energy networks association

24 November 2011

Mr John Pierce
Chairman
Australian Energy Market Commission
Level 5, 201 Elizabeth Street
Sydney NSW 2000

via website: submissions@aemc.gov.au

Dear ~~Mr Pierce~~ John

Response to AEMC Consultation Paper – National Electricity Amendment (Distribution Network Planning and Expansion Framework) Rule 2011

Thank you for the opportunity to respond to the AEMC Consultation Paper on the National Electricity Amendment (Distribution Network Planning and Expansion Framework) Rule 2011.

Please find attached the ENA submission.

We would also suggest that the AEMC hold a forum/workshop as soon as practicable with stakeholders to enable both parties to gain a better understanding of the key concerns.

The ENA recognises the work put into the Rule change by the AEMC and appreciates the opportunity to contribute to its development. If you have any questions please contact Jim Bain on 02 6272 1516.

Yours sincerely

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Chief Executive

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AEMC REVIEW OF DISTRIBUTION NETWORK PLANNING AND EXPANSION FRAMEWORK – RULE CHANGE

ENA Submission

24 November 2011

Key Messages

The ENA is concerned that the AEMC's proposals will not be materially effective in increasing the level of Demand Side Participation in the National Electricity Market (NEM) and will result in a disproportionate regulatory burden on Distribution Network Service Providers (DNSPs) and costs to customers through:

- The potential for duplication of network planning and expansion requirements at both a National and State or Territory level;
- The proposal to the Regulatory Investment Test for Transmission (RIT-T) for all joint planning projects even where such developments involve minimal transmission network involvement, and are undertaken to service distribution requirements;
- The prescriptive nature of the proposed Demand Side Engagement Strategy and aspects of its implementation, particularly the Demand Side Engagement Database;
- Applying the Regulatory Investment Test for Distribution (RIT-D) to the "most expensive" option, which would capture all but the smallest distribution projects;
- The overall complexity of the proposed RIT-D process, which would introduce unacceptable delays in the provision of infrastructure and become the subject of compliance enforcement and potential dispute; and
- Aspects of the Specification Threshold Test (STT) need clarification, particularly the AEMC's intention for certain projects to be fast tracked through the RIT-D and whether this intention has flowed through to the Rules. A failure to do this may lead to unnecessary disputes and protracted disagreements with the AER.

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Executive Summary

The Energy Networks Association (ENA) is pleased to have this opportunity to respond to the Australian Energy Market Commission's (AEMC) Consultation Paper on the Rule change for a National Framework for Electricity Distribution Network Planning and Expansion.

The ENA is the peak national body for Australia's energy networks, which provide the vital link between gas and electricity producers and consumers. The ENA represents gas distribution and electricity network businesses on economic, technical and safety regulation and national energy policy issues.

Energy network businesses deliver electricity and gas to over 13.5 million customers, employ more than 40,000 people and contribute approximately 1.25 per cent to Australia's gross domestic product. Energy is delivered across Australia through approximately 48,000 km of transmission lines, 800,000 kilometres of electricity distribution lines and 81,000 kilometres of gas distribution pipelines. Energy network businesses are valued at more than $60 billion and annually undertake investment of more than $6 billion in network operations, reinforcement, expansions and greenfields extensions.

Although this submission outlines the ENA's concerns with the proposed Draft Rules, the ENA is generally supportive of the intent of the policy review by the AEMC in the area of Network Planning and Expansion. The proposed Rule Change must ensure that the options analysis that underlies the investment decision by network companies, treats supply-side and non-network initiatives in a balanced manner so as to produce an optimal outcome that meets the National Electricity Objective.

The drivers, project volumes and lead-times for investment differ markedly between Transmission Network Service Providers (TNSPs) and DNSPs. These differences emphasise the importance of establishing a national framework for network planning that is tailored to the requirements of DNSPs and proponents of distribution non-network alternatives. For example, lead-times for DNSPs are shorter than for TNSPs. The proposed Rules do not address the need for DNSPs to be able to react quickly to unforeseen network limitation due to customer load growth or coming and goings. The ENA therefore does not believe that a suitable framework can be established for distribution in circumstances where the underlying premise is an alignment of the transmission and distribution frameworks.

The ENA and its members have been heavily involved in the AEMC's review into the arrangements for distribution planning and expansion and this submission complements previous submissions.

