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Dear Ms Rozyn

**SUBMISSION ON THE DISTRIBUTION NETWORK PLANNING AND EXPANSION FRAMEWORK CONSULTATION PAPER**

Ergon Energy Corporation Limited (Ergon Energy) welcomes the opportunity to provide a submission to the Australian Energy Market Commission (AEMC) on its *Distribution Network Planning and Expansion Framework Rule Change Consultation Paper*.

As indicated in our earlier submissions to the *Review of National Framework for Electricity Distribution Network Planning and Expansion*, Ergon Energy is generally supportive of the development of a national framework in the key areas of network planning and development. In particular, we strongly support the development of a regulatory investment test for distribution which is tailored to distribution network investment considerations as opposed to a single test for distribution and transmission.

Ergon Energy notes that the AEMC has not organised a public workshop to discuss the issues raised in the Consultation Paper. Ergon Energy believes holding a workshop after the publication of the draft Rule determination will provide a valuable opportunity for stakeholders to present their views on the proposed rule change request.

Should you require additional information or wish to discuss any aspect of this submission, please do not hesitate to contact me on (07) 4121 9545.

Yours sincerely

A handwritten signature in blue ink that reads 'C. A. Price'.

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Encl: Ergon Energy's submission.

# **Ergon Energy Corporation Limited**

**Response to the Distribution Network Planning and  
Expansion Framework Rule Change**

**Consultation Paper**

**Australian Energy Market Commission**

**24 November 2011**





# **Response to the Distribution Network Planning and Expansion Framework Rule Change Consultation Paper Australian Energy Market Commission 24 November 2011**

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## 1. INTRODUCTION

Ergon Energy Corporation Limited (Ergon Energy), in its capacity as a Distribution Network Service Provider (DNSP) in Queensland, welcomes the opportunity to provide comments to the Australian Energy Market Commission (AEMC) on its *Distribution Network Planning and Expansion Framework Rule Change Consultation Paper* (Consultation Paper).

Ergon Energy supports the development of a national framework in the key areas of network planning and development, including the development of a Regulatory Investment Test for Distribution (RIT-D). This submission outlines Ergon Energy's response to the Consultation Paper.

Ergon Energy has structured this submission into the following sections:

- Section 2 details Ergon Energy's key issues and preferred positions in response to the AEMC's Consultation Paper and the proposed amendments to the National Electricity Rules (the Rules);
- Section 3 outlines Ergon Energy's detailed responses, in tabular form, to the consultation questions posed by the AEMC; and
- Section 4 provides specific comments, in tabular form, on the proposed amendments to the Rules.

Ergon Energy is available to discuss this submission or provide further detail regarding the issues raised, should the AEMC require.





## 2. KEY ISSUES AND PREFERRED POSITIONS

This section discusses Ergon Energy's key issues and preferred positions in response to the AEMC's Consultation Paper and the proposed amendments to the Rules. Ergon Energy believes these key issues require further development and consideration by the AEMC.

### 2.1 Transitional arrangements

Ergon Energy believes that consideration should be given to DNSPs' existing jurisdictional obligations, such as the Demand Management Plan and the Network Management Plan in Queensland, which will need to transition to the proposed Demand Side Engagement Strategy and Distribution Annual Planning Report (DAPR) respectively. Any consolidation, harmonisation or rolling back of jurisdictional and national requirements to produce a single set of obligations should ensure that only one set of requirements apply at any one time to avoid duplication in reporting. DNSPs should not be unfairly subject to the burden of complying with both.

Further, Ergon Energy considers that a transitional period of not less than 12 months from the finalisation of the Rule change and the AER's RIT-D Application Guidelines (Guidelines) is required. This will provide DNSPs with sufficient time to understand the new regulatory requirements and to adapt existing processes, procedures, documentation and information systems. Ergon Energy believes that the first DAPR should be published in line with the jurisdictional start date.

### 2.2 Responsibility for carrying out the RIT-T

Ergon Energy is concerned that the draft Rules allow for parties to agree on a lead party to be responsible for carrying out the Regulatory Investment Test for Transmission (RIT-T) for joint investments. Ergon Energy considers that the Transmission Network Service Provider (TNSP) should always be the lead party in these circumstances and the Rules should reflect this. This is because DNSPs are not equipped nor have sufficient resources to undertake the RIT-T in addition to the proposed RIT-D. Ergon Energy suggests amending clause 5.6.2AA(h)(4) and removing all "or *Distribution Network Service Provider* (as the case may be)" references throughout the RIT-T requirements.

### 2.3 'Most expensive option' criteria for the RIT-D

Ergon Energy strongly disagrees with the criteria that the RIT-D be carried out where the most expensive option is more than \$5 million as this will potentially lead to almost every distribution investment being subject to the RIT-D. Ergon Energy considers that it is important to tailor the RIT-D specifically to distribution network investment considerations.

Ergon Energy believes that the proposed approach will result in an increased regulatory burden on DNSPs as:

- The term 'technically and economically feasible' can be broadly interpreted and will capture a range of possible options, thus increasing the likelihood of the most expensive option being above \$5 million; and
- The use of RIT-T terminology such as 'technically and economically feasible' essentially prescribes a requirement to undertake a preliminary 'mini least cost regulatory investment test' prior to the Specification Threshold Test stage. This means that the DNSPs will be required to form an expectation as to the costs and benefits of the technically feasible options during the Net Present Value assessment, similar to what is currently required by the AER's RIT-T Application Guidelines.





Ergon Energy suggests that the focus should either be on the least expensive or preferred option. For example, clause 5.6.5CB(a) could be amended to:

*“A Distribution Network Service Provider must apply the regulatory investment test for distribution to a proposed distribution investment except in circumstances where:*

*...*

*(2) the estimated capital cost of the **least expensive technically feasible option** that addresses the *identified need* is less than \$5 million (as varied in accordance with a cost threshold determination)”.*

## 2.4 Exemptions from the RIT-D

In addition to the exemptions detailed under clause 5.6.5CB(a), Ergon Energy believes that the RIT-D should not apply to investments undertaken:

- As a result of legislative compliance obligations (e.g. duty of care);
- Where an investment is primarily an aged asset replacement but which inadvertently results in an augmentation component due to the inability to acquire the same size aged asset because of changes in design standards or infrastructure availability;
- In the case of gifted or contributed assets an exemption should apply to:
  - The gifted assets regardless of whether they are funded by a third party and gifted to the DNSP or the third party pays the DNSP to undertake the work; and
  - Any work on the shared network in order to connect the gifted assets; and
- Where the requirement stems from a need to connect a new customer or upgrade/change their supply (at the customer’s request). That is, an exemption should apply to:
  - New dedicated connection assets for a customer(s); or
  - Any new shared assets or augmentation on the shared network in order to connect a new customer.

## 2.5 Demand Side Engagement Strategy

Ergon Energy proactively engages with non-network providers and other interested parties in pursuit of the most effective and cost efficient non-network alternatives, and is supportive of the concept of a Demand Side Engagement Strategy.

