

3 November 2006

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H166
Australia Square NSW 1215


Dear Dr Tamblyn



570 George Street
Sydney NSW 2000
Telephone (02) 9269 2112
+61 2 9269 2112
Facsimile (02) 9264 2982

Address all mail to
GPO Box 4009
Sydney NSW 2001
Australia

George Maltabarow
Managing Director

Submission regarding draft Rule on the Regulatory Test Principles

I would like to thank you for the opportunity to comment on the draft Rule in relation to the principles of the Regulatory Test. The draft Rule is a small step in the right direction but there are further steps that should be taken. Our comments, to this effect, are summarised below and fully explained in the attached submission.

Lifting the objectives and principles of the Regulatory Test into the Rules is an improvement to the governance of this area of policy. However the Regulatory Test, given it places requirements on NSPs and thus making it a rule, should be lifted in its entirety to the Rules. This would result in the AEMC making the Regulatory Test through the Rule change process and thereby rectify the poor governance that aspect of requiring the AER to both draft and enforce the Regulatory Test.

With the many current reviews it is important to consider their cascading implications. For example, the chapter 6 draft Rule adopted the ex ante capex incentive. Under this incentive, TNSPs are required to increase the level of rigour with which they make their regulatory submissions to the AER, as compared to the level required under an ex post review. The associated rigorous regulatory scrutiny of forecast capital expenditure reduces the need to rely on the Regulatory Test to ensure that investments are efficient. For this reason, EnergyAustralia proposes lifting the threshold of the test from \$10m to \$35m.

The draft Rule has focused on transmission and not distribution. EnergyAustralia considers that any changes to the Regulatory Test and its principles should only be applied to distribution after a distribution focused review.

Please do not hesitate to contact me on (02) 9269 2111, or Mr Harry Colebourn on (02) 9269 4171, if you have any enquiries regarding this matter.

Yours sincerely

GEORGE MALTABAROW
Managing Director

