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20 June 2008.

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

By email to submissions@aemc.gov.au

Dear Dr Tamblyn,

Submission on EUAA proposed rule change to WACC parameters

Please find attached EnergyAustralia's submission on the Energy Users Association of Australia's (EUAA) request for a Rule change to vary the values of the equity beta and gamma prescribed in National Electricity Rules (NER). EnergyAustralia considers that this proposed rule change should not be made by the AEMC.

The proposed rule change would alter one of the key transitional arrangements for the NSW and ACT regulatory determination processes put in place by the MCE with effect from 1 January 2008. The NSW and ACT distribution network service providers prepared and submitted their regulatory proposals on 2 June 2008, on the basis of these transitional arrangements. Any change to these arrangements would be contrary to the policy decision by the MCE to implement transitional arrangements for WACC parameters.

EnergyAustralia also submits that the proposed rule change would pre-empt and ultimately prejudice the AER's upcoming reviews of rate of return parameters under both Chapters 6 and 6A of the National Electricity Rules. Having individual parameters investigated by the AEMC, concurrently to the AER's review, is contrary to the policy intent of the MCE and AEMC.

Further, Energy Australia considers that the arguments and analysis put forward by EUAA do not provide the AEMC with compelling evidence to warrant consideration at this stage of any change to the value of the equity beta and gamma. EnergyAustralia submits that the most appropriate course of action is for the AEMC to determine not to make the proposed rule and to allow the matters the subject of the rule request to be fully considered the AER as part of its upcoming comprehensive reviews.

These matters are set out in more detail in EnergyAustralia's submission, which is attached. Should you have any questions in relation to this submission please contact Mr Jon Hocking on (02) 9269 2054.

Yours sincerely,


Geoff Lilliss
Executive General Manager - Network

Attachment



EnergyAustralia's submission on EUAA's proposed rule change to WACC parameters

EnergyAustralia welcomes the opportunity to respond to the Energy Users Association of Australia (EUAA) proposed rule change to the values of the equity beta and gamma as prescribed in Chapter 6A and Appendix 1 to the National Electricity Rules (NER).

EnergyAustralia submits that the proposed rule change should not be made by the AEMC for three key reasons:

- The rule change would alter transitional arrangements for the NSW and ACT regulatory determination processes, in respect of which regulatory proposals were submitted on 2 June 2008. This would be contrary to the decision by the Ministerial Council of Energy (MCE) to implement transitional arrangements for WACC parameters.
- The rule change process would pre-empt and ultimately prejudice the Australian Energy Regulator's (AER) upcoming review. Having individual parameters investigated by the Australian Energy Markets Commission (AEMC) concurrently to the AER review is contrary to the policy intent of the MCE and AEMC.
- The arguments and analysis put forward by EUAA do not provide the AEMC with compelling evidence to warrant consideration at this stage of any change to the values of the equity beta and gamma prescribed in the NER.

Proposed rule change is contrary to MCE policy intent`

EnergyAustralia submits that the proposed rule change is inconsistent with the MCE's policy intent for Appendix 1 to the NER (transitional rules). EnergyAustralia notes that the MCE chose to adopt the parameters codified by the AEMC in the transmission rules rather than undertake a review of any of the WACC parameters for NSW and ACT businesses. We note the MCE's comments in its Explanatory Memorandum:¹

"...the AER's 2009 review of distribution and transmission WACC parameters is the appropriate forum for the issues to be comprehensively considered. Adopting the transmission WACC parameters as a transitional measure for ACT and NSW distributors does not create a precedent that the AER must treat distribution and transmission the same in future."

In response to submissions on the Explanatory Memorandum, the MCE confirmed its policy intent not to amend WACC parameters prior to the AER undertaking a more considered review:²

"...SCO considers the transmission parameters appropriate to apply to the businesses for the reset given that the AER will not have time to do a thorough review of the issues and set out its statement of regulatory intent. The adoption of the parameters will allow the AER and stakeholders to focus on the other areas of the framework given the limited time to conduct the determination. The adoption of the parameters as a transitional measure should not be seen as prejudicing the independent review of the parameters by the AER."

In EnergyAustralia's view, the EUAA rule change proposal is misconceived so far as it seeks to change the transitional arrangements for NSW and the ACT because it is contrary to a specific and very recent policy decision made and implemented by the MCE for 1 January 2008.

¹ Standing Committee of Officials of the Ministerial Council on Energy, *Changes to the National Electricity Rules to establish a national regulatory framework for the economic regulation of electricity distribution - Explanatory Material*, April 2007, p44.

² Standing Committee of Officials of the Ministerial Council on Energy, *Response to stakeholder comments on the Exposure Draft of the National Electricity Rules for distribution revenue and pricing*, Chapter 6, p85.

Governance concerns with AEMC reviewing WACC parameters

EnergyAustralia has concerns with the AEMC undertaking a concurrent and potentially precedent setting review process on WACC issues at a time when the AER will be undertaking the rule mandated review of WACC parameters for distribution. Under clause 6.5.4(a) of the NER, the AER must conduct a review of certain WACC parameters by 31 March 2009. The AER has issued a statement to notify stakeholders that it will be publishing an issue paper in July/ August 2008. It appears likely that the AEMC will make a rule change so that the timing of the AER's review of the parameters for transmission will be aligned with that for distribution.

While EnergyAustralia recognises that the AEMC has an obligation to consider rule change proposals, it is clear that the appropriate review mechanism for WACC issues is the AER's review of WACC parameters. EnergyAustralia considers that the intention of both the AEMC and MCE was for the AER to undertake a full and detailed review of WACC parameters. In its determination on Chapter 6A of the rules, the AEMC stated that:³

.... the Commission considers there is merit in providing short term certainty by codifying the WACC parameters in Rules. However, the Commission also recognises that there may be a need for the methodology and parameters to evolve over time. Therefore, the Commission has built in to the Rules a review and change mechanism. While this does not limit the ability for a person to lodge a rule change proposal on this issue, the Commission considers that the review mechanism achieves the right balance between certainty and flexibility and therefore contributes to the NEM Objective.

A consolidated and detailed review of WACC parameters, undertaken by the AER, is the more appropriate review mechanism for the issues raised by EUAA. Such a review would provide all interested parties with an opportunity to participate in extensive consultation processes. In contrast, if the AEMC accept the proposed rule change it would presuppose and ultimately prejudice the AER's upcoming review.

EnergyAustralia therefore submits that the proposed rule should not be made by the AEMC as it would make the AER's review virtually unworkable.

No compelling evidence to warrant a rule change

EnergyAustralia has had insufficient time to undertake a detailed critique of EUAA's arguments. However, EnergyAustralia considers that the arguments put forward by EUAA do not provide the AEMC or the AER with sufficient evidence to warrant consideration of any change to the equity beta and gamma prescribed in the NER at this stage.

EnergyAustralia notes that the AEMC's determination for Chapter 6A of the NER sought to codify elements of the WACC where there was a general acceptance of the values. As such, the AEMC specified an equity beta of 1.0 and gamma of 0.5 and considered that, should compelling evidence arise to warrant a change, this could be dealt with at the time of the AER's five yearly review of the WACC parameters⁴. EnergyAustralia reiterates that EUAA has not provided compelling evidence to warrant consideration of any change to the values for the equity beta and gamma prescribed in the NER outside of the processes established by the AEMC.

EnergyAustralia looks forward to participating in the AER's review of WACC parameters.

³ Australian Energy Market Commission, *Draft Determination, National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006 No 1*, July 2005, p60.

⁴ Australian Energy Market Commission, *Rule Determination, National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006 No 1*, 16 November 2006, pp87-88.