

**AEMC DRAFT NATIONAL ELECTRICITY AMENDMENT (ECONOMIC
REGULATION OF TRANSMISSION SERVICE) RULE 2006**

INFORMATION COLLECTION (CLAUSES 6.19 AND 6.20)

AER PAPER

3 May 2006

Introduction

The AER's submission (March 2006) to the AEMC on the draft *National Electricity Amendment (Economic Regulation of Transmission Service) Rule 2006* (draft Rule) provided comments on clauses 6.19 and 6.20 (Information Collection) (see pp 58-59).

As requested at the meeting between AEMC and AER staff on 19 April 2006, this paper provides more detailed comments on the above clauses. The shaded sections in Part 1 of this paper are provided on a confidential basis.

Should any further information be required, please do not hesitate to contact Owen Seadon on (03) 9290 1445.

Overview

- The amendment discussed in Part 1 of the paper is intended to address the anomaly regarding the publication by the AER of an annual report on the financial and economic, as well as operational, performance of transmission networks.
- Part 2 of the paper sets out additional drafting comments on clauses 6.19 and 6.20.

Part 1 Publication by AER

1.1 Summary

1. Clause 6.2.5 of the National Electricity Rules (Rules) (draft clause 6.19) requires TNSPs to provide to the AER on an annual basis information on the TNSP's financial and operational performance. The AER is not able to disclose the information without the TNSP's written consent, or, if consent is declined, giving the TNSP a formal notice under clause 6.2.6 (draft clause 6.20).
2. Whilst the Rules and the draft Rule expressly provide for the AER to publish an annual report on TNSPs' performance against service standards, there is no equivalent function in relation to TNSPs' financial performance.
3. Consequently, the AER cannot issue a notice under clause 6.2.6 (draft clause 6.20) to a TNSP that has not consented to the inclusion of its information in an annual report comparing TNSPs' financial performance. The ACCC / AER annual electricity regulatory reports cover only those TNSPs that consent.

1.2 Current provisions

4. Clause 6.2.4(b) in Part B of Chapter 6 of the Rules requires the AER, in applying the form of economic regulation specified in clause 6.2.4(a), to set a revenue cap to apply to each TNSP. The revenue cap is then used by the TNSP to determine transmission prices in accordance with Part C of Chapter 6 of the Rules (see clause 6.3).
5. In addition, clauses 6.2.5 and 6.2.6 in Part B of Chapter 6 govern information disclosure by TNSPs and disclosure by the AER of that information. In summary:
 - (a) TNSPs are required to submit certified annual financial statements to the AER in a form determined by the AER (cl 6.2.5(a)). Clause 6.2.5(a1) sets out information that must be included in the financial statements (including information the AER requires to 'prepare and publish annual performance statistics in relation to ... service standards'). In addition, the AER may require a TNSP to provide any other information the AER reasonably requires to perform its regulatory functions in a manner and by a date it considers to be consistent with the requirements of clauses 6.2.2, 6.2.3 and 6.2.4 (cl 6.2.5(c)).
 - (b) Clause 6.2.5(b) sets out the purposes for which the AER may use the annual financial statements. The purposes include:
 - (i) monitoring compliance with the revenue cap;

- (ii) assessing the allocation of costs (and identifying cross-subsidies) between regulated and unregulated services;
 - (iii) collating data regarding the financial, economic and operational performance of TNSPs to be used as input to the AER's decision-making regarding the setting of revenue caps or other regulatory controls to apply in future regulatory control periods; and
 - (iv) setting and publishing annual performance statistics in relation to the service standards published by TNSPs under clause 6.5.7(b).
- (c) Information provided by a TNSP under clause 6.2.5 cannot be disclosed by the AER without the prior written consent of the TNSP unless the procedure in clause 6.2.6 has been followed (cl 6.2.5(e)).
 - (d) Clause 6.2.6(a) sets out certain information that must be published in the AER's revenue cap decisions.
 - (e) Clauses 6.2.6(b)-(e) set out the procedure by which the AER may disclose information where the TNSP has declined written consent:
 - (i) the AER must be of the opinion that disclosure would not cause detriment to the TNSP or the public benefit outweighs the detriment; and
 - (ii) the AER must issue a written notice to the TNSP which, amongst other things, identifies the information, the nature of the intended disclosure, why the AER wishes to make the disclosure, and why the AER is of the opinion referred to above.

In addition, section 16 of the National Electricity Law (NEL) requires the AER, in performing or exercising 'an AER regulatory function or power' (defined in section 2) to perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national electricity market objective (set out in section 7).

- (f) The AER cannot disclose the information until 28 days after the notice is received by the TNSP. The TNSP may seek review of the notice under the *Administrative Decisions (Judicial Review) Act 1977*.
- (g) The disclosure of information provided to the AER is also governed by section 44AF of the *Trade Practices Act 1974* (Cth): see NEL section 18.

