



Australian Energy Market Commission

CONSULTATION PAPER

Application of rate of return guidelines to TasNetworks

Rule Proponent

Tasmanian Networks Pty Ltd

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**RULE
CHANGE**

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About the AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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1 The rule change request

On 9 June 2017, Tasmanian Networks Pty Ltd (TasNetworks) made a request to the Australian Energy Market Commission (AEMC or Commission) to make a rule change regarding the timing of the application of the Rate of Return Guidelines' (Guideline) revision,¹ scheduled to commence by 17 December 2018, to its distribution business.

1.1 Background

TasNetworks, Tasmania's distribution and transmission network service provider, commenced operations on 1 July 2014. TasNetworks operates its distribution and transmission network businesses jointly and is regulated by the Australian Energy Regulator (AER).

National electricity market (NEM) network service providers are subject to the Guideline. The Guideline sets out the AER's approach to estimating the returns on equity and debt for electricity transmission and distribution network service providers (including TasNetworks) in accordance with the allowed rate of return objective² in the National Electricity Rules (NER).³ The Guideline is not binding on the AER in terms of how it determines the allowed rate of return for distribution or transmission network service providers. Nor is it binding on network service providers (such as TasNetworks) in regard to how they form their revenue proposals as part of the revenue determination process. However, if either decides to depart from the Guideline, it must provide reasons for doing so.⁴

The rule change request relates to the implementation of the Rate of Return Guidelines Review rule change which inserted the transitional rule 11.93.1 into the NER.⁵ Clause 11.93.1 of the NER stipulates that the current 2013 Guideline will apply to the regulatory control period following TasNetworks' distribution and transmission regulatory control periods that commenced prior to the rule taking effect on 20 October 2016.

An earlier rule change to the NER resulted in the shortening of TasNetworks' distribution regulatory control period commencing 1 July 2017 from the minimum of five years to two years.⁶ As a result, TasNetworks' transmission and distribution regulatory control periods will align from 1 July 2019.

For further information, please refer to TasNetworks' rule change request.⁷

¹ National Electricity Amendment (Rate of Return Guidelines Review) Rule 2016 No. 9.

² Clause 6.52(c) and 6A.6.2(c) of the NER.

³ Australian Energy Regulator, *Better Regulation: rate of return guideline*, Australian Energy Regulator, Melbourne, 2013, p.1.

⁴ Australian Energy Regulator, *Explanatory Statement: Rate of Return Guideline*, Australian Energy Regulator, Melbourne, 2013, p. 7.

⁵ National Electricity Amendment (Rate of Return Guidelines Review) Rule 2016 No. 9.

⁶ National Electricity Amendment (Aligning TasNetworks' regulatory control periods) Rule 2015 No. 6.

⁷ The rule change request can be found on the Commission's website: www.aemc.gov.au.

1.2 Issues raised in the rule change request

The effect of clause 11.93.1 of the NER is that the 2013 Guideline will apply to TasNetworks' two year distribution regulatory control period which commenced 1 July 2017 and its five year transmission regulatory control period commencing 1 July 2019.⁸ The 2018 Guideline will apply to TasNetworks' distribution and transmission regulatory control periods after these. As a result, the 2018 Guideline will commence application at different regulatory control periods for TasNetworks' distribution and transmission businesses.

TasNetworks has stated that the rule made on 13 October 2016 has the unintended consequence of having a different Guideline apply to its five year transmission and distribution regulatory control periods commencing 1 July 2019.

A related issue raised in the rule change request concerns the 2018 Guideline taking effect by 17 December 2018. TasNetworks' revised regulatory proposal for its five year aligned distribution and transmission regulatory control period commencing 1 July 2019 is due December 2018⁹ and it expects to have completed customer and stakeholder consultation by then.

This means the 2018 Guideline would likely be published near the time that revised regulatory proposals are due. Given these two dates have some flexibility, scenarios could arise where the 2018 Guideline is published before TasNetworks has had sufficient time to consider the new information in its revised regulatory proposal submission due in the same month. This may leave TasNetworks insufficient time to prepare its revised regulatory proposal to take into account any differences between the 2013 Guideline and 2018 Guideline for its distribution regulatory control period commencing 1 July 2019.