The major areas in the Consultation Paper which are of concern to the ENA are as follows:

- The potential for duplication of network planning and expansion requirements at both a N+ational and State or Territory level;

- The AEMC's proposal to employ the RIT-T test for all joint planning projects, even where such developments involve minimal transmission network investment, and are undertaken to service distribution requirements;
- The prescriptive nature of the proposed Demand Side Engagement Strategy and aspects of its implementation;
- Applying the RIT-D threshold to "the most expensive option which is technically and economically feasible" will lead to almost every distribution investment being subject to the RIT-D;
- The overall complexity of the proposed RIT-D process, which would introduce unacceptable delays in the provision of infrastructure and become the subject of compliance enforcement and potential dispute; and
- Aspects of the Specification Threshold Test (STT) need clarification, particularly as to what projects are envisaged to be fast tracked. A failure to do this may lead to unnecessary disputes and protracted disagreements with the AER.

1 Annual Planning Process

1. What are the implications of allowing each jurisdiction to determine the start date for the annual planning period? 2. Is it necessary to include a default start date for the annual planning period in the Rules?

The AEMC has acknowledged that the Rules currently contain a high level obligation on DNSPs to analyse the expected future operation of the distribution network over a minimum five year forward horizon and that in most cases, jurisdictional arrangements supplement this national requirement. The ENA supports the objective of creating a national annual planning process that is clearly defined, common and efficient. However, the preparation of the Distribution Annual Planning Report (DAPR) should not result in an unwarranted cost burden for DNSPs, and ultimately customers. The scope and level of detail required to be included in the DAPR should be commensurate with the value to its target audience.

However, to achieve the objective of national consistency, it is important that a clear commitment is made to remove jurisdictional requirements when the national arrangements are introduced to avoid duplication of reporting. It is not appropriate for a DNSP's distribution planning activities to be subject to regulation by more than one regulator at one time. Therefore, in the period of transition to the new Framework, careful planning will be required to ensure that DNSPs will not be required to comply simultaneously with the existing jurisdictional arrangements (which are commonly licence conditions) ***and*** the new Framework, which would be embodied in the Rules.

The ENA supports the proposal to allow each jurisdiction to determine the start date for the annual planning period to reflect the seasonal variability as different jurisdictions and DNSPs have different summer and winter peaks. The ENA considers that aligning planning periods nationally would not facilitate transparency, but would instead reduce the usefulness and relevancy of published information.

The ENA also notes that some DNSPs currently do not have the systems in place to produce some of the information required in the DAPR. The ENA suggests that the AEMC should consider this in relation to allowing a transitioning period for DNSPs to put in place many of the new systems that will be required.

2 Demand Side Engagement Strategy

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? 2. To what extent would DNSPs incur additional costs in developing and maintaining the various components of the proposed Demand Side Engagement Strategy?

The ENA's view remains that the most effective way to improve non-network alternatives is through clear and appropriate incentives rather than prescriptive process requirements.

The ENA queries the definition of Demand Side Engagement Register in Chapter 10 as it does not make any reference to the Register and is therefore incomplete. The ENA also suggests that the following amendment to clause 5.6.2AA(p) would help clarity when the Demand Side Engagement Register would be required to take effect:

Each Distribution Network Service provider must, from the date on which it's first Demand Side Engagement document must be published under paragraph (m), establish and maintain a register (Demand Side Engagement Register) for those parties wishing to be advised of relevant developments relating to clause 5.6.2AA and clause 5.6.5CA.

The ENA also recommends that similar to the option proposed for the DAPR, DNSPs should be able to apply for an exemption or variation to the Demand Side Engagement Strategy requirements where, due to operational or resource reasons, the cost of complying would manifestly exceed any benefit that may reasonably be obtained from compliance. For example, costs may include system and web development to allow external parties to register their interest together with ongoing administrative costs of maintaining and updating the database.

Demand Side Engagement Document

Clause 5.6.2AA(l) requires DNSPs to 'prepare and make available' a Demand Side Engagement Document. The ENA suggests that clause 5.6.2AA(l) should be amended to read similar to clause 5.6.2AA(m) and require DNSPs to 'prepare and publish' the document as 'make available' is not defined under the Rules and may be open to different interpretations.

