

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

Your reference:
20 October 2006

Dear Commissioner Tamblyn

**Re: Economic Regulation of Transmission Services
Forecast Capital and Operating Expenditure**

ACOSS welcomes this opportunity to contribute to debate regarding the likely effect of the Draft Revenue Rules. We are writing in response to the Commission's invitation, issued by email on 12 October. We appreciate the Commission's extension of the time available for consultation and efforts to provide relevant material.

ACOSS is the peak council of the community welfare sector in Australia and the national voice for the needs of people affected by poverty and inequality. Our interest in the Draft Rule is primarily the result of our interest in matters affecting disadvantaged Australians as consumers of energy.

In general terms ACOSS is concerned to ensure that the NEM Objective is the point of reference for Rule making in economic regulation and for the subsequent administration of those Rules. We are of the view that this Rule will establish precedent for decision-making processes in electricity distribution and for the gas market. The contentious definition of terms like 'efficient', 'reasonable' and 'quality' will no doubt engage market participants and others for a long time to come.

We are of the view that a regulator must be empowered to act with a level of discretion, bounded appropriately, in this case not least by the 'twelve factors' at 6A.6.6(b)(2).

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Thus, in response to the Commission's question as to whether the Rules should provide that:

- a. a TNSP's proposal must be accepted if the AER is satisfied that the proposal for forecast expenditure satisfies the criteria in the Rules; **or**
- b. the AER should have a residual discretion to substitute its own reasonable estimate of forecast expenditure in those circumstances.

ACOSS is of the view that option 'b' should prevail. We are encouraged in this view by the advice of the Australian Government Solicitor:

48. The probity and veracity of the evidence relating to these factors will obviously be the most important elements in the AER's view of whether the total is a reasonable estimate. There will be issues of materiality in whether doubt on one element or figure deprives the total proposed by the service provider of being a reasonable estimate. The list of factors will necessarily bring **reasonably** held propositions and positions **into conflict** [our emphasis].

53. The reasonable estimate decision framework based on the twelve factors does enable the AER to reject total forecasts which are not based upon reason, or exceed the limits prescribed by reason, after critically analysing all the evidence. However, the use of the 'reasonable estimate' test, uncertainty in forecasting, the existing case law in *Gasnet* and *Telstra* and the role of the pricing principles in resolving conflict, **will result in the AER being required to accept a range of forecasts higher than those it would determine as the most appropriate or best estimate** [our emphasis].

Our reading of this advice suggests that, given the potential for differences of view about forecasts that could be regarded as reasonable, it should be entirely appropriate for the regulator to substitute what it regarded as the best estimate of forecasts, not merely a reasonable estimate.

ACOSS takes this opportunity to reiterate the views of others (notably the Consumer Utilities Advocacy Centre and the Consumer Law Centre of Victoria) expressed previously in the consultation process, such that the availability of timely, accurate, consistently presented information to and from the regulator is absolutely critical to the reality and perception of probity in these processes. An ability to compare the performance of service providers with their forecasts and with each other, over time, will contribute greatly to assessments of efficiency and the success of reform in the energy industry.

Should you have any questions about this submission, please contact Tony Westmore at ACOSS by phone on 02 9310 4844 or email tony@acoss.org.au

Yours sincerely
Australian Council of Social Service

Andrew Johnson
Executive Director