

National Electricity Rules – Rule Change Application **Reform of the Dispute Resolution Process for the Regulatory Test**

1. Introduction

The regulatory test is a critical mechanism that ensures that new assets constructed and entitled to a guaranteed return are economically efficient. Transparent and reliable operation of the test is critical for minimising customers' network costs and also reducing the risks to non-network investors from inefficient and unpredictable decision-making. TRUenergy is a major player in the NEM's generation and retail market. We have a direct interest in the dispute provisions for the regulatory test in ensuring that inefficient network investments do not adversely impact our merchant generation and non-network projects.

TRUenergy supports the Ministerial Council of Energy (MCE) requests to the Australian Energy Market Commission (AEMC) to make a 'Rule' to implement a streamlined dispute resolution process for the regulatory test subject to some important conditions.

Let me outline four key issues

1. The current multi staged dispute resolution process that allows appeals to be heard through both the Dispute Resolution Panel (DRP) and the Australian Energy Regulator (AER) is unnecessary. We agree that the AER should hear all the disputes on the regulatory test directly.
2. We agree with the proposal to limit the grounds on which a dispute may be raised to network issues and the operation of the NEM.
3. The dispute resolution process should be further streamlined such that the appeal mechanism becomes identical for reliability and non-reliability transmission augmentations
4. The AER should be given up to 120 business days to review whether the regulatory test has been applied appropriately to both reliability and non reliability transmission augmentations as they both reflect comprehensive assessments of economic efficiency.

2. Key Issues

2.1 The current multi staged dispute resolution process that allows appeals to be heard through both the Dispute Resolution Panel (DRP) and the Australian Energy Regulator (AER) is unnecessary. We agree that the AER should hear all the disputes on the regulatory test directly.

Irrespective of the outcomes of a dispute heard by the DRP and the final report prepared by the project proponent, the same matters considered and resolved by the DRP can be disputed and referred to the AER for determination. TRUenergy believes that the current process is inefficient and needs to be changed; therefore we support the proposal in streamlining down appeals to one forum.

The AER seems to be in the best position to be the single forum to hear disputes on the regulatory test because

- It has the experience in handling complex regulatory matters on a range of issues and would be well placed to handle this activity.
- It has the economic skills required to make these complex decisions
- It has the competence to manage the economic consultants to undertake these activities if need be.
- It makes decisions in a transparent manner with timely decisions that are published
- In publishing and making decisions of regulatory test disputes would create regulatory precedent creating more certainty for investors.

2.2 We agree with the proposal to limit the grounds on which a dispute may be raised to network issues and the operation of the NEM

We agree that disputes on the grounds of personal detriment or effect on property rights, rather than on network issues and the operation of the NEM should be heard through other forums such as local planning processes. Therefore access to this dispute mechanism should exclude those grounds.

Drafting a limitation to grounds of appeal should be done cautiously as it may inadvertently complicate the appeals process for others regarding whether their appeals are correctly constituted. Having said that, the rule change as drafted appears to strike a fair balance in achieving this objective. We suggest the AEMC monitor this issue, and if in practice the limitation complicates the dispute process for those it did not intend to affect, that the AEMC progress a review upon it.

2.3 The dispute resolution process should be further streamlined such that the appeal mechanism becomes identical for reliability and non-reliability transmission augmentations.

TRUenergy can see no reason why reliability and non-reliability transmission augmentations should be subject to different appeal grounds. The current rules allow the DRP to settle the assumptions upon which reliability augmentations are applied. Where the network asset is not a reliability augmentation, a dispute can be raised to question whether that new large transmission asset satisfied the regulatory test.

A reliability augmentation is tested to determine if the network augmentation is efficient for reliability purposes. A non-reliability augmentation is tested to determine if the augmentation delivers a 'net benefit' to the market. However, both can be complex economic and technical assessments and they are not necessarily distinct concepts. For example, VENCORP's standard practice is to subject augmentations that other TNSP's might describe as "reliability" augmentations to the "market benefit" test.

They each have the potential to be incorrectly carried out with commensurate adverse impact on other parties and equally require due care and diligence. Thus in the interests of fair process and transparency, they should both be disputable under the same grounds, i.e. an appellant should be able to also dispute whether a reliability augmentation satisfies the regulatory test.

We accept that a distinction in the grounds of dispute between the different test legs existed prior to the current proposal, however we think this proposal to streamline the dispute provisions provides an excellent opportunity to further simplify and standardise the dispute provisions such that each leg of the regulatory test-reliability and market benefit-are equally robust.

2.4 The AER should be given up to 120 business days to review whether the regulatory test has been applied appropriately to both reliability and non reliability transmission augmentations as they both reflect comprehensive assessments of economic efficiency

It is our view that 120 business days provides the AER with a reasonable time frame to assess whether the complex technical and economic assessments involved in some regulatory tests have been applied appropriately, be they reliability or non-reliability transmission augmentations. Some reliability augmentations have a value of many \$10's of millions, and any assessment will require a reasonable time frame for the AER to determine if the regulatory test has been applied appropriately. Hence, the appeal process should not differentiate between reliability and non-reliability augmentations.

We should not fear that the extension will unduly delay appeal decisions. Where the proposal and analysis is straightforward, the AER would clearly not use the entire 120 day period simply because it is available to them. Presumably the shortened reliability period has come about as it was expected that reliability augmentations, if delayed, would put reliability at risk. It would appear that if reliability was imminently and clearly at risk, then a reliability regulatory test assessment, by definition, is probably also a straightforward one and the AER would not need the full period. In any case, the AER should have the flexibility to decide what level urgency the matter must be addressed.

As such, the AER should be given up to 120 business days to determine whether both reliability and non-reliability augmentations satisfy the regulatory test in the event of a dispute.

3.0 Conclusion

So, in summary, TRUenergy supports the (MCE's) request to the (AEMC) to make a 'Rule' to implement a streamlined dispute resolution process, as:

1. The current multi staged dispute resolution process that allows appeals to be heard through both the Dispute Resolution Panel (DRP) and the Australian Energy Regulator (AER) is unnecessary. We agree that the AER should hear all the disputes on the regulatory test directly.
2. We agree with the proposal to limit the grounds on which a dispute may be raised to network issues and the operation of the NEM.

However we suggest:

3. The dispute resolution process should be further streamlined such that the appeal mechanism becomes identical for reliability and non-reliability transmission augmentations.
4. The AER should be given up to 120 business days to review whether the regulatory test has been applied appropriately to both reliability and non reliability transmission augmentations as they both reflect comprehensive assessments of economic efficiency.

Regards

Con Noutso
Manager Regulation (Access)