



Major Energy Users Inc.

17 April 2012

The Commissioners
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Sent by: online lodgment

Dear Sirs

Assumed utilisation of imputation credits Rule change proposal ERC0143

Major Energy Users Inc (MEU) comprises more than 20 large energy users operating in all states and territories, and has affiliated representative groups based in Victoria, NSW, SA, WA and the NT.

We have reviewed the AEMC Consultation Paper discussing the rule change proposed by SP Ausnet and ElectraNet regarding the vexed issue of what is an appropriate value for gamma in the Rules to allow for the pass through of imputation credits.

In its WACC decision of 2009, the AER determined that gamma should be valued at 0.65 but as a result of significant argument over a period of time, the Australian Competition Tribunal (ACT) has determined that the value for gamma should be 0.25.

In the same WACC decision of 2009, the AER determined that the market risk premium (MRP) should be 6.50. This was an increase from the consistently used value of 6.0, which has been used for regulatory decisions since the Great WACC Debate of 1998 held by the ACCC and the Victorian regulator Office of the Regulator General (precursor to the ESCV). The reason for the increase in MRP was to reflect the impact of the Global Financial Crisis. However, over the last few years, the AER has determined that a more appropriate value for MRP should be a reversion to that long used value of 6.0, and has since used this value for a number of decisions for electricity distribution and gas decisions.

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The original purpose of the Chapter 6A rules in relation to setting WACC parameters was to provide longer term certainty for NSPs and to minimize the amount of effort dedicated by NSPs proving that WACC elements should be varied to improve the financial position of NSPs and to reduce the time dedicated by the AER and other stakeholders to refuting the claims of the NSPs. The need for this certainty was supported by the NSPs at the time. It was also supported by consumer groups representing large energy users.

For reasons best known to the developers of the Chapter 6 rules and the gas rules, the Chapter 6A rules on WACC were not incorporated into the revisions of the chapter 6 and gas rules and, as a result, there has been continuing debate as to what the various WACC parameters should be.

The MEU is aware that key aspects of the network regulation rules are currently under review by the AEMC, including whether the WACC parameters should be set for five years for all NSPs (the AER proposal) or whether there should be flexibility allowed. The current review of the rule change proposal is yet to reach a landing on this.

The MEU view is that, until there has been a decision on how and when WACC parameters are to be assessed, there should be no change to the current rules. The MEU recognizes that this decision might disadvantage SP Ausnet and ElectraNet in regard to the reduced value of gamma but, equally, they remain the beneficiary of the higher value of MRP to offset any reduction. It is not equitable nor is it in the interest of consumers for action to be taken on one element while leaving the other element alone.

The MEU is of the view that the development of the WACC parameters in 2009 reflected a balance of competing elements and therefore to change one parameter in isolation of an assessment of all other parameters has the potential to upset the balance between the competing elements. If the AEMC is inclined to grant a rule change to allow a change for one element of the WACC parameters, then it is beholden on the AEMC to be consistent and address every parameter on the same basis as it addresses the proposed change in gamma. The MEU approach reflects consistency of principles, which is a core aspect of the regulatory regime.

The MEU is concerned that the proponents (SP Ausnet and ElectraNet) both appear to suggest that an ACT decision should be considered to have a higher standing than other decisions of the AER. The proponents seem not to recognize that the ACT only “stands in the shoes” of the regulator when it reviews a decision of the AER. In fact, when the ACT reviews an AER decision the AER does not take a role in countering arguments but acts as a model litigant working with the ACT to identify the correct answer. Because of this an ACT decision does not possess a higher standing than those of the AER and should not be automatically used to change the rules, especially when there is a major AEMC review in progress with an expectation of a decision in a relatively short interval.

The MEU considers that if the current wide review of the network regulation rules changes the way the WACC parameters are set then the new approach should apply immediately and not wait for the WACC parameter determination set for March 2014.

Yours faithfully

A handwritten signature in black ink, appearing to read "David Headberry". The signature is written in a cursive style with a checkmark at the end.

David Headberry
Public Officer