Public database of proposals

The AEMC has proposed that DNSPs should establish a public database of proposals and case studies. The proposals and case studies to be included in the database should demonstrate and exemplify proposals received by DNSPs as well as the process with which they were assessed and considered by the DNSPs. The database should contain examples of proposals that were successful as well as those that were not.

The AEMC has recognised that DNSPs should not publish any commercially sensitive information in the non-network proposals and case studies and on this public database. The ENA believes that the necessary "sanitising" of this material will so restrict the content as to render it of very limited value to any non-network proponent.

The ENA submits that the limited value of the database does not outweigh the cost of maintaining the database, and therefore the proposal to require distributors to maintain a database should be abandoned. The ENA believes that the requirement to publish the DAPR, Demand Side Engagement Strategy and the various documents associated with the RIT-D process on the DNSP's website, sufficiently demonstrate DNSPs commitment to transparency and accountability.

Register of Non-network Participants

The AEMC's proposal that each DNSP in the NEM establish a register of interested parties (and that each interested party should register with each DNSP) appears to be an inefficient and costly approach to facilitating the flow of information between DNSPs and the proponents of non-network investments.

In addition to a central repository, the ENA strongly suggests that the AEMC develop a set of eligibility criteria for non-network proponents. Such criteria would ensure that practical solutions are proposed in an efficient and professional manner by proponents who have the necessary resources capable of providing appropriate solutions. Furthermore, it must be recognised that distributors generally have governance arrangements and policies in place which must be adhered to in the procurement of goods and services, which may conflict with the register of non-network participants.

3 Distribution Annual Planning Report

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?

2. Do you consider the proposed process for applying for and granting an exemption or variation to the annual reporting requirements is appropriate?

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?

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?

5. Do DNSPs face sufficient business and regulatory drivers to ensure that they carry out appropriate planning and procedure accurate forecasts in their DAPRs?

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?

The ENA supports the proposal to provide DNSPs with the opportunity to seek exemptions or variations to the annual reporting requirement, given the scope and volume of information that Schedule 5.8 requires. However, the ENA does not support the proposed wording for the exemption where, due to operational or network characteristics, the costs of preparing data would 'manifestly exceed any benefit that may reasonably be obtained from reporting the relevant data in a national regime.' The ENA believes that it is inappropriate to include the term 'manifestly' because it is too subjective and difficult to demonstrate. As such, it may be appropriate for a set of criteria to be developed.

In relation to the process for applying for an exemption, the Rules should require the AER to:

- make and publish a draft determination on an application within a specified period (of, say, 30 business days);
- provide a reasonable period (of, say, 20 business days) for interested parties to lodge submissions on the draft decision; and
- make and publish a final determination within a specified period (of, say, 20 business days).

The ENA also questions whether all of the information required in the DAPR as detailed in proposed Schedule 5.8 is required for planning purposes. Some of the information sought in the proposed clauses[1] resembles that information requested by the AER in assessing a

[1] For example, proposed clauses S5.8(10), S5.8(11) and S5.8(13).

DNSP's forecast capital expenditure as part of its assessment of the Regulatory Proposal for the Regulatory Control Period. Some of the information is also similar to that which the AER was proposing to obtain from DNSPs in an annual regulatory information order for performance reporting purposes. The ENA considers that it is inappropriate for the DAPR to include information that is already requested / available via other regulatory mechanisms.

DNSPs are subject to a number of regulatory and commercial incentives to minimise expenditure. They are also exposed to financial penalties under the Service Target Performance Incentive Scheme if service standards are compromised in the pursuit of cost reductions. These complementary incentives provide strong commercial drivers for DNSPs to carry out appropriate planning and to produce accurate forecasts in their DAPRs, as it is in the DNSPs' commercial interests to ensure that an optimal level and mix of network investment and non-network alternatives is employed to deliver network services that meet the needs and expectations of customers.

In addition to the above, it is noteworthy that the AEMC has already considered this question in its 2009 Draft Report on the Review of National Framework for Electricity Distribution Network Planning and Expansion. Page 19 of the Consultation Paper stated:

> "AEMC considered that it was not appropriate to extend the proposed dispute resolution process to DNSPs' annual planning process and reporting on the basis that sufficient business and regulatory drivers exist to ensure that DNSPs carry out appropriate planning and produce accurate forecasts in their DAPRs."

