets are explicitly excluded from the definition of 'network'[6].

Additionally, there is no indication in the draft rules that a request for third-party access should be processed under Chapter 5 of the NER. While the interface with the TNSP would be treated as such it is not clear that the interface between the incumbent asset owner and the third party seeking access would be, or why it should be. The only reference in the drafting is to negotiations occurring on a fair and reasonable basis (draft cl. 2.5.1C), and that Part K of the NER applies to dispute resolutions (draft cl. 6A.30).

The CEC's view is that the drafting is much closer to providing the necessary terms to prevent intrusion on the established ownership arrangements for these assets. However, this is contrary to the stated intent of the rule change. The CEC requests that the intent of the rule change request be clarified. For example

- Is Chapter 5 to be applied to every owner of a Dedicated Connection Asset should some other party seek access?
- On what grounds should Dedicated Connection Assets be treated as a 'network' when network assets clearly serve a defined and different purpose (open access for example) under the rules?

[5] Consultation Paper, p. 40.

[6] NER Version 77, p. 1187.

- How would the rules be adapted to manage this new definition of *transmission network*?
- If the negotiating framework is to be applied to Dedicated Connection Assets what justification is there for regulating pricing through this framework?

Scope of the Negotiating Framework

Assuming that the intent of the rule change request is for the principles to apply to Dedicated Connection Assets, the new principles for negotiation are expected to apply to a wider set of applications and market participants, including:

- Any negotiated services not considered in this rule change (TNSP and other party);
- The non-contestable cut-in works required to connect a new generator or load (generator or load and TNSP);
- The connection or load to an established Identified User Shared Asset (generator and TNSP);
- Construction of a new Identified User Shared Asset (generator or load and TNSP);
- Operation and maintenance contracts for an Identified User Shared Asset (asset owner and TNSP);
- Transfer or ownership of an Identified User Shared Asset to the local TNSP, and;
- Connecting a third-party to an existing Dedicated Connection Asset (generator or load and generator).

In addition, the CEC has proposed in this submission that the principles wold also apply to negotiations that occur when a request is made to transition a Dedicated Connection Asset to form part of the shared network (asset owner and DNSP, TNSP or load proponent).

Considerations for negotiating framework

The Commission has recently considered the negotiation of generator connections to DNSP's networks. The Chapter 5 and 5A rule change decisions recognised the importance and necessity of fair and reasonable connection processes, preferring a fairly prescriptive approach to timing and information transparency. These principles are equally critical to negotiations with a TNSP for a connection to a shared network.

Additionally, given the diversity of potential applications for the final negotiating framework it is critical the rules allow the flexibility for negotiations with an asset owner whom has a clear property right over a Dedicated Connection Asset, which has been designed for a single purpose.

The relationship between a local TNSP and its competitors should also be considered. For example scope for a local TNSP to 'manage' timing of a connection agreement to their favour for a construction bid, for the TNSP to tie delivery of cut-in works under defined timeframes to the delivery of the Identified User Shared Network assets or a local TNSP refusing to accept penalties for delay for the delivery of cut-in works unless they are selected for the remaining works must be considered. There is significant opportunity for a TNSP to use its competitive advantage in this, and similar, ways and the negotiating framework will need to manage this.

A balanced approach to information transparency is also needed. For example draft cl. 6A.9.3 allows a TNSP to make additional requests for information, while the counterparty is only permitted one request, creating unwarranted imbalance in the rules.

Increasing transparency

The Commission has gained significant experience regarding information transparency throughout the recent revision of both Chapters 5 and 5A for distribution networks. The principles and detail of the information that was included in the final decision for these rule changes are equally applicable to the transmission connections and should be directly translated through this rule change. They should be considered in addition to the information expected under the draft rules.

Striking balance in the information provided

The rule change must strike a balance between creating the opportunity for contestability to drive down costs by ensuring that the design standards and philosophies and operation and maintenance regimes are not overly prescriptive, while ensuring that the connecting party can make and negotiate economically efficient decisions on their preferred ownership arrangements.

Connection options should not be dictated by the TNSP

Optionality for a connection provided by the TNSP should not supersede the right for a decision for a preferred option to be made by the connecting party as currently granted under cl. 5.3.6(d).

Contracts must provide for free transition of ownership

Contractual arrangements between the owner of the assets and the local TNSP must not place terms on the ownership structure, thereby allowing an owner to freely sell and transfer ownership to another party irrespective of the TNSP's operation and maintenance regime.

Independent approval of design standards and philosophies

Design standards and philosophies and proposed maintenance regimes should be approved by an independent engineer to ensure that the TNSP has created the opportunity for assets to be constructed contestably, while balancing its NER obligations.

Independent engineer

The CEC supports the nomination of an independent engineer to provide advice on technical matters as this would be a helpful improvement in early resolve of any disputes. Some important factors to consider in designing this framework will be the identification of a truly independent engineer. Many qualified Australian businesses are already engaged in contracts or bidding for works associated with transmission networks or generation. As a result it will be critical that the panel is not limited to Australian businesses and permits an overseas business to become listed.

Dispute process

Given the increased number of parties created by the proposed changes the need for an expeditious and binding decision to be made over a dispute is necessary to manage risk. The lack of use of the dispute resolution mechanism is likely to reflect that it is not adequate for this purpose. Ultimately the framework must not inadvertently create an opportunity for a TNSP to use a challenging dispute resolution process to its advantage.