1.3 The proposed rule

TasNetworks has proposed drafting to implement its rule change request. The proposed rule amends clause 11.93.1 of the NER to resolve having a different Guideline apply to TasNetworks' transmission and distribution businesses for its five year aligned distribution and transmission regulatory control period commencing 1 July 2019. This essentially addresses the two issues raised in the rule change request.

The proposed rule amends the definition of "current regulatory control period" in clause 11.93.1 of the NER as it applies to TasNetworks to be the regulatory control period "which ends on 30 June 2019". The effect of this will be that TasNetworks' current 1 July 2017 to 30 June 2019 distribution regulatory control period will be considered the "current regulatory control period" rather than its 1 July 2012 to 30 June 2017 distribution regulatory control

⁸ The rule change request uses the terms current regulatory control period and subsequent regulatory control period as it applies in clause 11.93.1 in the NER. It also uses the term second subsequent regulatory control period to refer to the regulatory control period after the subsequent regulatory control period. For distribution this is the five year regulatory control period commencing 1 July 2019 whereas for transmission this is the five year regulatory control period commencing 1 July 2024.

⁹ Australian Energy Regulator, *Preliminary framework and approach: TasNetworks electricity transmission and distribution Regulatory control period commencing 1 July 2019*, Australian Energy Regulator, Melbourne, 2017, p. 9.

period.

This means the 2013 Guideline rather than the 2018 Guideline will apply to the five year distribution regulatory control period commencing 1 July 2019. As TasNetworks' "current regulatory control period" for transmission would also end 30 June 2019, the corresponding transmission regulatory control period would also be subject to the 2013 Guideline. The proposed rule will therefore create consistency with respect to the Guideline that applies to TasNetworks' network businesses for the five year regulatory control period commencing 1 July 2019, compared with clause 11.93.1 of the NER as it is currently drafted.

1.4 Treatment as a non-controversial rule change

TasNetworks submitted that the rule change request should be treated as non-controversial under s. 96 of the National Electricity Law (NEL).

The Commission considers the rule change request should be subject to the expedited rule making process under s. 96 of the NEL on the grounds that it considers the rule change request to be non-controversial, and is unlikely to have a significant impact on the NEM.¹⁰ This is because:

- the rule change request concerns issues unlikely to have a material impact upon the NEM as its effect is limited to TasNetworks (and its stakeholders) and the AER
- the impact of the issues raised in the rule change request are limited to TasNetworks' five year aligned network regulatory control period commencing 1 July 2019.

The Commission does not anticipate that the proposed changes, if made, would result in a significant impact to other network service providers, or any other market participants.

Rule changes that are considered to be non-controversial may be progressed under an expedited (faster) process involving only one round of consultation. Under an expedited rule change, the Commission must publish its final rule determination within six weeks of commencing the rule change process.¹¹

The Commission has decided to use an expedited process to consider this rule change request provided it does not receive any valid requests not to use the expedited process by 5 September 2017. To be valid, an objection should set out the reasons why the rule change request will have a significant impact on the NEM.

If there are no valid objections to the expedited process, the final determination will be published on 3 October 2017.

¹⁰ s. 87 of the NEL.

¹¹ The AEMC has published a notice under s. 95 and 96 of the NEL to commence and assess this rule change request as a non-controversial rule.

1.5 Assessment framework

The Commission's assessment of this rule change request must consider whether the proposed rule promotes the national electricity objective (NEO) as set out under s. 7 of the NEL.¹²

The NEO is:

to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

In assessing the rule change proposed against the NEO, the Commission proposes to consider the following principles to guide the assessment of the rule change request:

- whether the proposed changes improve the transparency of information and enhance regulatory certainty
- whether the proposed changes reduce regulatory and administrative burden.