The ENA believes that the requirement for certification of the DAPR by the Chief Executive Officer and a Director is unnecessary and onerous given the scope of the certification (including its extension to compliance with all of the DNSP's policies) and the fact that compliance with other aspects of the Rules is not required to be certified. It is suggested that certification by the Chief Operating Officer and or a relevant General Manager would be appropriate.

4 Joint Planning Requirements

1. Do you consider the proposed Rule is appropriate and sufficient in clarifying the arrangements for joint planning between DNSPs and TNSPs?
2. In what circumstances would DNSPs be required to undertake joint planning with other DNSPs?
3. Do you consider the proposed Rule is appropriate and sufficient in clarifying the arrangements for joint planning between DNSPs?

Clause 5.6.5CB(a)(4) suggests that where the need for a proposed augmentation of the DNSP's network has been identified through the joint planning process, the RIT-D should not be performed. Unlike clause 5.6.5CB(a)(3), clause 5.5.5CB(a)(4) does not explicitly state that RIT-T should be performed instead.

Existing clause 5.6.2(e2) suggests under these circumstances, the Regulatory Test should be performed by the DNSP. The ENA suggests that clause 5.6.5CB(a)(4) should be clarified such that where the network constraint is primarily a distribution one, the RIT-D should be performed where the preferred solution is a distribution solution rather than a transmission solution (even though a transmission solution may be an option). The RIT-T should only be performed in circumstances where the preferred solution to address a distribution constraint is a transmission solution.

Similarly, if a RIT-T is to be performed to primarily address a distribution constraint, would this assessment need to be performed by the TNSP or the DNSP? If the intent is that the DNSP is required to perform this function, this will mean DNSPs will have to develop systems to enable it to perform both RIT-D and RIT-T assessments and the documentation associated with both tests.

The ENA advises that there are circumstances where joint planning is multi-dimensional and the preferred solution is a combination of both DNSPs and TNSPs with a multitude of network owners. The ENA suggests that a straight application of the RIT-T is inappropriate in these circumstances.

Investments identified through the joint planning process between TNSPs and DNSPs in the great majority of instances will not have material market effects. These investments will involve the following classes of equipment:

- Distribution assets;
- Transmission connection assets; and

- Transmission investments required to ensure that a distribution network meets the minimum power system security and reliability standards or to replace distribution assets.

Only for the latter (and least frequently needed) of these investment categories, is there ever likely to be a material market effect through the reinforcement of the interconnected transmission network.

5 RIT-D

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?
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?
3.	Should the AER be required to publish a separate annual report detailing the results of any audit undertaken in the proceeding 12 months?

The ENA has reviewed the RIT-D from 3 perspectives:

- electricity pricing pressures - customers should not have to bear undue network planning costs created by ambiguity in the RIT-D;
- the more convoluted and ambiguous the new assessment framework is, the more effort and cost will be expended to undertake the required assessments;
- community and environment, which networks must integrate with, and to which DNSPs are accountable. To the extent that the assessment framework is divorced from these factors, the more difficult it is for DNSPs to manage broader community expectations. Hence the likelihood disputes will increase.

Of particular concern to the ENA from the RIT-D proposed changes:

- increased administratively onerous requirements for assessment of projects including increased audits of projects and increased range of parties and matters that are able to dispute RIT-D assessments. The proposed changes will increase the end cost to consumers, thereby failing to address the price component of the NEO.
- the term 'consult' is used throughout the RIT-D and may be subject to different interpretations as to what is actually required by the term. For example, consulting under 5.6.6AB(g) may be different as to what form of consultation is required under clause 5.6.6AB(p) and it may be interpreted differently by DNSPs. This outcome would not be consistent with the principle of seeking consistency across the market participants. The ENA suggests that the term 'consult' should be defined under Chapter 10, particularly to avoid unnecessary disputes.
- the proposal that the RIT-D threshold be applied to "the most expensive option which is technically and economically feasible". Such terminology will potentially lead to almost every distribution investment being subject to the RIT-D.

Whereas the application of the RIT-T to the most expensive transmission option would be unlikely to significantly increase the number of eligible projects, this is not the case with distribution networks. Unless amended, this provision has the potential to capture many thousands of projects across the NEM and create an unsupportable burden on DNSP resources. Two everyday situations illustrate why this would take place:

- One of the most common situations a DNSP faces in augmenting supply to a local area involves a choice of whether to reinforce the existing HV network, or establish a new zone substation to support the existing network. Both options would always be technically and economically feasible and ordinarily the least cost alternative would be chosen.

