

2 October 2012

Mr Richard Khoe
Project Leader,
Economic Regulation of Network Service Providers Rule Change
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

via email: aemc@aemc.gov.au

Dear Mr Khoe

Draft Electricity National Electricity Amendment Rule 2012 – Transitional Arrangements

The Energy Networks Association (ENA) is writing you on behalf of its members affected by the proposed transition and savings rules being considered by the Australian Energy Market Commission (AEMC) in respect of its Draft Determination on the *Economic Regulation of Network Service Providers*.

The network sector is highly appreciative of the consultation opportunities provided to date on these critical parts of a revised rule framework. Any transitional rules will involve complex considerations, and invariably will directly and substantially impact on the legitimate business interests and the stability of the commercial, investment and regulatory environment facing network businesses. For these reasons, it is crucial that these matters receive the appropriate detailed focus from all affected stakeholders.

This objective is best assisted by a clear shared understanding of how the rule-making process is intended to proceed, and predictability around its critical procedural steps. At the AEMC's Consultation Workshop held in Sydney on 26 September, the issue was raised of the formal commencement date of the consultation process on the proposed draft rules relating to transitional and savings arrangements. It was noted at the workshop that the draft rules released by the Commission are designated as 'consultation rules', and that they do not have the status of formal Commission-issued draft rules.

It is our understanding that the Commission's initial view is that the minimum six week consultation period required following the release of such draft rules by the *National Electricity Law* has nevertheless commenced.¹ This position does not appear in conformity with industry's understanding of the relevant provisions of the NEL, which require formally issued draft rules to be released with a fixed minimum consultation period of six weeks.

¹ *National Electricity Law* Section 99 (4) (a)

ENA and its members have – as noted at the workshop – actively participated in constructive detailed discussions with the Commission, AER and other affected stakeholders regarding the practical implementation of transitional rule arrangements.

Network businesses consider it would provide improved clarity to all stakeholders for the formal legal status and length of the associated consultation to be placed beyond doubt by the Commission, and that the Commission’s final views on these issues be communicated in a public manner to all interested stakeholders.

Uncertainty on these questions has the potential to significantly undermine the capacity of the proposed rules to meet the rule-making tests and commence operation effectively. Until such clarity is forthcoming, network businesses will of course continue to actively pursue pragmatic and robust outcomes under the Commission’s process for developing successful transitional and savings arrangements. These steps must of necessity, however, not be interpreted in a manner which could be potentially prejudicial to network businesses’ existing or future rights.

If you have any questions regarding these matters, or ENA can be of further assistance to the Commission on these important issues, please contact Garth Crawford, Principal Advisor, Economic Regulation on 02 6272 1555.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'M Roberts', written in black ink.

Malcolm Roberts
Chief Executive Officer