However, we have concerns regarding the proposed requirement to publish a database of non-network proposals and/or case studies that demonstrate economic assessments undertaken by the DNSP in its consideration of non-network proposals. While it is proposed that DNSPs will have discretion in selecting items to be published to protect the confidentiality of commercially sensitive information, a database may discourage non-network providers from disclosing their proposals for fear of commercially sensitive information being inadvertently disclosed. Further, the removal of commercially sensitive information compromises the value of the information provided and is unlikely to provide meaningful guidance to decision-makers and non-network providers.

Ergon Energy is also concerned that the maintenance of a database will impose unnecessary establishment and compliance costs on Ergon Energy for little demonstrable benefit. Ergon Energy notes that the demonstration of economic assessments undertaken by DNSPs in their consideration of non-network proposals is already proposed to occur in the publication of the project specification report.





Ergon Energy recommends that similar to the option proposed for the DAPR<sup>1</sup>, DNSPs should be able to apply for an exemption or variation to particular Demand Side Engagement Strategy requirements where, due to operational or resource reasons, the costs of complying would manifestly exceed any benefit that may reasonably be obtained from compliance.

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<sup>1</sup> Clause 5.6.2AA(v)





### 3. TABLE OF DETAILED COMMENTS ON THE CONSULTATION PAPER

| Question(s)  | Ergon Energy Response   |
|--|---|
| <i>Question 1 Annual Planning Process</i>  |   |
| 1.1 What are the implications of allowing each jurisdiction to determine the start date for the annual planning period?  | <p>Ergon Energy supports each jurisdiction being able to determine the start date for their annual planning periods to suit their particular peak periods and does not believe there are any negative implications in allowing this. Queensland, Victoria and South Australia endure summer peaking periods and it would be nonsensical to adopt a calendar year planning period which would split the peaking period.</p> <p>Further, Ergon Energy's expenditure, Statement of Corporate Intent and regulatory control period are all based on financial year periods and we question the reasoning behind a calendar year planning period.</p>        |
| 1.2 Is it necessary to include a default start date for the annual planning period in the Rules?   | <p>Ergon Energy does not believe it is necessary to include a default start date for the annual planning period in the Rules. The start date should be subject to jurisdictional transitional arrangements to ensure DNSPs are not unfairly subject to the burden of complying with both existing jurisdictional (albeit diminishing) and new national reporting requirements. New compliance requirements should only commence once existing requirements cease entirely.</p> <p>Ergon Energy notes that the Department of Employment, Economic Development and Innovation (DEEDI) intends to consult with Queensland distributors on this matter.</p> |
| <i>Question 2 Demand Side Engagement Strategy</i>  |   |
| 2.1 To what extent would potential investors, non-network providers and any other interested parties find the information provided by the proposed Demand Side Engagement Strategy (specifically, the Demand Side Engagement document, the database of non-network proposals/case studies and the Demand Side Engagement register) useful? | Please refer to our comments in Section 2.5 in relation to confidentiality issues.  |
| 2.2 To what extent would DNSPs incur additional costs in developing and maintaining the various components of the proposed Demand Side Engagement Strategy?  | <p>Please refer to our comments in Section 2.5 in relation to the costs of establishing and maintaining the database.</p> <p>Additionally, DNSPs are likely to have existing jurisdictional compliance obligations which are replicated in the proposed Rules. It is imperative that these cease prior to the new</p>   |



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|  | Rules commencing. An example is the requirement for Queensland DNSPs to produce a Demand Management Plan which must include their demand management strategy <sup>2</sup> .  |
| <i>Question 3 Distribution Annual Planning Report</i>  |  |
| 3.1 What are the implications (positive and negative) of providing DNSPs with the opportunity to apply for exemptions or variations to the annual reporting requirements?  | <p>Ergon Energy is supportive of allowing DNSPs to apply for exemptions or variations to the annual planning requirements. Changes required in order to comply with the proposed DAPR requirements may require significant modifications to DNSPs' IT systems at a significant cost. Providing DNSPs with the opportunity to apply for exemptions or variations will allow the Australian Energy Regulator (AER) to consider whether the benefit exceeds the compliance cost.</p> <p>At the very least, exemptions should apply when requested during transitional periods to allow sufficient time for DNSPs to undertake required organisational, process and system changes.</p> <p>Further, Ergon Energy considers that any minimum set of core reporting requirements should extend only to common information currently reported by DNSPs in their annual planning reports (e.g. the Network Management Plan in Queensland).</p> |
| 3.2 Do you consider the proposed process for applying for and granting an exemption or variation to the annual reporting requirements is appropriate?  | Ergon Energy is supportive of the proposed process. However, we suggest that the AER should be required to give reasons for its determination.   |
| 3.3 How might a DNSP demonstrate, and the AER determine, whether the costs of preparing certain reporting data would "manifestly exceed any benefit that may reasonably be obtained from reporting the relevant data in a national regime"? Is there a need to define a set of criteria to assist both parties in this assessment? | Ergon Energy sees benefit in the application of a set of clear-cut, well defined criteria in order to avoid subjectiveness in the assessment process.  |
| 3.4 Are there any alternative solutions which may better balance the benefits of maintaining consistency across the NEM with the costs of preparing and reporting the data under a national framework?   | Nil comment.   |
| 3.5 Do DNSPs face sufficient business and regulatory drivers to ensure that they carry out appropriate   | DNSPs currently have sufficient business and regulatory drivers to ensure that they carry out appropriate planning and produce accurate forecasts in their DAPRs (i.e. Chapter 6 of  |

<sup>2</sup> Section 127C of the *Electricity Regulation 2006*



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|   | planning and produce accurate forecasts in their DAPRs?   | the Rules). This includes regulatory reviews and work undertaken for regulatory and pricing proposals.  |
| 3.6   | Is there a need to consider additional measures to ensure DNSPs deliver robust, high quality DAPRs? If so, what additional measures could be put in place?  | Ergon Energy does not support additional measures being imposed on DNSPs as there are already sufficient drivers for DNSPs to produce robust and high quality planning reports.   |
| <i>Question 4 Joint planning requirements</i>                 |   |   |
| 4.1   | Do you consider the proposed Rule is appropriate and sufficient in clarifying the arrangements for joint planning between DNSPs and TNSPs?  | <p>Ergon Energy currently cooperates with TNSPs and other DNSPs in joint planning.</p> <p>Joint projects are evaluated on the basis of seeking the least cost solution with issues concerning ownership being a secondary consideration.</p> <p>As discussed in Section 2.2, the draft Rules should be amended to ensure that TNSPs are always the lead party where joint investments require a RIT-T to be carried out. This is because DNSPs are not equipped nor have sufficient resources to undertake the RIT-T in addition to the proposed RIT-D.</p> |
| 4.2   | In what circumstances would DNSPs be required to undertake joint planning with other DNSPs?   | Ergon Energy believes that DNSPs should be required to undertake joint planning with other DNSPs only in circumstances where the planning involves assets of both DNSPs.  |
| 4.3   | Do you consider the proposed Rule is appropriate and sufficient in clarifying the arrangements for joint planning between DNSPs?  | Nil comment.  |
| <i>Question 5 Regulatory Investment Test for Distribution</i> |   |   |
| 5.1   | Do you consider the proposed RIT-D design parameters are likely to work together to provide an effective decision making framework for DNSPs, consistent with the NEO?  | Subject to our responses to this consultation, Ergon Energy believes the RIT-D design parameters are an improvement on current arrangements and are consistent with the National Electricity Objective (NEO).   |
| 5.2   | Do you consider it is necessary to provide the AER with additional powers to (1) review a DNSPs policies and procedures with regard to the consideration of non-network alternatives and (2) audit projects which have been identified by DNSPs as not meeting the threshold for the RIT-D? | Ergon Energy does not believe it is necessary to provide the AER with additional review and audit powers as these activities would be captured by the AER's existing functions and powers set out in legislation in relation to monitoring, investigating and enforcing compliance (e.g. penalties for non-compliance and audit powers).  |
| 5.3   | Should the AER be required to publish a separate annual report detailing the results of any audit   | Ergon Energy does not believe sufficient justification exists for a separate annual audit report to be published. Results of any audits can be included in the AER's existing   |