  A zone substation represents a significant investment which would always exceed the proposed threshold for the RIT-D. It follows that every proposal to extend or augment the HV network, no matter how minor, would then be subject to the RIT-D, since a zone substation alternative would exist.

- DNSPs are frequently faced with a decision to extend the network at all voltages using overhead lines or underground cable circuits. Both options would ordinarily be considered technically and economically feasible and the DNSP would ordinarily construct the cheaper overhead option unless circumstances dictated otherwise.

  The cost of an underground investment is usually in the order of 2.5 to 10 times that of the overhead option. As an underground option will always exist, the RIT-D investment threshold has effectively been lowered by an order of magnitude, to include a very large number of minor overhead line projects.

Clause 5.6.5CA - Principles & AER Guidelines

Clause 5.6.5CA(b)

Recommendation 13 of the AEMC's 2009 Final Report states that the purpose of the RIT-D is to identify the preferred option which would be the credible option which maximises the present value of net economic benefit to all those who *distribute* electricity in the market. Clause 5.6.5CA(b) of the Draft Rules states that the purpose of the RIT-D is to identify the credible option that maximises the present value of the net economic benefit to all those who *produce, consume and transport* electricity. The ENA questions the departure from the original drafting and requests that the reasons for this policy departure be made clear as this goes to the core of the RIT-D framework.

Clause 5.6.5CA(c)(4)

Clause 5.6.5CA(c)(4) requires DNSPs to consider the value of customer reliability (VCR) when assessing market benefits. AEMO is currently consulting on VCR for TNSPs. The

AEMC should make a recommendation that AEMO undertake a similar consultation for DNSPs so that the classes of market benefits that could be delivered by the credible option under clause 5.6.5CA(4) may be better calculated.

Clause 5.6.5CA(c)(6)(iv), (7)

The ENA believes that further clarity is required as to how non-financial costs are to be considered in undertaking the RIT-D. Clarification will assist DNSPs in dealing with the increasing number of community disputes around the scope of costs, and non-financial costs specifically. The ENA suggests that the AEMC include a 'for the avoidance of doubt' provision to this affect at the end of paragraph (6), or to propose an amendment to paragraph (9) (which would arguably exclude 'non-financial' costs in any case).

Clause 5.6.5CA(c)(7)

Clause 5.6.5CA(c)(7) requires a DNSP to include a quantification of all classes of cost set out in paragraph (6) unless it can provide reasons as to why a particular class of cost 'is not expected to apply'. The ENA considers that this wording is unclear and suggests that it be replaced with a reference to the 'materiality' of the class of cost, in line with the wording of the corresponding provisions for the RIT-T (clause 5.6.5B(c)(5) and (6)).

Clause 5.6.5CA(c)(9)

The ENA suggests that the term 'may not' is ambiguous and should be amended to 'will not'. Such an amendment may prevent unnecessary disputes being raised. The ENA also notes that clause 5.6.5CA(c)(9) also allows market benefits or costs to 'Market Customers' to be included in any analysis under the RIT-D, unlike the corresponding provision in relation to the RIT-T (cl.5.6.5B(c)(9)). The ENA queries whether there is a reason why this might be the case, and would it be practical for a DNSP to consider these benefits.

Clause 5.6.5CB - Exemptions

Clause 5.6.5CB(a)(2)

As discussed above, the ENA has serious concerns with clause 5.6.5CB(a)(2) and the requirement that the RIT-D cost threshold be applied to the *most expensive* technically and economically feasible option. The ENA believes this is inconsistent with the intention of having a cost threshold that attempts to address the currently disproportionate regulatory burden on DNSPs.

The ENA is concerned that the proposed approach would result in increased regulatory burden on DNSPs because:

1. 'Technically and economically feasible' can be broadly interpreted and will capture a range of possible options, increasing the likelihood of the most expensive option being above $5 million; and

2. Importing RIT-T terminology such as 'technically and economically feasible" effectively mandates a requirement for a preliminary "mini least cost regulatory investment test" prior to the STT stage. The NPV assessment would require the business to form an expectation as to the costs and benefits of the technically feasible options (of which there will be many) – indeed this is required by the AER's RIT-T Application Guidelines. The ENA notes that the typical distribution network constraint has many more options to assess than the typical transmission network constraint.

