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By email: [submissions@aemc.gov.au](mailto:submissions@aemc.gov.au)

Australian Energy Market Commission  
PO Box H166  
AUSTRALIA SQUARE NSW 1215

Dear Dr Tamblyn

**Draft Rule Determination – *Draft National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006***

The Consumer Law Centre Victoria (CLCV) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) review of economic regulation of electricity networks. Due to the limited resources available to CLCV for participation in this consultation and the complexity it arises, the CLCV has provided limited comment on the *Draft National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006* and associated Draft Rule Determination (the **Draft Rule and Determination**). Our comments relate to:

- the “reasonable estimates” test; and
- information disclosure by the Australian Energy Regulator.

**About CLCV**

The CLCV is one of Australia's leading consumer and public interest organisations. A not-for-profit, independent organisation, we undertake research, policy development, advocacy and education. The CLCV's work is focussed on advancing the interests of consumers, particularly low-income and vulnerable consumers. The CLCV is currently working on a range of issues, including utilities, competition and consumer protection policies, financial services, telecommunications, exploitative credit and access to justice. The CLCV also operates a large consumer legal practice assisting over one thousand low-income consumers each year with free legal advice and representation.

**National Electricity Market objective**

We note that the AEMC is undertaking this review of the economic regulation of transmission services guided by the National Electricity Market (NEM) objective. We welcome this approach, noting that the NEM objective is “for the long term interest of consumers”. We are of the view that the NEM objective requires regulation that delivers consumer benefit, so as to secure a quality of supply commensurate with price and consumer preferences.

We raise the comments below, considering in particular how such rules would apply to the regulation of distribution services. While we are aware that the current rule relates to transmission services, we note that there is a policy view (confirmed by the Expert Panel) that the regulatory regime for network access pricing should be, where possible, common across gas and electricity transmission and distribution.

## **Reasonable estimates test**

We welcome the Commission's efforts in seeking to achieve an appropriate balance between certainty for stakeholders and discretion for the regulator by codifying certain aspects of the regulator's decision-making process. However, we are concerned that the reasonable estimate decision rule for capital and operating expenditure forecasts may limit the regulator's exercise of discretion, potentially thereby putting the interests of transmission businesses ahead of consumers.

The Draft Rule provides that the AER must accept a transmission businesses' forecast operating and capital expenditure unless the AER determines it to be outside a "reasonable estimate". We have a number of concerns regarding this approach:

- first, given the lack of parameters around "reasonable", we believe that the test will ultimately be litigated in the courts to determine what amounts to a "reasonable estimate". While litigation relating to regulatory decisions is not of itself a bad thing, we would be concerned with a decision that allows recovery of an amount that is more than is efficient on the basis that it is still a reasonable estimate. We are also concerned regarding the uncertainty that may prevail until the question is resolved;
- secondly, the uncertainty referred to above could lead to conservative regulatory decision-making around "reasonable estimate" to avoid the prospect of a drawn-out appeals process; and
- thirdly, the approach inherently reduces the discretion of the regulator – requiring acceptance of figures within a range rather than forming a view as to the correct value.

Each of these factors increases the incentives of regulated entities to game the regulatory decision-making process.

We note that the Commission has codified certain criteria that the AER must consider in determining whether an amount is a "reasonable estimate". We welcome the proposed criteria, including the requirement to take into account submissions from interested parties. However, we are of the view that these criteria should be taken into account by the AER in reaching a view and making a determination as to what is "capex" and "opex" values rather than in reaching a view as to what is a "reasonable estimate".

## **Information disclosure**

We also have concerns with the Draft Rule's protection of "confidential" information of the transmission businesses. The Draft Rule provides that the AER cannot publish such information without the businesses' consent. Even where consent is given, the information cannot be published in a disaggregated way that identifies particular businesses.

Transmission businesses are monopoly businesses, and, as such, should not have the same need for confidentiality as businesses that operate in a competitive market. In our view, the AER should be able to publish its annual report containing information on each transmission business's network characteristics, including financial indicators, operating ratios, service standards performance, and comparisons between actual expenditure and revenue cap components. Such reporting is fundamental to effective "competition by comparison", the accountability arrangements of transmission businesses and the regulator, and can make a valuable contribution to public knowledge of the key issues in the network.

We hope the comments in this submission are of use to the Commission. Should you have any queries, please contact Gerard Brody on 03 9629 6300 or Catriona Lowe on 03 9629 6901.

Yours sincerely

Catriona Lowe  
CEO