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| <p>undertaken in the preceding 12 months?</p>  | <p>Quarterly Compliance Reports.</p> <p>Ergon Energy also believes that any audit undertaken should be a consultative process with the DNSP.</p>   |
| <p><i>Question 6 Dispute resolution process</i></p>  |  |
| <p>6.1 Do you consider the proposed scope of parties who could raise a dispute to be appropriate?</p>  | <p>Ergon Energy does not object to the proposed scope of parties provided adequate controls are in place to minimise vexatious or frivolous disputes. As mentioned in our earlier submission<sup>3</sup>, Ergon Energy supports the dispute resolution process focusing on compliance with the Rules and not on the outcomes of the RIT-D.</p>   |
| <p>6.2 What are the implications (positive and negative) of allowing the AER to grant exemptions from the proposed dispute resolution process?</p>                                   | <p>Ergon Energy supports allowing the AER to grant exemptions from the proposed dispute resolution process as this minimises vexatious or frivolous disputes that unnecessarily delay required investments.</p> <p>To deter these types of disputes, the AEMC may wish to consider imposing a nominal fee payable by parties lodging a dispute which would be refundable if the AER later determines that the dispute had substance.</p>   |
| <p>6.3 Is there a need to develop detail or specification around the process for applying to the AER for, and the AER approving, exemptions to the dispute resolution process?</p>   | <p>Ergon Energy supports the development of standard form templates and criteria to streamline the application and approval process for exemptions to the dispute resolution process.</p>  |
| <p><i>Question 7 Implementation and transition</i></p>   |  |
| <p>7.1 Are there any issues in respect of the rolling back of jurisdictional requirements that may need to be supported or provided for by transitional provisions in the Rules?</p> | <p>As discussed in Section 2.1, any consolidation, harmonisation or rolling back of jurisdictional and national requirements to produce a single set of obligations should ensure that only one set of requirements apply at any one time.</p>   |
| <p>7.2 If the proposed national framework was to be introduced, are the proposed timeframes appropriate to allow for the transition to the national framework?</p>                   | <p>Ergon Energy considers that the RIT-D transitional period should not only be from the commencement of the Rule change but, more importantly, from when the AER's Guidelines have been released. This will assist in ensuring DNSPs can appropriately implement the new regulatory requirements.</p> <p>Ergon Energy believes a transitional period of not less than 12 months from the finalisation of the Rule change and Guidelines is required in order to provide sufficient time for DNSPs to adapt existing processes, procedures, documentation and information systems.</p> |

<sup>3</sup> EECL (2009), Submission to the *Draft Report – Review of National Framework for Electricity Distribution Network Planning and Expansion*, 13 August 2009, p8.



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|  | Ergon Energy considers that the first DAPR should be published in line with the jurisdictional start date.   |
| 7.3 Are there any other factors that should be taken into account in developing transitional provisions to enable the efficient potential application of the proposed Rule to all DNSPs? | <p>It should be clarified that where tests have begun under the existing Regulatory Test but remain incomplete at the start of the new RIT-D, then these should be finalised under the existing Regulatory Test.</p> <p>Finally, consideration should be given to DNSPs' existing jurisdictional obligations, such as Ergon Energy's Demand Management Plan and Network Management Plan, which will need to transition to the proposed Demand Side Engagement Strategy and DAPR respectively. It is important to ensure that only one set of requirements apply at any one time.</p> |
| 7.4 From a market participant perspective, are there any implications in not aligning the proposed introduction of the national framework with the commencement of the NECF?             | The National Energy Customer Framework (NECF) is a major regulatory change for industry participants, materially impacting systems and processes and requiring the commitment of significant resources to ensure compliance from 1 July 2012. Ergon Energy does not support the concurrent implementation of the national Distribution Network Planning and Expansion Framework as this will place significant pressure on existing change programs and endanger the compliant delivery of both programs.  |
| <i>Other Issues</i>  |  |
| Figure A.1 in the Consultation Paper indicates that the "DNSP publishes the results of the STT assessment within 2 weeks".   | Ergon Energy questions where in the proposed Rules the 2 weeks is specified.   |



#### 4. TABLE OF DETAILED COMMENTS ON THE PROPOSED RULES

| Clause  | Provision  | Ergon Energy Response  |
|---|--|--|
| <i>5.6.2AA Distribution Annual Planning Review and Report</i> |  |  |
| 5.6.2AA(a)  | <p><b>Purpose</b><br/>           (4) ensure a level playing field for all <i>regions</i> in terms of attracting investment and promoting efficient decisions;</p>  | <p>Ergon Energy does not support the use of the colloquial term ‘level playing field’ and recommends amending this to:<br/>           “(4) ensure <b>equitable treatment</b> for all <i>regions</i> in terms of attracting investment and promoting efficient decisions”.</p>  |
| 5.6.2AA(h)  | <p><b>Requirements of the Distribution Annual Planning Review</b><br/>           Each <i>Distribution Network Service Provider</i> must conduct joint planning with each <i>Transmission Network Service Provider</i> of the <i>transmission networks</i> to which the <i>Distribution Network Service Provider’s networks</i> are connected. The relevant <i>Distribution Network Service Provider</i> and <i>Transmission Network Service Provider</i> must:<br/>           ...<br/>           (4) where the need for <i>augmentation</i> or a non-<i>network</i> alternative is identified under subparagraph (3):<br/>           ...<br/>           (ii) must carry out the <i>regulatory investment test for transmission</i> for the <i>identified need</i>; and<br/>           (iii) may agree on a lead party to be responsible for carrying out the <i>regulatory investment test for transmission</i>. In this case, the other parties will be deemed to have discharged their obligations to undertake the <i>regulatory investment test for transmission</i> in response to the <i>identified need</i> for investment.</p> | <p>Please refer to our comments in Section 2.2 regarding TNSPs always being the lead party where joint investments require a RIT-T to be carried out.</p>  |
| 5.6.2AA(l)  | <p><b>Demand Side Engagement Strategy</b><br/>           Each <i>Distribution Network Service Provider</i> must prepare and make available a <i>Demand Side Engagement</i> document which must include at least:<br/>           ...<br/>           (13) a summary of the factors the <i>Distribution Network Service Provider</i> takes into account when negotiating <i>connection agreements</i> with <i>embedded generators</i>;</p>  | <p>The Demand Side Engagement Strategy should not contain or replicate information which is, or will be, publicly available elsewhere (e.g. through the Chapter 5A connection process and associated publication requirements established under the NECF). For information that is available elsewhere, Ergon Energy considers that a specific reference to that source is sufficient.</p> |