The ENA submits that it is not appropriate to employ the RIT-T threshold to RIT-D and suggests that the AEMC consider the following change to 5.6.5CB(a)(2):

> *"A Distribution Network Service Provider must apply the regulatory investment test for distribution to a proposed distribution investment except in circumstances where:*
>
> *…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)".*

The ENA further questions whether the $5 million is an appropriate cost threshold.

The ENA believes that this approach will better meet the principle of proportionality, as set out in the AEMC's Final Report.

Clause 5.6.5CB(a)(6)

The ENA is concerned that it is the intention of clause 5.6.5CB(a)(6) to require RIT-D to be undertaken on new investments where there is an upgrade to the shared network to facilitate a new connection resulting in incidental augmentation or gifted asset. The ENA believes that such a requirement would result in undue delay for the connection asset customer and therefore suggests that where there is a new investment in the network associated with customer connections, and where the customer contributes a significant proportion of the costs, this investment should be exempt from the RIT-D process.

Clause 5.6.5CB(a)(8)

The ENA understands that draft clause 5.6.5CB(a)(8) refers to status of replacement and refurbishment of existing assets under RIT-D. The ENA seeks further clarification that clause

5.6.5CB(8) excludes incidental augmentation from the RIT-D process. The ENA suggests that clause 5.6.5CB(8) be amended to the following:

> *'the proposed distribution investment is related to* the refurbishment or replacement expenditure *of existing assets* and also results in an augmentation to the network…'.

The ENA is concerned that the phrase 'as allocated by the distribution network service provider in accordance with the recognised Cost Allocations Methods and any applicable AER guidelines' is ambiguous. The ENA suggests that this phrase should be amended to reflect the current wording of clause 6.15.1 *'as allocated by the Distribution Network Service Provider in accordance with the Cost Allocation Method that has been approved in respect of that provider by the AER'*.

Clause 5.6.5CB(c)(1)

The ENA is concerned with the requirement of clause 5.6.5CB(c)(1) and the requirement to be operational within 6 months. This timeframe to be operational for urgent and unforseen work is unrealistic and problematic, particularly given the lead times required for procurement of equipment, design and construction. Rather than prescribe a more appropriate timeframe, urgent and unforseen work should fall within the exemptions framework.

Clause 5.6.5CB(f)

The ENA seeks clarification if the AER review is in relation to a DNSP's Demand Side Engagement Strategy or a non-network option under the Specification Threshold Test stage of RIT-D.

Clause 5.6.5CB(g)

The ENA suggests that it is unclear why the AER would be required to audit a DNSP's consideration of non-network alternatives. If it is retained, The ENA submits that the AEMC or AER clarify what will be considered 'adequate consideration of non-network solutions'. This requirement is open to interpretation which is inappropriate where an audit against the requirement is undertaken.

Additional exclusions

The ENA also advocates the exclusion of other classes of distribution investment from the scope of the RIT-D, as follows:

- Support services such as IT and communications equipment. Such expenditure is not associated with the expansion of the network to meet demand and therefore there would be no benefit to seeking alternative options.
- "S Factor" proposals. These are projects which are initiated to improve the reliability of the network. These projects are essentially self-funding, and would be

assessed on the basis of a business case using the DNSP's specific internal investment criteria. Such projects should be excluded from any RIT-D requirements.

- Projects where the principal driver for the distribution investment is to address either a safety related issue, environmental threat or statutory requirement. Where such projects exist, no non-network solution will exist to eliminate these risks and absolve DNSPs of their general duty of care to their staff or the public or in general their statutory requirements. Therefore, The ENA submits that these projects should be exempted from the RIT-D process.

Clause 5.6.5D - Credible Option

Clause 5.6.5D(a)(2)

THE ENA notes that 'commercially feasible' is undefined and may be open to interpretation. Rather, this phrase should be replaced with 'economically feasible'. This is consistent with the language of the Principles, which refer to net economic benefit. The Principles also explicitly note for the potential for negative NPV options to be required, which could be argued to be commercially unfeasible.

The ENA also notes there appears to be a typographical error in under this clause in that the reference to paragraph (b) should be a reference to paragraph (b1).

Clause 5.6.5D(b1)(5)

The ENA questions the drafting of this clause as DNSPs are not in a position nor is it appropriate for a DNSP to assess whether a credible option is 'intended to be regulated'. Regulation of services/assets is determined by the AER.

