



MAJOR ELECTRICITY USERS' GROUP

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Ministry of Economic Development
WELLINGTON

By email to electricity@med.govt.nz

Dear Janet

Submission on draft Electricity Governance (Connection of Distributed Generation) Regulations 2007

1. This is a submission by the Major Electricity Users' Group (MEUG) on the draft Electricity Governance (Connection of Distributed Generation) Regulations 2007 published 13 April 2007 by the Ministry of Economic Development (MED). On the same day the MED published a "*Discussion Paper: Summary of changes to Draft Regulations for Connection of Distributed Generation,*" and "*Summary of Submissions: Draft Regulations for Connection of Distributed Generation.*"
2. Overall MEUG is not satisfied there is any need for these regulations. Neither has any comprehensive cost-benefit-analysis been undertaken or considered by government to support introducing these regulations that MEUG is aware of. Nevertheless the government has decided regulations are needed. The comments in this submission are therefore designed to minimise any harm the regulations might cause parties in reaching commercial arrangements between themselves subject to their behaviour complying with the Commerce Act and the Electricity Industry Reform Act.
3. MEUG acknowledge that the draft regulations are an improvement on the previous draft published 12 September 2006. In particular removing the need for generators to have liability insurance. The latter was suggested by NZIER in their report dated 9th October 2006 to MEUG and tabled with MED on 10th October 2006. There are also some aspects we raised in earlier submissions that have been clarified as more detailed drafting has become available (eg concerns with the potential liability of relatively small generators) and the explanatory notes provide by MED in the Summary of Submissions (eg using Commerce Act information disclosure requirements would require a change to the Commerce Act).
4. However there remain several key points of difference suggested by MEUG and NZIER. In particular:

- a) Should the parties use the regulated terms, then unresolved disputes on matters of pricing can be referred to the Electricity Commission and Rulings Panel. MEUG believe it is extraordinary that those agencies potentially may be asked to arbitrate on detailed pricing matters instead of the Commerce Commission. The Commerce Commission has the expertise and legislative authority to consider matters of pricing in relation to competition policy and abuse of market. The Rulings Panel and Electricity do not; at present. It would be a perverse outcome if through these regulations the Rulings Panel and Electricity Commission were to become alternative regulatory bodies to arbitrate on pricing in respect of competition and market power cases. Therefore MEUG strongly recommend that disputes regarding matters of pricing be excluded from the process parties, under the regulated option, can seen dispute resolution. Matters of pricing should remain a matter for the Commerce Act and Commerce Commission.
 - b) The draft regulations require disclosure of certain information that that is not timely and not comprehensive. MEUG make suggestions of improve these information disclosure requirements that will have little incremental cost to implement but likely to have significant value to the public and policy makers.
 - c) A 5 year sunset clause remains an essential requirement for MEUG.
 - d) The step wise caps on liability benefit some and disadvantage others. A unit based cap rate is suggested by MEUG.
5. Comments on these key differences along with comments on drafting details are attached in the appendix.

Yours sincerely



Ralph Matthes
Executive Director

Appendix: MEUG comments on draft regulations

Regulation	Comment	Suggested change
Regulation 6, clause (1)	This clause requires distributors to "promote" connection. MEUG do not believe that distributors are required to promote DG; rather the purpose of the regulations is to make sure distributors act even-handed for all requests for DG connection. The purpose statement in draft regulation 3 uses the phrase "enable connection" and MEUG suggest the same should apply to regulation 6, clause (1)	Delete "promote" and replace with "enable"
Regulation 11(2)	<p>MEUG strongly object to matters regarding pricing disputes being settled through the Electricity Governance Regulations process. If the draft regulations proceed as drafted, then potentially the Rulings Panel will be making decisions on such matters as the Weighted Average Cost of Capital (WACC). It would be bizarre if the Rulings Panel were to establish precedents on WACC that were inconsistent with the generic WACC decisions of the Commerce Commission in their role as regulator of several sectors.</p> <p>MEUG does not consider that the Electricity Commission or the Rulings Panel should become experts in competition pricing policy when there is already a competent authority, namely the Commerce Commission, which has the authority to consider complaints on pricing due to anti-competitive behaviour or exercise of market power.</p> <p>This point has been made by MEUG and NZIER in previous submissions.</p>	<p>Add new sub-regulation, 11(2)(d),</p> <p>"Regarding prices to be agreed pursuant to Schedule 4. Pricing disputes are subject to the Commerce Act."</p>
Proposed new Regulation 18	MEUG continue to support the suggestion by NZIER of a sunset clause in 5 years. By that time several connection agreements using regulated and non-regulated terms will be available as precedents for ongoing contracts. The role of the regulations to seed the market with general terms and conditions will have been achieved and the regulations can therefore be removed.	<p>Add new regulation 18:</p> <p>"Regulations to end in 5 years time These regulations will end 5 years after they come into effect."</p>
Schedule 1, clause 17(2)	This clause allows a distributor to give priority to a final application received more than 10 business days earlier than a second application for a similar part of the distribution network. Exactly how that prioritisation will be achieved is at the discretion of the distributor; however MEUG would be concerned if distributors thought that they need not meet the timing requirements of clause 19 in respect of any final applications by other parties following an initial final application.	Add a new sentence, "For the benefit of doubt, this clause does not remove the obligation on the distributor to meet the timing requirements of clause 19 on further Final applications received for a similar part of the distribution network following an initial "Final" application."