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|            | <p>(14) the process used, and a summary of any specific regulatory requirements, for setting charges and the terms and conditions of <i>connection agreements</i> for embedded generation; and</p> <p>(15) the process for lodging a embedded generation <i>connection application</i> and the factors taken into account by the <i>Distribution Network Service Provider</i> when assessing <i>connection applications</i>.</p>   |  |
| 5.6.2AA(l) | <p><b>Demand Side Engagement Strategy</b></p> <p>(15) the process for lodging a embedded generation <i>connection application</i> and the factors taken into account by the <i>Distribution Network Service Provider</i> when assessing <i>connection applications</i>.</p>  | <p>Ergon Energy suggests replacing ‘a’ embedded generation with ‘an’. That is:</p> <p>“(15) the process for lodging <b>an</b> embedded generation <i>connection application</i> and the factors taken into account by the <i>Distribution Network Service Provider</i> when assessing <i>connection applications</i>.”</p>   |
| 5.6.2AA(o) | <p><b>Demand Side Engagement Strategy</b></p> <p>Each <i>Distribution Network Service Provider</i> must establish, maintain and <i>publish</i> a database of non-<i>network</i> proposals and/or case studies that demonstrate economic assessments undertaken by the <i>Distribution Network Service Provider</i> in its consideration of non-<i>network</i> proposals. In selecting items to be <i>published</i> in the database, the <i>Distribution Network Service Provider</i> should protect the confidentiality of commercially sensitive information.</p> | <p>As discussed in Section 2.5, Ergon Energy does not support the establishment of a published database as the costs to develop and maintain it outweigh the benefits. Firstly, even though Ergon Energy has discretion to select data to be published, there is a risk of inadvertently disclosing commercially sensitive information. Secondly, additional resources will be required to administer the database. Thirdly, it will result in reporting duplication as details of proposals are intended to be published in the project specification report.</p> |
| 5.6.2AA(p) | <p><b>Demand Side Engagement Strategy</b></p> <p>Each <i>Distribution Network Service Provider</i> must establish and maintain a <i>Demand Side Engagement Register</i> for those parties wishing to be advised of relevant developments relating to clause 5.6.2AA and clause 5.6.5CA.</p>  | <p>Ergon Energy does not support a requirement whereby each DNSP must establish and maintain an individual register. Instead, Ergon Energy supports a central registration system for non-<i>network</i> providers, with the Australian Energy Market Operator (AEMO) being responsible for the management of this register.</p> <p>As discussed in our earlier submission<sup>4</sup>, this requirement undermines the development of a national ‘market’ and increases the burden on non-<i>network</i> providers by requiring</p>                               |

<sup>4</sup> EECL (2009), Submission to the *Draft Report – Review of National Framework for Electricity Distribution Network Planning and Expansion*, 13 August 2009, p5.

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|   |  | <p>them to register separately with each DNSP.</p> <p>Further, Ergon Energy disagrees with the AEMC’s consideration<sup>5</sup> that the establishment of an individual register will enhance DNSPs’ relationships with non-network providers. Ergon Energy already proactively engages and consults with non-network providers and believes the register will have minimal impact on enhancing these relationships.</p> |
| 5.6.2AA(u) and (w)  | <p><b>Contents of the Distribution Annual Planning Report</b></p> <p>(u) A <i>Distribution Network Service Provider</i> may apply to the AER for an exemption from or variations to any requirement of clause S5.8.</p> <p>...</p> <p>(w) The AER must:</p> <p>(i) respond to an application under paragraph (u) within 30 business days; and</p> <p>(ii) grant an exemption or variation to the requirement of clause S5.8 if satisfied that the <i>Distribution Network Service Provider</i> has met the test under paragraph (v).</p> | <p>Ergon Energy recommends italicising ‘AER’ as it is a defined term in Chapter 10 of the Rules. That is:</p> <p>“A <i>Distribution Network Service Provider</i> may apply to the <b>AER</b> for an exemption from or variations to any requirement of clause S5.8”</p> <p>and</p> <p>“The <b>AER</b> must...”.</p>  |
| 5.6.5B Regulatory investment test for transmission                            |  |  |
| 5.6.5B(c)   | <p><b>Principles</b></p> <p>(9) provide that any cost or market benefit which cannot be measured as a cost or market benefit to <i>Generators, Distribution Network Service Providers, Transmission Network Service Providers or Distribution Network Service Provider</i> (as the case may be) or consumers of electricity may not be included in any analysis under the <i>regulatory investment test for transmission</i>;</p>  | <p>The draft amendment incorrectly repeats “<i>Distribution Network Service Provider</i>”.</p>   |
| 5.6.5C Investments subject to the regulatory investment test for transmission |  |  |
| 5.6.5C(a)   | <p>A <i>Transmission Network Service Provider or Distribution Network Service Provider</i> (as the case may be) must apply the <i>regulatory investment test for transmission</i> to a proposed <i>transmission investment or joint network investment</i> (as the case may be)...</p>   | <p>Please refer to our comments in Section 2.2 regarding TNSPs always being the lead party where joint investments require a RIT-T to be carried out.</p>  |

<sup>5</sup> AEMC (2009), *Final Report – Review of National Framework for Electricity Distribution Network Planning and Expansion*, 23 September 2009, p82.

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| 5.6.5C(a)  | <p>A <i>Transmission Network Service Provider</i> or <i>Distribution Network Service Provider</i> (as the case may be) must apply the <i>regulatory investment test for transmission</i> to a proposed <i>transmission investment</i> or <i>joint network investment</i> (as the case may be) except in circumstances where:</p> <p>...</p> <p>(7) the proposed <i>transmission investment</i> or <i>joint network investment</i> (as the case may be) is designed to address limitations in respect of a <i>distribution network</i> notified under clause 5.6.2(e)(2);</p>   | <p>Most joint investments would be addressing limitations in the distribution network or they wouldn't be built. However, Ergon Energy does not see the purpose of conducting only a RIT-D. Joint investments where a change is made to the transmission network should be subject to the RIT-T.</p>  |
| 5.6.5C(a)  | <p>A <i>Transmission Network Service Provider</i> or <i>Distribution Network Service Provider</i> (as the case may be) must apply the <i>regulatory investment test for transmission</i> to a proposed <i>transmission investment</i> or <i>joint network investment</i> (as the case may be) except in circumstances where:</p> <p>...</p> <p>(8) the proposed <i>transmission investment</i> or <i>joint network investment</i> (as the case may be) will be a <i>connection asset</i>.</p>  | <p>This clause states that transmission-to-distribution network connections would not be subject to the RIT-T. This appears to be contrary to the Ministerial Council on Energy's intention that "the RIT-T would be applied to any investments identified through the joint planning process that affect both the transmission and distribution networks or require action by both DNSPs and TNSPs, including transmission-distribution connection projects"<sup>6</sup>.</p>  |
| 5.6.5CA <i>Regulatory investment test for distribution</i> |  |   |
| 5.6.5CA(c)   | <p><b>Principles</b></p> <p>The <i>regulatory investment test for distribution</i> must:</p> <p>...</p> <p>(4) require the <i>Distribution Network Service Provider</i> to consider the following classes of market benefits that could be delivered by the <i>credible option</i>:</p> <ul style="list-style-type: none"> <li>(i) changes in voluntary <i>load</i> curtailment;</li> <li>(ii) changes in involuntary <i>load shedding</i> and <i>customer</i> interruptions caused by <i>network</i> outages, using a reasonable forecast of the value of electricity to <i>customers</i>;</li> <li>(iii) changes in costs for parties, other than the <i>Distribution Network Service Provider</i>, due to:</li> </ul> | <p>The wording in this clause appears to require a DNSP to undertake an assessment of market benefits to assess whether any applicable market benefits may be material or alter the selection of the preferred option.</p> <p>The majority of distribution investments will be reliability driven and, as such, consideration of market benefits is not relevant in those circumstances. The circumstances in which market benefits are likely to be relevant in a distribution context are very limited and making the assessment of market benefits compulsory will add considerably to the costs of the process with no real benefit.</p> <p>For those investments where market benefits are relevant, Ergon Energy supports the development of an agreed jurisdictional</p> |