Clause 5.6.5D(b1)(5) and (6)

The ENA suggests that both these clauses should not refer to 'credible options' but rather be amended to 'the option' because a DNSP, at this stage in the process, has not yet determined whether the option is credible.

Clause 5.6.6AB - *Specification Threshold Test*

Clause 5.6.6AB(d) – 'technically feasible'

The AEMC previously stated in its Final Report:

> *"We also consider that there is a need for the RIT-D to provide for a more streamlined process for small to medium sized investments where there was no potential for non network solutions. This is to strike the right balance between the compliance cost on DNSPs and the benefits of additional consultation…*

The Specification Threshold Test (STT), as it is currently drafted, allows fast-tracking of the assessment process only if the DNSP cannot identify a technically feasible non-network option to defer or remove the need for investment. The ENA submits that the phrase 'technically feasible' would result in the DNSP never being able to exercise the STT, therefore rendering the STT ineffective.

Rather, the phrase 'technically feasible non-network options' should be amended to 'credible non-network options'. This amendment would require non-network options to address the need, be economically/commercially and technically feasible and be able to be completed in a timely manner. This amendment would enable clauses 5.6.6AB(d)(1) and (2) to be merged into a single requirement.

The ENA argues that this proposed amendment was the original intention of the AEMC, as highlighted in the AEMC's Final Report[2]:

"…if a DNSP identifies the potential for non-network solutions under the STT and no non-network provider is identified with the non-network option, the DNSP would still be required to consider the non-network option under the project assessment process *as long as the option is commercially and technically feasible and can be implemented in sufficient time to meet the need."*

Clause 5.6.6AB(d) – 'proposed'

The ENA submits that the term 'proposed' under clause 5.6.6AB(d) and which is used in subsequent clauses (clause 5.6.6AB(m)), creates unnecessary confusion. At this stage of the RIT-D the DNSP has not proposed any investment, the DNSP has only identified a need. As such, the phrase 'proposed investment' needs to be reworded to simply state 'investment', and the phrase "proposed distribution investment" to simply state "distribution investment".

Clause 5.6.6AB - Project Specification Stage

Clauses 5.6.6AB(f)

The ENA suggests that clause 5.6.6AB(f) is unnecessarily convoluted and should be amended to read as follows:

> *'A Distribution Network Service Provider must carry out the requirements of paragraphs (g) to (l) where a Specification Threshold Test assessment by the Distribution Network Service Provider determines that there are credible options that are non-network options which can either defer or remove the need for the proposed distribution investment'.*

[2] AEMC 'Review of National Framework for Electricity Distribution Network Planning and Expansion' Final Report page 58

Draft Project Assessment Report (DPAR)

Clauses 5.6.6AB(m)

The ENA notes that clause 5.6.6AB(m) is ambiguous and questions whether the time periods refer to the proceeding of the investment or the preparation of the DPAR. If it is assumed that the time periods relate to the preparation of the DPAR, then:

- what if the AER does not agree to extend the timeframe, and
- clarity is required as to when the 12 month period commences. For example, is it 12 months within the closing date of submissions on the project specification report or the STT?

The ENA suggests the following amendments to clause 5.6.6AB(m):

> *If the Distribution Network Service Provider elects to proceed with the proposed distribution investment then, within:*
>
> *(1) 12 months, or*
>
> *(2) any longer time period as agreed to in writing by the AER*
>
> *of the end of the consultation period on a project specification report or (where relevant) the publication by the Distribution Network Service Provider of a Specification Threshold Test report, the Distribution Network Service Provider must prepare a draft project assessment report, having regard to the submissions received, if any, and publish that report.*

The ENA questions what would happen if the AER rejected an application to extend the 12 month period. That is, would a DNSP be required to undertake another RIT-D?

Final Project Assessment Report

Clause 5.6.6AB(x)

The ENA believes that clause 5.6.6AB(x) is ambiguous as it does not appear to contemplate the requirement to publish a FPAR after fast tracking RIT-D through the DPAR exemption under clause 5.6.6AB(t). This means the requirement to set out matters detailed in the DPAR and summarise submissions on the DPAR is impossible, if a DPAR was never required to be published. The ENA suggests a clause be drafted that states:

> *(1) A Distribution Network Service Provider is not required to comply with (x) if the Distribution Network Service Provider is exempt from publishing a draft project assessment report under paragraph (t).*

6 Dispute Resolution Process

1.	Do you consider the proposed scope of parties who could raise a dispute to be appropriate?
2.	What are the implications (positive and negative) of allowing the AER to grant exemptions from the proposed dispute resolution process?
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?