From 1 July 2016, the NER, as amended from time to time, apply in the Northern Territory (NT), subject to derogations set out in Regulations made under the NT legislation adopting the NEL.¹³ Under those Regulations, only certain parts of the NER have been adopted in the NT.¹⁴ Because the proposed rule's impact is limited to Tasmania and will not have any impact on the NT, the Commission will not assess the proposed rule against additional elements required by the NT legislation.¹⁵

1.5.1 Transparency of information and regulatory certainty

Transparency of information and regulatory certainty refers to clear, accountable and relevant information to stakeholders in order to provide greater regulatory certainty to support the efficient investment in electricity.

The important consideration for this criterion in this rule change request is the uncertainty around the 2018 Guideline scheduled to take effect by around the time TasNetworks' revised regulatory proposal is due for the regulatory control period commencing 1 July 2019. This 2018 Guideline is due to be made after TasNetworks expects customer and stakeholder consultations for its revised regulatory proposal would have already been completed based on the 2013 Guideline.¹⁶ TasNetworks has suggested this creates a lack of

¹² s. 88 of the NEL.

¹³ National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

¹⁴ For the version of the NER that applies in the Northern Territory, refer to: [http://www.aemc.gov.au/Energy-Rules/National-electricity-rules/National-Electricity-Rules-\(Northern-Territory\)](http://www.aemc.gov.au/Energy-Rules/National-electricity-rules/National-Electricity-Rules-(Northern-Territory)).

¹⁵ National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

¹⁶ The AER also has the discretion to publish the revised 2018 Guideline prior to 17 December 2018.

transparency of information and regulatory certainty as it may have insufficient time to consider the 2018 Guideline in its revised regulatory proposal submission or conduct further consultations with stakeholders for its five year distribution regulatory control period commencing 1 July 2019.¹⁷

1.5.2 Regulatory and administrative burden

Regulatory and administrative burden for this rule change request refers to whether the implementation of the rule change would either reduce or increase the regulatory or administrative burden on stakeholders. If regulation is excessive or complex, it increases costs for businesses, market bodies and other relevant stakeholders which are likely to be passed through to consumers in the form of higher prices.

The Commission considers the following aspects of the rule change request to be relevant to this criterion (with respect to the five year regulatory control period commencing 1 July 2019):

- Whether there are benefits of having consistency in the Guideline applying to TasNetworks' transmission and distribution businesses. For example, this may provide TasNetworks with the ability to consult stakeholders jointly.
- Whether the implementation of the proposed rule has the potential to reduce some costs for the AER in assessing TasNetworks' transmission and distribution proposals against one Guideline rather than two.

1.6 Consultation

The Commission invites submissions on this consultation paper and the rule change request by 19 September 2017.

¹⁷ TasNetworks rule change request, p. 2.

2 Lodging a submission

The Commission invites requests not to make a rule under the expedited process and written submissions on this rule change request.

All enquiries on this project should be addressed to Thomas Redmond on (02) 8296 7858 or thomas.redmond@aemc.gov.au.

2.1 Lodging a request not to make a rule under an expedited process

Written requests not to make a rule under the expedited process in s. 96 of the NEL must include reasons for the request, and must be lodged with the Commission by 5 September 2017 online in accordance with the process specified in section 2.3.

2.2 Lodging a submission to this rule change request

Written submissions on the rule change request must be lodged with the Commission by 19 September 2017 online in accordance with the requirements specified in section 2.3.

Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.¹⁸ The Commission publishes all submissions on its website, subject to a claim of confidentiality.

2.3 Lodging a submission electronically

Electronic submissions, or requests not to make a rule under the expedited process, must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code ERC0223.

The request or submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

¹⁸ This guideline is available on the Commission's website: www.aemc.gov.au.

Abbreviations

2013 Guideline	the current Rate of Return Guidelines developed in 2013
2018 Guideline	the Rate of Return Guidelines revision which is scheduled to take effect 17 December 2018
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
COAG	Council of Australian Governments
Commission	See AEMC
Guideline	Rate of Return Guidelines
NEL	National Electricity Law
NEM	national electricity market
NEO	national electricity objective
NER	National Electricity Rules
NT	Northern Territory
TasNetworks	Tasmanian Networks Pty Ltd