<sup>6</sup> See page 4 of the Rule change request

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|            | <p>(A) differences in the timing of new <i>plant</i>;<br/>         (B) differences in capital costs; and<br/>         (C) differences in the operating and maintenance costs;<br/>         (iv) differences in the timing of <i>distribution investments</i>;<br/>         (v) changes in <i>load transfer capacity</i> and the potential for <i>load transfer capacity of embedded generating units</i>;<br/>         (vi) any additional option value (where this value has not already been included in the other classes or market benefits) gained or foregone from implementing the <i>credible option</i> with respect to the likely future investment needs of the <i>market</i>;<br/>         (vii) changes in <i>electrical energy losses</i>; and<br/>         (viii) any other market benefits that are determined to be relevant by the <i>Distribution Network Service Provider</i>.</p>  | <p>based standard approach to value the upstream benefits to transmission and generation. The approach must be sufficiently robust such that it should consider the full value chain, including generators, TNSPs, DNSPs, retailers and customers, and not be limited to the confines of any single provider.</p>  |
| 5.6.5CA(c) | <p><b>Principles</b></p> <p>The <i>regulatory investment test for distribution</i> must:</p> <p>...</p> <p>(6) require the <i>Distribution Network Service Provider</i> to consider the following classes of costs that could be delivered by the <i>credible option</i>:</p> <p>(i) costs incurred in constructing or providing the <i>credible option</i>;<br/>         (ii) operating and maintenance costs over the operating life of the <i>credible option</i>;<br/>         (iii) the cost of complying with laws, regulations and applicable administrative requirements in relation to the construction and operation of the <i>credible option</i>; and<br/>         (iv) any other class of costs that have been determined to be relevant by the <i>Distribution Network Service Provider</i>;</p> <p>(7) require a <i>Distribution Network Service Provider</i> to include a quantification of all classes of costs set out in paragraph (6) unless it can, in its <i>draft project assessment report</i> or in its <i>final project assessment report</i>, provide reasons why a particular class of cost is not expected to apply to a <i>credible option</i>;</p> <p>...</p> <p>(9) provide that any market benefit or cost which cannot be measured as a market benefit or a cost to <i>Generators, Distribution Network Service</i></p> | <p>There is an inconsistency in (7) and (9) relating to costs which cannot be quantified.</p> <p>In some cases it will be difficult to quantify the costs for “...complying with laws, regulations and applicable administrative requirements in relation to the construction and operation of the <i>credit option</i>”. An example is the unknown impact of the carbon tax.</p> <p>Ergon Energy recommends that this should be amended to:</p> <p>“(7) require a <i>Distribution Network Service Provider</i> to include a quantification, <b>to the extent reasonably possible</b>, of all classes of costs set out in...”.</p> |



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|  | <p><i>Providers, Transmission Network Service Providers, Market Customers or consumers of electricity may not be included in any analysis under the regulatory investment test for distribution; and</i></p>  |  |
| 5.6.5CA(j)   | <p><b>Regulatory investment test for distribution guidelines</b></p> <p>The <i>AER</i> may, from time to time, amend or replace the <i>regulatory investment test for distribution</i> and <i>regulatory investment test for distribution application guidelines</i> in accordance with the <i>distribution consultation procedures</i>, provided the <i>AER publishes</i> any amendments to, or replacements of, the <i>regulatory investment test for distribution</i> or <i>regulatory investment test for distribution application guidelines</i> at the same time.</p> | <p>Ergon Energy believes that sufficient time should be allowed for DNSPs to comply with any amendments to the RIT-D.</p>  |
| <p><b>5.6.5CB Investments subject to the regulatory investment test for distribution</b></p> |   |  |
| 5.6.5CB(a)   | <p>A <i>Distribution Network Service Provider</i> must apply the <i>regulatory investment test for distribution</i> to a proposed <i>distribution investment</i> except in circumstances where...</p>   | <p>As discussed in Section 2.4, Ergon Energy believes exemptions should also apply to investments undertaken:</p> <ul style="list-style-type: none"> <li>• As a result of legislative compliance obligations (e.g. duty of care);</li> <li>• Where an investment is primarily an aged asset replacement but which inadvertently results in an augmentation component due to the inability to acquire the same size aged asset because of changes in design standards or infrastructure availability;</li> <li>• In the case of gifted or contributed assets an exemption should apply to: <ul style="list-style-type: none"> <li>○ The gifted assets regardless of whether they are funded by a third party and gifted to the DNSP or the third party pays the DNSP to undertake the work; and</li> <li>○ Any work on the shared network in order to connect the gifted assets; and</li> </ul> </li> <li>• Where the requirement stems from a need to connect a new customer or upgrade/change their supply (at the customer's request). That is, an exemption should apply to:</li> </ul> |