The ENA strongly supports the proposal that the dispute resolution process be limited to compliance by a DNSP with the Rules in relation to its application of the RIT-D (rather than the outcomes of the RIT-D process).

These approaches will reduce the likelihood of ambiguity in the interpretation of compliance with processes and potential for dispute, by ensuring that compliance may be readily inferred and understood. This in turn will reduce the administrative burden and cost for regulated businesses and the AER alike and the likelihood of unnecessary delay in the assessment of investment projects.

In determining the scope of parties who can raise a dispute, the AEMC must remain cognisant of the potential for investment delays and possibility of disputes arising for reasons unrelated to the compliance with the Rules (e.g. environmental and social reasons). A dispute under the proposed RIT-D process, which is designed to ensure the economic development of distribution networks and the appropriate consideration of non-network investments, should only be raised by parties that have been affected by an alleged non-compliance with that process. The ENA suggests that the AER should produce guidelines or a framework as to how a dispute may be raised.

In addition to the scope of parties, the ENA believes the scope of matters that can be disputed should be limited to where:

- The party lodging the dispute did not submit a non-network proposal to the project specification report. The right to lodge a dispute should be limited to those parties having an interest in the outcome of the FPAR; and
- The dispute was not raised during the DPAR and where the recommendation(s) in the FPAR have not changed significantly from the DPAR.

The ENA suggests that clause 5.6.6AC(b) be amended to include a subparagraph (3) which provides that:

A dispute under this clause 5.6.6AC may not be raised in relation to any matters set out in the final project assessment report which:

(3) are based on matters set out in the draft project assessment report and were not disputed during the consultation on the draft project assessment report under clause 5.6.6AB(o).

This subparagraph will remove the opportunity for vexatious or frivolous disputes being raised on matters in the FPAR and limit the ability to wait until the dispute resolution stage to engage in the RIT-D process.

The ENA notes that should the AEMC amend 5.6.6AC(b), clause 5.6.6A(b) should also be amended.

The ENA is supportive of the suggestion to develop specification around the process for applying to the AER for an exemption to the dispute resolution process.

7 Transitional Arrangements

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?
2.	If the proposed national framework was to be introduced, are the proposed timeframes appropriate to allow for the transition to the national framework?
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?
4.	From a market participant perspective, are there any implications in not aligning the proposed introduction of the national framework with the commencement of NECF?

In formulating Rule provisions to implement the outcomes of the Distribution Network Planning and Expansion Review, the ENA urges the AEMC to ensure that workable transition arrangements are set out, to facilitate the efficient ongoing development of the networks.

The ENA is concerned that the Draft Rules provide no guidance as to what stage a DNSP will be required to comply with RIT-D in relation to projects that have already started data analysis under the current Regulatory Test but have not completed the Regulatory Test. In addition, the ENA requests that for projects where consultation has already commenced under the Regulatory Test, that they continue through to finality under the current arrangements.

The ENA has concerns that the draft Rules do not appear to state that compliance with the RIT-D procedures set out under clause 5.6.6AB can only commence after the publication of the RIT-D and Application Guidelines by the AER. Without this clarity, DNSPs would need to comply as the Rules are made but before the AER has finalised their Guidelines. The ENA suggests that the draft Rules be amended to reflect this compliance requirement.

In addition, the AER has 12 months to publish the RIT-D and Application Guidelines. The Draft Rules should specify the timeframe, after the release of the Guidelines, within which a DNSP is required to comply. The ENA suggests that at least a six month transitional period is necessary.

The ENA does not expect there will be any implications in not aligning the proposed introduction with the commencement of NECF. The introduction of NECF is to commence on 1 July 2012, which may be prior to the introduction of the national

planning and expansion framework and will not provide sufficient time for market participants to transition to the national framework.

More importantly, the ENA does not believe that the two reforms need to be aligned for introduction as they are not related in any way. The ENA is concerned that an expedited Rule change process will impact on the Commission's ability to meaningfully consider submissions and consider that the Commission be permitted to freely determine the timeframe for the full course of consultation on the Rule change proposal.