

Consumer Action Law Centre

The Consumer Action Law Centre is an independent, not-for-profit, campaign focussed, casework and policy organisation. It is formed by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service, and builds on the significant strengths of these two centres.

20 October 2006

By facsimile: submission@aemc.gov.au

Australian Energy Market Commission
PO Box H166
AUSTRALIA SQUARE NSW 1215

Dear Dr Tamblyn

Economic regulation of transmission services

I refer to the Australian Energy Market Commission's (the **Commission**) request for further comment in relation to the Draft *National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006* and the associated Draft Rule Determination (the **Draft Rule** and **Draft Determination**). We welcome the opportunity to make further comment and thank the Commission for consulting broadly in relation to this important matter.

The Commission has sought comment on whether the Draft Rule should provide that:

- a Transmission Network Service Provider's (**TNSP**) proposal must be accepted if the Australian Energy Regulator (**AER**) is satisfied that the proposal for forecast expenditure satisfies the criteria in the Rules (that is, is a reasonable estimate); or
- the AER should have a residual discretion to substitute its own reasonable estimate of forecast expenditure.

The following comments are in addition to comments in the Consumer Law Centre Victoria's initial submission on the Draft Rule dated 11 September 2006.

About Consumer Action

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Reasonable estimates test

As stated in our initial submission, we are concerned that the reasonable estimates decision rule for capital and operating expenditure forecasts may limit the regulator's exercise of discretion, thereby putting the interests of TNSPs ahead of consumers.

We agree with the legal advice provided to the Department of Industry, Tourism and Resources by the Australian Government Solicitor (**AGS**) that the Draft Rule appears to adopt a limited 'propose-respond' model of regulation. This means that the Draft Rule requires that the AER decide that the TNSPs' proposal must be unreasonable before it can substitute a new decision. In our view, such a rule overly constrains the AER and will encourage TNSPs to propose estimates that are at the higher end of a reasonable range. Furthermore, it will limit the ability of the regulator to form a view as to the correct value and significantly limit the likelihood of a successful review of a regulator's decision.

In our view, the regulator should have discretion to substitute its own reasonable estimate of forecast expenditure. The regulator should, however, take into account the factors listed in sections 6A.6.6(b)(2) and 6A.6.7(b)(3) of the Draft Rule. These factors will be fundamental in the AER's decision-making, guiding it in determining whether to accept the TNSPs proposals. The AER is also to be guided by the National Electricity Law (**NEL**) objective, and the pricing principles in section 16(2) of the NEL. In our view, these safeguards will sufficiently limit the AER's discretion so that it will not substitute TNSPs proposals inappropriately.

We note the AGS's comments that the pricing principles place considerable weight on protecting the interests of service providers and that the AGS would therefore favour the view that a broad range of proposals from a service provider will be within the bounds of a reasonable estimate. This conclusion concerns us, and in our view, a requirement on the AER to accept a proposal that is "reasonable" will further favour service providers over consumers. To counter this, the regulator must be given discretion to propose its reasonable estimate of forecast expenditure.

We also note that the AGS advice states that it is to inform the Commonwealth's position regarding the drafting of electricity distribution rules. Given this, and the fact that distribution and transmission costs make up almost 50 per cent of consumers' bills, we believe that any regulatory framework that allows over-recovery by network providers, without the right of the regulator to over-rule proposals, is fundamentally flawed.

Should you have any questions in relation to this submission, please contact Gerard Brody on 03 9629 6300.

Yours sincerely

Catriona Lowe
CEO