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|            |  | <ul style="list-style-type: none"> <li>○ New dedicated connection assets for a customer(s); or</li> <li>○ Any new shared assets or augmentation on the shared network in order to connect a new customer.</li> </ul>  |
| 5.6.5CB(a) | (2) the estimated capital cost of the most expensive option to address the relevant <i>identified need</i> which is technically and economically feasible is less than \$5 million (as varied in accordance with a <i>cost threshold determination</i> )   | <p>As discussed in Section 2.3 above, Ergon Energy strongly disagrees with the criteria that the RIT-D be carried out where the most expensive option is more than \$5 million. Ergon Energy suggests that the focus should either be on the least expensive or preferred option.</p> <p>Additionally, Ergon Energy considers that the term ‘economically feasible’ should be clarified in the Rules. This term is open to interpretation and hence fraught with risk when at the same time introducing a dispute resolution process.</p> <p>If it is assumed that ‘economically feasible’ means where marginal benefit exceeds marginal cost, then it would be difficult to quantify marginal benefit. For example, what value should be assigned to safety and the aesthetics of underground power lines versus overhead?</p> |
| 5.6.5CB(c) | <p>For the purposes of paragraph (a)(1), a proposed <i>distribution investment</i> will be required to address an urgent and unforeseen <i>network</i> issue that would otherwise put at risk the <i>reliability</i> of the <i>distribution network</i> if:</p> <p>(1) it is necessary that the proposed <i>distribution investment</i> be operational within 6 months of the <i>Distribution Network Service Provider</i> identifying the <i>identified need</i>;</p> | <p>As highlighted in our earlier submission<sup>7</sup>, Ergon Energy considers that the timeframe of six months in the definition of whether a proposed investment is urgent or unforeseen is not workable in practice and could potentially result in some projects not being completed in time to meet reliability and system security criteria.</p> <p>The timeframe for urgent and unforeseen investments should at least equate to the longest potential timeframe under the RIT-D process from identifying the need to the end of the period for a dispute being raised. Preferably, Ergon Energy suggests this period be changed to 12 months.</p> <p>Ergon Energy also strongly supports changing the wording from</p>   |

<sup>7</sup> EECL (2009), Submission to the *Draft Report – Review of National Framework for Electricity Distribution Network Planning and Expansion*, 13 August 2009, p21.

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|   |   | 'required to be operational' to 'required to be commenced' as the requirement for the investment to be 'operational' is not workable in practice (given the majority of investments will take longer than 6 months to be operational) and would not capture those projects that would need to commence earlier than the time taken to complete the RIT-D process (even if not operational) to ensure reliability and system criteria are met.  |
| 5.6.5CB(f)  | The AER may review a <i>Distribution Network Service Provider's</i> policies and procedures with regard to consideration of non-network alternatives in order to determine if non-network alternatives have been duly considered.   | As discussed in Questions 5.2 and 5.3 above, the AER has existing powers to audit compliance as part of its quarterly compliance program. Therefore, it is not necessary to provide this superfluous, duplicated power.<br><br>Ergon Energy considers that the prima facie position should be that a DNSP's policies and procedures are fully compliant with the Rules and that it should be a prerequisite that the AER have a valid reason for reviewing a DNSP's policies and procedures (e.g. in response to a legitimate dispute or as part of a planned compliance program). |
| <b>5.6.5E Review of Costs Thresholds</b>                            |   |  |
| 5.6.5E(a1)  | Every 3 years (or shorter for the first review) the <i>AER</i> must undertake a <i>cost threshold review</i> of the changes in the input costs used to calculate the estimated capital costs in relation to investments subject to the <i>regulatory investment test for distribution</i> and the <i>cost threshold</i> for refurbishment, replacement, and urgent and unforeseen investments subject to the <i>Distribution Annual Planning Report</i> , for the purposes of determining whether the amounts are:<br><br>(1) \$5 million referred to in clauses 5.6.5CB(a)(2) and (9); | This should be amended to:<br><br>“(1) \$5 million referred to in clauses 5.6.5CB(a)(2) and (8)”.  |
| <b>5.6.6 Regulatory investment test for transmission procedures</b> |   |  |
| 5.6.6(j)  | <b>Project assessment draft report</b><br>If the <i>Transmission Network Service Provider</i> or <i>Distribution Network Service Provider</i> (as the case may be) elects to proceed with the proposed <i>transmission investment</i> or <i>joint network investment</i> (as the case may be), within 12 months of the end date of the consultation period referred to in paragraph (h), or such longer time period as is agreed in writing by the <i>AER</i> , the <i>Transmission Network Service</i>   | Ergon Energy queries whether the AEMC intended this to be:<br><br>“If the <i>Transmission Network Service Provider</i> or <i>Distribution Network Service Provider</i> (as the case may be) elects to proceed with the proposed <i>transmission investment</i> or <i>joint network investment</i> (as the case may be), within 12 months of the end date of the consultation period referred to in paragraph (h), or such longer time period as is agreed in writing by the <i>AER</i> , the   |

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|   | <p>Provider must prepare a report (the <i>project assessment draft report</i>), having regard to the submissions received, if any, under paragraph (g) and make that report available to all <i>Registered Participants, AEMO and interested parties</i>.</p>   | <p><i>Transmission Network Service Provider or the Distribution Network Service Provider (as the case may be)</i> must prepare a report (the <i>project assessment draft report</i>), having regard to the submissions received, if any, under paragraph (g) and make that report available to all <i>Registered Participants, AEMO and interested parties</i>.”</p> |
| 5.6.6(t)  | <p><b>Project assessment conclusions report</b></p> <p>(2) the <i>Transmission Network Service Provider or Distribution Network Service Provider (as the case may be)</i> elects to proceed with the proposed <i>transmission investment or joint network investment (as the case may be)</i>, within 12 months of the end date of the period for consultation referred to in paragraph (h), or within 12 months of the end date of such longer time period as is agreed in writing by the AER</p>  | <p>Ergon Energy recommends italicising ‘AER’ as it is a defined term in Chapter 10 of the Rules. That is:</p> <p>“...as is agreed in writing by the <b>AER</b>’.</p>   |
| 5.6.6A Disputes in relation to application of regulatory investment test for transmission                             |   |  |
| 5.6.6A(f)   | <p>The AER may only make a determination under subparagraph (d)(3)(i) if it determines that:</p> <p>(1) the <i>Transmission Network Service Provider or Distribution Network Service Provider (as the case may be)</i> has not correctly applied the <i>regulatory investment test for transmission</i> in accordance with the <i>Rules</i>;</p> <p>...</p> <p>(4) there was a manifest error in the calculations performed by the <i>Transmission Network Service Provider or Distribution Network Service Provider (as the case may be)</i> in applying the <i>regulatory investment test for transmission</i>.</p> | <p>Please refer to our comments in Section 2.2 regarding TNSPs always being the lead party where joint investments require a RIT-T to be carried out.</p>  |
| 5.6.6AA Determination that proposed transmission investment satisfies the regulatory investment test for transmission |   |  |
| 5.6.6AA(a)  | <p>After the expiry of the 30 day period referred to in clause 5.6.6A(c) and where a <i>preferred option</i> is not for <i>reliability corrective action</i>, the <i>Transmission Network Service Provider or Distribution Network Service Provider (as the case may be)</i> may request, in writing to the AER, that the AER make a determination as to whether the <i>preferred option</i> satisfies the <i>regulatory investment test for transmission</i>.</p>  | <p>Please refer to our comments in Section 2.2 regarding TNSPs always being the lead party where joint investments require a RIT-T to be carried out.</p>  |
| 5.6.6AA(e)  | <p><b>Cost determinations</b></p> <p>Where a costs determination is made, the AER may:</p>  | <p>Ergon Energy recommends that this should be amended to:</p> <p>“(1) render the <i>Transmission Network Service Provider or</i></p>  |