Schedule 1, clause 26	<p>The timeliness of reporting is important to gauge if the regulations are effective and being complied with. Rather than reporting annually, MEUG recommend distributors report quarterly. Rather than allow a 3 month period between the end of the reporting period, this information should be available within 20 business days. This is a reasonable period because reporting and financial systems should easily be capable of achieving this. It is absurd that the parties are only given 30 business days to negotiate a contract before the default regulatory option applies, but the distributor is given 3 months to table a basic statistical report to the EC.</p> <p>MEUG do not believe there would be very little additional cost to distributors from a more frequent and earlier reporting requirement and this would be more than offset the value to the public as to how effective the regulations were and rate of new DG being built.</p>	In opening sentence change “on or before 1 April each year stating, in relation to the preceding calendar year,” to “on or before the 20 th business day following the end of each calendar quarter (that is ending 31 March, 30 June, 30 September and 31 December),”
Schedule 1, clause 26 (f)	The effectiveness of the regulations is not just measured by the number of DG applications processed, but also the quantum of DG connections. For example one distributor may process 100 applications that in aggregate have a capacity of 100 kW but be in dispute over 1 application with a capacity of 10 MW. Another distributor may have only processed 10 applications but collectively they may have a capacity of 100 MW. Having information on the capacity of DG connections is probably of more value than the number of connections. Therefore the regulations should also require distributors to advise the capacity of new DG connections.	Add a new sub-clause, 26(f)(iii) Rated capacity of generation connected
Schedule 1, proposed new clause 26 (g)	Clause 26 (f) of schedule 1 requires information to be tabled with the EC on DG connections. MEUG suggest information on DG disconnections is also required to enable the public and policy makers to gauge the effectiveness of the regulations and overall policy with respect to DG.	Add new clause 26 (g) that lists exactly the same information as required for clause 26 (f), including the new sub-clause 26(f)(iii) as proposed by MEUG above, except it relates to disconnections.
Schedule 2, clause 4	Meter requirements and metering information is governed already by the Electricity Governance Rules. This whole section is therefore redundant. For clarity these regulations should simply cross-reference the Electricity Governance Rules. To do otherwise might imply meter and metering information requirements that are different from the Electricity Governance Rules; that doesn't seem to be the case nor would it be advisable to allow any differences.	Remove all text in clause 4 and replace with new text: “The requirements on the generator and distributor in respect of meters and metering installation are set out in the Electricity Governance Rules.

Schedule 2, clause 18(d)	The rules are a regulatory obligation. Therefore clause 18(d)(i) is sufficient and clause 18(d)(iv) is redundant.	Delete clause 18(d)(iv)
Schedule 2, clause 23	The step changes in liability limits are advantageous for generators just below the step but disadvantage generators just over the step. This is distortionary but can be fixed using variable unit caps. MEUG suggest the liability limits be expressed on a \$/kW contracted maximum connection rate.	Remove flat step liability caps and replace with unit connection rates.
Schedule 2, clause 26	<p>The regulated force majeure provisions should be the same as those in the Transmission Benchmark Agreement currently being finalised by the Electricity Commission. If the force majeure provisions are different, then this could become a material issue for large DG considering whether to connect to the transmission grid or local distribution network.</p> <p>It is also unclear how MED can draft these provisions and claim they are consistent with the Transmission Benchmark Agreement when the EC has yet to finalise and make a recommendation to the Minister. There is a risk promulgating these regulations before the final form of the Benchmark Agreement force majeure provisions are in place may lead to an inconsistency.</p>	<p>Remove all text in clause 26 and replace with new text:</p> <p>"The regulated force majeure provisions are identical to the force majeure provisions in the Transmission Benchmark Agreement attached as a schedule to the rules."</p>
Schedule 4, clause 2(h)	The draft regulations allocate incremental network investment costs to multiple generators that benefit from that investment pro rata to "expected peak of each generator's injected generation." MEUG suggest the efficient allocation methodology is likely to be different for each case depending on such factors as whether the peak generation outputs are coincident, the maximum combined peak output is coincident with the peak load on the network as a whole and in some cases the incentives arising from the transmission charges avoided using the Transmission Pricing Methodology that the EC have yet to finalise. MEUG suggest this clause should indicate these aspects might be relevant as part of the pricing principles.	Delete the phrase "are commensurate with the relative expected peak of each generator's injected generation" and replace with "take into account the relative expected peak of each generator's injected generation, the relative share of the expected maximum combined peak output, whether the combined peak generation is coincident with the peak load on the network and the Transmission Pricing Methodology attached as a schedule to the rules as the case may be."