



825 Ann Street, Fortitude Valley QLD 4006  
PO Box 264, Fortitude Valley QLD 4006

[ergon.com.au](http://ergon.com.au)

Ref: ERC0207

20 September 2016

Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

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

Dear Sir/Madam

**NATIONAL ELECTRICITY AMENDMENT (RATE OF RETURN GUIDELINES REVIEW)  
RULE 2016 (ERC0207)**

Ergon Energy Corporation Limited (Ergon Energy) welcomes the opportunity to comment on the rule change request submitted by the Australian Energy Regulator (AER) (7 June 2016) to the Australian Energy Market Commission (AEMC or Commission), seeking to extend the deadline to review the current Rate of Return Guidelines (the Guideline).

The Guideline was first published on 17 December 2013 as required by clause 6.5.2(m) of the National Electricity Rules (NER), and thereafter the AER is required to periodically publish the Guideline<sup>1</sup>, consulting with stakeholders on its contents in doing so. A review must occur at intervals of no greater than three years. The AER's rule change proposes an extension to the deadline of the first review from 17 December 2016 to 17 December 2018<sup>2</sup>, in consideration of the fact that key elements of the current Guideline remain subject to Australian Competition Tribunal and Federal Court of Australia proceedings. The final outcomes of the Tribunal and Federal Court proceedings are unlikely to occur before December 2016.

It is widely recognised that the Guideline plays an integral role in the regulatory decision making process, and that the outcomes of these proceedings may result in a change of approach as to how the allowed rate of return is determined by the AER. As such, Ergon Energy generally supports the AER's request, agreeing that there is little value in commencing a review before the Tribunal and Federal Court proceedings are complete.

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<sup>1</sup> NER Clauses 6.5.2(p)(1) and 6A.6.2(m)

<sup>2</sup> subsequent reviews would continue on the existing three year cycle

Ergon Energy also acknowledges the proposed revised deadline of 17 December 2018 is anticipated to accommodate the conclusion of court proceedings, and allow sufficient time for the AER to develop, consult and publish a revised Guideline given their outcomes. In any case, transitional provisions may be necessary to accommodate scenarios where a Network Service Provider's (NSP) revised regulatory proposal is due at or around the timing for release of the revised Guideline. The AEMC has proposed that the most appropriate approach would be for transitional provisions to specify that the current 2013 Guideline would apply to the 2018 regulatory determination processes of the (most) affected service providers<sup>3</sup>.

However, Ergon Energy notes the deadline for the revised Guidelines' release would fall just a few weeks short of that for the submission of its initial Regulatory Proposal (due end January 2019). Should the revised Guideline apply to Ergon Energy, we have concerns as to whether there will be sufficient time to consider, and decide on whether and how to either incorporate or depart<sup>4</sup> from the Guideline in this regard. Furthermore, risk must also be considered that the AER may not meet NER-specified timeframes for release of its revised Guideline.

Regulatory certainty should exist for all NSPs as to what Guideline applies at any/all stages of their determination processes and from what Guideline departures will be possible. Significant time and effort is required to formulate and incorporate a position in this regard. As such, Ergon Energy considers transitional provisions should denote that the version of the Guideline in place a defined number of months (preferably at least 3 months) before the submission of an initial regulatory proposal, applies therein.

In any case, in the absence of an earlier NER-mandated due date, strong endeavours should be made for the earliest possible release of the Guideline by the AER following completion of Tribunal and Federal Court proceedings. A heavy reliance will also be placed on the AER's positions becoming known soon after the resolution of court outcomes, as well as through forums in advance of the release of the amended guideline and via the NSW Draft Determinations.

Should you wish to discuss further, please contact myself on (07) 3851 6416 or Regulatory Affairs Manager – Performance & Reporting, Mrs Kim Casey on 0428 197 012.

Regards



**Jenny Doyle**  
**GROUP MANAGER REGULATORY AFFAIRS**

Telephone: 07 3851 6416  
Mobile: 0427 156 897  
Email: jenny.doyle@ergon.com.au

<sup>3</sup> Based on the AER's regulatory determination forward schedule, TasNetworks, Power and Water, Ausgrid, Endeavour, Essential, and ActewAGL are expected to submit revised regulatory proposals no earlier than 30 November 2018.

<sup>4</sup> The Guideline is not binding and departures may occur under NER schedules 6.1.3(9) and S6A.1.3