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|  | <p>(1) render the <i>Transmission Network Service Provider</i> or <i>Distribution Network Service Provider</i> (as the case may be) an invoice for the costs; or</p> <p>(2) determine that the costs should:</p> <p>(i) be shared by all the parties to the dispute, whether in the same proportion or differing proportions; or</p> <p>(ii) be borne by a party or parties to the dispute other than the <i>Transmission Network Service Provider</i> or <i>Distribution Network Service Provider</i> (as the case may be) whether in the same proportion or differing proportions; and</p> <p>(iii) the <i>AER</i> may render invoices accordingly.</p> | <p><i>Distribution Network Service Provider</i> (as the case may be) an invoice for the <b>reasonable</b> costs; or</p> <p>(2) determine that the <b>reasonable</b> costs should:</p> <p>(i) be shared by all the parties to the dispute, whether in the same proportion or differing proportions; or</p> <p>(ii) be borne by a party or parties to the dispute other than the <i>Transmission Network Service Provider</i> or <i>Distribution Network Service Provider</i> (as the case may be) whether in the same proportion or differing proportions; and</p> <p>(iii) the <i>AER</i> may render invoices accordingly.”</p> |
| <p><b>5.6.6AB Regulatory investment test for distribution procedures</b></p> |   |   |
| <p>5.6.6AB(d)</p>  | <p><b>Specification Threshold Test</b></p> <p>In undertaking the <i>Specification Threshold Test</i>, the <i>Distribution Network Service Provider</i> must assess:</p> <p>(1) the reasons (<i>identified need</i>) for the proposed <i>distribution investment</i>, including the assumptions used in identifying the <i>identified need</i>; and</p> <p>(2) technically feasible non-<i>network</i> options that can either defer or remove the need for the proposed <i>distribution investment</i> to address the <i>identified need</i>.</p>   | <p>Ergon Energy recommends that this should be amended to:</p> <p>“(2) <b>credible</b> non-<i>network</i> options that can either defer or remove...”</p> <p>or</p> <p>“(2) <b>technically feasible and cost effective</b> non-<i>network</i> options that can either defer or remove...”</p> <p>as a non-<i>network</i> alternative would only be considered if it is more cost effective than the <i>network</i> option.</p> <p>Further, there should be a limit on the number of assessments to only those proposals which could potentially be implemented.</p>   |
| <p>5.6.6AB(e)</p>  | <p><b>Specification Threshold Test</b></p> <p>If after undertaking the <i>Specification Threshold Test</i> the <i>Distribution Network Service Provider</i> determines that there are no technically feasible non-<i>network</i> options to either defer or remove the need for the proposed <i>distribution investment</i> to address the <i>identified need</i>, then the <i>Distribution Network Service Provider</i>.</p>   | <p>Ergon Energy recommends inserting commas after ‘If’ and ‘Test’. That is:</p> <p>“If, after undertaking the <i>Specification Threshold Test</i>, the <i>Distribution Network Service Provider</i> determines...”.</p>   |
| <p>5.6.6AB(f)</p>  | <p><b>Project specification stage</b></p> <p>The <i>Distribution Network Service Provider</i> must carry out the project specification stage where a <i>Specification Threshold Test</i> assessment by the <i>Distribution Network Service Provider</i> determines that the <i>identified</i></p>   | <p>Ergon Energy recommends that this should be amended to:</p> <p>“...that the <i>identified need</i> has the potential for technically feasible <b>and cost effective</b> non-<i>network</i> options either to defer or remove...”</p>   |

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|            | <p><i>need</i> has the potential for technically feasible non-<i>network</i> options either to defer or remove the need for the proposed <i>distribution investment</i> to address the <i>identified need</i>.</p>   | <p>as a non-network alternative would only be considered if it is more cost effective than the network option.</p>  |
| 5.6.6AB(h) | <p><b>Project specification stage</b><br/> (3) the relevant deferred annual <i>augmentation</i> charge associated with the <i>identified need</i>;</p>   | <p>Ergon Energy strongly disagrees with the requirement that the annual deferred augmentation charge be published as this would provide non-network providers the top level cost of what they need to compete with and may mean inflated responses on what could actually be achieved.</p> <p>The consultation process should be an open tender process where non-network providers' proposals are submitted blind to the costs of competing solutions and which reflect their true costs of supply.</p> <p>A potential compromise could be that a range of the relevant annual deferred augmentation charges is published. For example:<br/> "...the annual deferment charge associated with this network proposal ranges from \$7.5 million to \$10 million."</p> |
| 5.6.6AB(h) | <p><b>Project specification stage</b><br/> A <i>Distribution Network Service Provider</i> must prepare a report (the <i>project specification report</i>), which must include:<br/> ...<br/> (4) a summary of the <i>Distribution Network Service Provider's</i> assessment of the <i>identified need</i> against the <i>Specification Threshold Test</i>, including:<br/> (i) technically feasible non-<i>network</i> options either to defer or remove the need for the proposed <i>distribution investment</i> to address the <i>identified need</i>; and ...</p> | <p>Ergon Energy recommends that this should be amended to:<br/> "(i) technically feasible and cost effective non-<i>network</i> options either to defer or remove..."</p> <p>as a non-network alternative would only be considered if it is more cost effective than the network option.</p>  |
| 5.6.6AB(h) | <p><b>Project specification stage</b><br/> (6) a description of all options. These options can include, but are not limited to, alternative <i>distribution</i> options, <i>generation</i> options, demand side management, and options involving other <i>transmission</i> and <i>distribution networks</i> and could include groups of options; and</p>  | <p>Ergon Energy recommends that this should be amended to:<br/> "(6) a description of all technically feasible and cost effective options ..."</p> <p>as a non-network alternative would only be considered if it is technically feasible and cost effective.</p> <p>Further, Ergon Energy considers that the publication of non-</p>   |

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|                    |  | network alternatives will raise confidentiality concerns of non-network providers.   |
| 5.6.6AB(h)         | <p><b>Project specification stage</b><br/> (7) for each option, the <i>Distribution Network Service Provider</i> must provide information, to the extent practicable, on:</p> <ul style="list-style-type: none"> <li>(i) a technical definition or characteristics of the option;</li> <li>(ii) the estimated construction timetable and commissioning date where the option is a <i>new network investment</i>; and</li> <li>(iii) the total indicative capital costs and operating costs.</li> </ul> | Ergon Energy does not support the publication of capital and operating costs as this would be commercially sensitive information and opposed by non-network providers.   |
| 5.6.6AB(l)         | <p><b>Project specification stage</b><br/> <i>Registered Participants, AEMO, interested parties, non-network providers</i> and parties on the <i>Distribution Network Service Provider's Demand Side Engagement Register</i> must be provided with not less than four months in which to make submissions on the project specification report from the date that the <i>Distribution Network Service Provider</i> publishes a <i>project specification report</i>.</p>                                 | <p>Ergon Energy considers the minimum four month period is unnecessarily long and suggests the following amendments:</p> <p><b>“Registered Participants, AEMO, interested parties, non-network providers and parties on the Distribution Network Service Provider's Demand Side Engagement Register must be provided with <b>six weeks from the project specification report's publication to provide notice to the Distribution Network Service Provider of their intention to make a submission and another six weeks to lodge its submission.</b> “</b></p> |
| 5.6.6AB(n)         | <p><b>Draft project assessment report</b><br/> The <i>draft project assessment report</i> must include the following:</p> <p>...</p> <p>(5) where relevant, a quantification of each applicable market benefit for each <i>credible option</i>;</p>  | <p>Ergon Energy recommends that this be changed to:</p> <p><b>“(5) where relevant <b>and available</b>, a quantification of each applicable market benefit for each <i>credible option</i>”.</b></p> <p>This ensures consistency with clause 5.6.5CA(d) which provides DNSPs the option, not obligation, to quantify market benefits.</p>  |
| 5.6.6AB(q) and (r) | <p>(q) The consultation period on the <i>draft project assessment report</i> must not be less than 30 <i>business days</i> from the <i>publication</i> of the report.</p> <p>(r) Within 4 weeks of the end of the consultation period on the <i>draft project assessment report</i>, at the request of an <i>interested party</i> or a <i>Registered Participant</i>...</p>  | Ergon Energy questions the inconsistency and logic behind the use of two different time measurements (i.e. ‘business days’ versus ‘weeks’).  |
| 5.6.6AB(x)         | <p><b>Final project assessment report</b><br/> The <i>final project assessment report</i> must set out:</p> <p>(1) the matters detailed in the <i>draft project assessment report</i> as required under paragraph (n); and</p>   | <p>Ergon Energy recommends that this should be amended to:</p> <p><b>“Where available, the <i>final project assessment report</i> must set out...”</b></p>   |