1.3 ACCC / AER Regulatory Report

6. The ACCC issued two documents pursuant to the former clauses 6.2.5(a) & (c) of the Code:
 - (a) *Information Requirements Guidelines* (5 June 2002), which sets out the financial information that must be provided by TNSPs. In particular, Appendix B to the Guidelines sets out the pro forma financial statements to be provided by TNSPs each year.
 - (b) *Service Standards Guidelines* (12 November 2003), which sets out the approach to setting performance measures as part of a revenue cap, and the service quality information that must be provided by TNSPs. In particular, clause 4 on pages 2-3 of the Guidelines sets out the pro forma information to be provided by TNSPs each year.

These documents are contained in the *Compendium of Electricity Transmission Regulatory Guidelines* published by the AER on 22 August 2005.

7. The ACCC proposed to publish an annual report, commencing for the reporting period 2002/03, on the financial and operational performance of the TNSPs using the information submitted by the TNSPs under clause 6.2.5 of the Code. In summary, the Regulatory Report contains information on each TNSPs':
 - network characteristics and operating environment;
 - operating ratios (eg opex/line length);
 - service standards performance; and
 - actual outcomes against the revenue cap components.
8. The ACCC / AER Regulatory Report is similar in structure and content to the reports published by State electricity regulators on the performance of the distribution networks that they regulate.
9. In accordance with clause 6.2.5(e) of the Code, the ACCC sought written consent from the relevant TNSPs.
10. Following these meetings, TransGrid, SPI PowerNet, VENCORP, Powerlink and ElectraNet provided consent, the latter two subject to conditions which did not materially affect the publication of the report. However, EnergyAustralia raised questions regarding the ACCC's authority to publish the report and did not provide consent.

[REDACTED]

[REDACTED] the ACCC

formed the view that it could not issue a notice under clause 6.2.6 to EnergyAustralia. Consequently, the 2002/03 and 2003/04 Regulatory Reports (published in August 2004 and April 2005) exclude EnergyAustralia's information.

[REDACTED] [This information subject to claim of confidentiality]. The issue remains under the Rule and draft Rule.

1.4 Issue

12. The Rules and draft Rule clearly provide a mechanism for proceeding to publish, where there is no written consent, annual reports on the performance of TNSPs in relation to service standards. However, there is no equivalent provision expressly providing for the AER to publish reports such as an annual report reviewing TNSPs' financial and economic performance.

13. The AER considers such reports:
- facilitate informed public input into future decisions by the AER, AEMC and other bodies;
 - provide greater transparency and accountability of the regulatory process;
 - recognise the interrelationship between revenue and the standard of performance; and
 - foster efficient outcomes by allowing comparisons to be made between TNSPs.

Such reports are routinely published by the State and overseas regulators, and are regarded as good regulatory practice.

1.5 Proposed amendment

14. The amendment to the draft Rule proposed in Attachment 1 to this paper is intended to clarify that:
 - (a) a function of the AER is the collection, analysis and dissemination of information on matters relating to the economic regulation of the national electricity market and transmission networks; and
 - (b) the certified annual financial statements submitted by TNSPs under clause 6.19(a) must include such information as the AER may reasonably require to perform this function, and may be used by the AER to perform this function.
15. The proposed amendment reflects the wording of clause 9.1(a) of the Australian Energy Market Agreement (30 June 2004) and the reference to ‘national electricity market’ in section 2 of the NEL.

Part 2 Other drafting issues: Clauses 6.19 and 6.20

16. Some further comments on clauses 6.19 and 6.20 follow:

(a) Clauses 6.19(h) and 6.20(a)

Is clause 6.20(a) intended to cover all information that a TNSP has been required to provide to the AER (for example, under clause 6.2.14 in relation to a pass through application), or is it limited to information provided under clause 6.19? (Clause 6.19(h) suggests that information provided under clause 6.12.1(c) in relation to a revenue proposal, should be treated as information provided under clause 6.19 (although the process set out in clauses 6.19(f) and 6.20 applies only in the case where the guidelines state that the information will not be disclosed).)

(b) Clause 6.19(d)

Clause 6.19(d) provides that the AER may require a TNSP to provide information the AER reasonably requires to perform 'its regulatory functions in a manner and by a date it considers to be consistent with the requirements of this Division, Subdivision 1 of Division 2 or Division 3'. Is 'regulatory functions' intended to cover a subset of functions conferred by Divisions 2.1, 3 and 4?