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|   | (2) summarise any submissions received on the <i>draft project assessment report</i> and the <i>Distribution Network Service Provider's</i> response to each such submission.  | as this information will only be available if a draft project assessment report was prepared.  |
| <b>5.6.6AC Disputes in relation to application of regulatory investment test for distribution</b> |  |  |
| 5.6.6AC   | <p>(a) <i>Registered Participants, the AEMC, Connection Applicants, Intending Participants, AEMO, interested parties, and non-network providers</i> may, by notice to the <i>AER</i>, dispute matters set out by the <i>Distribution Network Service Provider</i> in the <i>final project assessment report</i> in relation to the application of the <i>regulatory investment test for distribution</i>.</p> <p>(b) A dispute under this clause 5.6.6AC may not be raised in relation to any matters set out in the <i>final project assessment report</i> which:</p> <p>(1) are treated as externalities by the <i>regulatory investment test for distribution</i>; or</p> <p>(2) relate to an individual's personal detriment or property rights.</p> | <p>Ergon Energy believes disputes should also be disallowed where:</p> <ul style="list-style-type: none"> <li>• The party lodging the dispute did not submit a non-network proposal to the project specification report. That is, the right to lodge a dispute should be limited to those parties having an interest in the outcome of the final project assessment report; and</li> <li>• The dispute was not raised during the draft project assessment report and where the recommendation(s) in the final project assessment report has not changed significantly from the draft project assessment report.</li> </ul> |
| 5.6.6AC(c)  | <p>Within 30 days of the date of <i>publication</i> of the <i>final project assessment report</i> under clause 5.6.6AB(u) or (v) (as the case may be), the party disputing a conclusion made in the <i>final project assessment report</i> (a <i>disputing party</i>) must:</p> <p>...</p>   | <p>Ergon Energy questions whether this should be amended to:</p> <p><i>"Within 30 days of the date of publication of the final project assessment report under clause 5.6.6AB(u), (v) or (y) (as the case may be)..."</i>.</p> <p>This takes into account final project assessment reports published in the DAPR.</p>  |
| 5.6.6AC(g)  | <p>The <i>AER</i> may only make a determination under subparagraph (d)(3)(i) if it determines that:</p> <p>(1) the <i>Distribution Network Service Provider</i> has not correctly applied the <i>regulatory investment test for distribution</i> in accordance with the <i>Rules</i>; or</p> <p>(2) there was a manifest error in the calculations performed by the <i>Distribution Network Service Provider</i> in applying the <i>regulatory investment test for distribution</i>.</p>   | <p>As indicated in our earlier submission<sup>8</sup>, Ergon Energy seeks clarification in the Rules as to what constitutes a 'manifest error'.</p>  |
| <b>6 Economic Regulation of Distribution Services</b>   |  |  |
| 6.5.6(e)  | <b>Forecast operating expenditure</b>  | Ergon Energy questions whether this should be amended to:  |

<sup>8</sup> EECL (2009), Submission to the *Draft Report – Review of National Framework for Electricity Distribution Network Planning and Expansion*, 13 August 2009, p20.

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|                                 | (11) any relevant <i>final project assessment report</i> required under clauses 5.6.6AB(u) or (v) (as the case may be).  | “(11) any relevant <i>final project assessment report</i> under clauses 5.6.6AB(u), (v) <b>or (y)</b> (as the case may be)...”.<br><br>This takes into account final project assessment reports published in the DAPR.  |
| 6.5.7(e)                        | <b>Forecast capital expenditure</b><br>(11) any relevant <i>final project assessment report</i> required under clauses 5.6.6AB(u) or (v) (as the case may be).   | Ergon Energy questions whether this should be amended to:<br>“(11) any relevant <i>final project assessment report</i> under clauses 5.6.6AB(u), (v) <b>or (y)</b> (as the case may be)...”.<br><br>This takes into account final project assessment reports published in the DAPR. |
| <b>10 Glossary</b>              |  |   |
| Considered project              | (3) if applicable:<br>(iii) in respect of a <i>transmission investment</i> which has not been subject to a <i>regulatory investment test for distribution transmission</i> or a <i>regulatory investment test for distribution</i> , an intention to proceed with the project has been <i>published</i> in the <i>Network Service Provider’s Annual Planning Report</i> or <i>Distribution Annual Planning Report</i> (as the case may be); or | The draft amendment incorrectly inserts ‘distribution’ within the term ‘ <i>regulatory investment test for transmission</i> ’.  |
| Demand Side Engagement Register | Has the meaning given in clause 5.6.2AA(k).  | The Demand Side Engagement Register is not referenced in clause 5.6.2AA(k) and Ergon Energy queries whether it is appropriate to rely on this clause as the correct definition.   |
| Joint network investment        | An investment identified under clause 5.6.2AA(t) which affects both a <i>transmission network</i> and <i>distribution network</i> or an investment which would require action by the <i>Transmission Network Service Provider</i> and the <i>Distribution Network Service Provider</i> .   | This definition incorrectly references 5.6.2AA(t) which relates to the contents of the DAPR. This should be amended to:<br>“An investment identified under clause 5.6.2AA(h) which affects...”.   |
| System limitation               | Has the meaning given in clause 5.6.2AA(f)(2).   | This should be amended to:<br>“Has the meaning given in clause 5.6.2AA(g)(2)”.  |
| <b>Other Issues</b>             |  |   |
| Whole document                  |  | To ensure consistency throughout the Rules, Ergon Energy suggests inserting ‘the’, where appropriate, before references to  |



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|  |  | <p>the 'AER' and the 'AEMC'.</p> <p>For example, clause 5.6.1A(f) should be amended to "...regarding <b>the AEMC's last resort planning powers</b>" and clause 5.6.1A(j) to "set out <b>the AER's obligations</b>".</p> |
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