(c) Interaction between clauses 6.12.1(c) and 6.19

Clause 6.12.1(c) requires a TNSP to include, in its revenue proposal, information that is specified by the AER in guidelines. The guidelines must be made in accordance with the transmission guideline procedures set out in clause 6.22 (see clause 6.12.2(b)). The AER understands that clause 6.22 does not apply to information requests under clause 6.19(a) and (d). Could clause 6.19 be used to obtain information from a TNSP in the context of making a transmission determination? This seems the preferable approach given that there would be practical difficulties in following the clause 6.12.2(b)(2) process when seeking further information from a TNSP in the context of assessing that TNSP's revenue proposal.

(d) Application of NEL s 16

Would section 16(1)(a) of the NEL apply to decisions to: require information (eg under cl 6.12.1(c), 6.19(a) or 6.19(d)); require verification or auditing (cl 6.19(e)); and publish information (cl 6.20(a))?

Subdivision 2 – Information Collection

6.19 Information disclosure by Transmission Network Service Providers

- (a) A *Transmission Network Service Provider* must submit certified annual financial statements to the *AER* (in a form and by a date to be determined by the *AER*) which provide a true and fair statement of the financial and operating performance of the *Transmission Network Service Provider* in a reporting period.
- (b) The certified annual financial statements submitted by the *Transmission Network Service Provider* under clause 6.19(a) must include:
 - (1) such information as the *AER* may reasonably require to prepare and publish:
 - (A) annual performance statistics in relation to the service standards published by the *Transmission Network Service Provider* under clause 6.5.7(b); and
 - (B) annual statistics regarding the performance of the *Transmission Network Service Provider* under any *service target performance incentive scheme* that applies to it in respect of the reporting period;
 - (2)-(4) ...; and
 - (5) such information as the *AER* may reasonably require to collate, analyse and disseminate information on matters relating to the economic regulation of the national electricity market and *transmission networks*.
- (c) The certified annual financial statements submitted by the *Transmission Network Service Provider* to the *AER* may be used by the *AER* to:
 - (1) monitor the compliance of the *Transmission Network Service Provider* with the *total revenue cap* for the *Transmission Network Service Provider* for a *regulatory control period* and with the *maximum allowed revenue* for the *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period*;
 - (2) assess the allocation of costs between services which are subject to regulation under a *revenue cap determination* and services or activities which are not subject to regulation under the *revenue cap determination*, and identify any cross-subsidy between these different types of services or activities;
 - (3) collate data regarding the financial, economic and operational performance of the *Transmission Network Service Provider* to be used as input to the *AER*'s decision-making regarding the setting of revenue caps or other regulatory controls to apply in future *regulatory control periods*;
 - (4) prepare and *publish*:
 - (A) annual performance statistics in relation to the service standards published by the *Transmission Network Service Provider* under clause 6.5.7(b); and
 - (B) annual statistics regarding the performance of the *Transmission Network Service Provider* under any *service target performance incentive scheme* that applies to it;
 - (5) *publish* aggregate information on the amount of any reductions, during the relevant reporting period, in the prices payable by a *Transmission Network User* for the relevant *prescribed transmission services* provided by the *Transmission Network Service Provider*, including any reductions under clause 6.5.8 in *Customer TUOS general charges* and/or *common service charges*, and the percentage of the reductions in the *Customer TUOS general charges* and/or *common service charges* (if any) that were recovered from other *Transmission Customers* through their *Customer TUOS general charges* and/or *common service charges*, respectively, under clause 6.5.8(c); and

- (6) collate, analyse and disseminate information on matters relating to the economic regulation of the national electricity market and *transmission networks*.
- (d) In addition to the certified annual financial statements referred to in clause 6.19(a), the *AER* may require a *Transmission Network Service Provider* to provide any other information the *AER* reasonably requires to perform its functions in a manner and by a date it considers to be consistent with the requirements of this Division, Subdivision 1 of Division 2 or Division 3.
- (e) The *AER* may request or undertake verification and/or independent audit of any information sought by it, or provided to it, under this clause 6.19.
- (f) Subject to clauses 6.19(g) and (h), information provided to the *AER* by a *Transmission Network Service Provider* pursuant to this clause 6.19 must be treated as confidential by the *AER* and must not be publicly released without the prior written consent of the *Transmission Network Service Provider* which provided that information unless the procedures set out in clauses 6.20(a) to (c) have been followed.
- (g) Clause 6.19(f) does not prevent that *AER* from *publishing* the information referred to in clauses 6.19(c)(4) or (5).
- (h) Clause 6.19(f) does not apply to any information which is required to be provided in accordance with the guidelines referred to in clause 6.12.1(c) where those guidelines do not specify that the information will not be publicly disclosed.
- (i) It is a function of the *AER* to collate, analyse and disseminate information on matters relating to the economic regulation of the national electricity market and *transmission networks*.