AUSTRALIAN ENERGY REGULATOR

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09 October 2008

Dr. John Tamblyn
Chair
Australian Energy Market Commission
PO Box H166
Australia Square, NSW 1215

By email: submissions@aemc.gov.au

Dear Dr. ~~Tamblyn,~~ John

Re: AEMC's Draft Cost Allocation Arrangements for Transmission Services Rule.

The AER welcomes the opportunity to comment on the AEMC's draft Rule determination on the National Electricity Amendment (Cost Allocations Arrangements for Transmission Services) Rule 2008 ('the draft rule').

The AER supports the general intent of the draft rule and considers it a legitimate objective to bring replacement assets within the scope of the grandfathering process, where assets have been replaced without affecting the provision of services under current agreements. The AER does, however, have a number of comments on some detailed aspects of the draft rule, which we think should be clarified in order to improve the practical workings of this provision.

The AER notes that the draft rule contains new definitional provisions which incorporate the concepts of a "prescribed connection service" and an "eligible asset" into Rule 11.6.11 ('the new definitions'). The new definitions clarify the operation of the draft rule and are an improvement over the existing Rule 11.6.11 of the National Electricity Rules. However, some further clarification regarding the precise meaning of these terms would be appropriate.

The AER seeks clarification on situations where a "prescribed connection service" may not be entirely provided by using "eligible assts." Situations may arise where a TNSP may wish to add a component part or other device to an "eligible asset" that would not constitute a replacement for the purposes of the National Electricity Rules. Similarly, the reconfiguration of an asset by a TNSP could result in certain assets which are not "eligible assets" becoming part of a connection service. In essence, the AER is concerned that it is not clear what the outcome will be when a service comprises both "eligible" and "non-eligible" assets.

In particular, under the draft rule, a determining criterion in the definition of a "prescribed connection service" is that '*the relevant service is provided using eligible assets.*' It is not clear whether this provision should be read as referring to *only* eligible assets or assets which include eligible assets. The distinction may have an impact upon whether a service will be ultimately classified as a prescribed connection service or a negotiated service. The AER requests that the AEMC consider the impact of any potential outcomes.

The AER also notes that the definition of a "prescribed connection service" includes the services provided by a TNSP immediately before the start of the TNSP's regulatory control period, subject to a number of criteria. The AER seeks clarification on the use of the term "immediately before the start of that regulatory control period" within the context of the definition of a "prescribed connection service." A plain reading of this provision could mean the date is the day before the beginning of a TNSP's regulatory control period. This interpretation, however, may mean that the AER may not be able to accurately determine the status of a prescribed connection service during the revenue reset process.

Under Rule 6A.13.3, The AER must not later than 2 months before the commencement of the relevant regulatory control period publish a final decision, including reasons, for a TNSP revenue reset. The AER believes that this rule requirement gives certainty to regulated businesses regarding the timing of their determinations and reduces the cost of regulatory compliance. Similarly, a date three to four months before the start of a TNSP's regulatory control period would add sufficient certainty to the draft rule (as opposed to the use of the term *immediately before the start of that regulatory control period*).

Further, given the timeline proposed for the implementation of the draft rule, the AER seeks clarification on the transitional provisions that will apply during the implementation of the draft rule. The AER notes that there may be assets that have become "negotiated service assets" under the current interpretation of clause 11.6.11 which would form part of a prescribed connection service as an eligible asset under the draft rule. If instances such as this exist in the market, the AER notes that eligible assets may revert to being prescribed service assets upon the implementation of the draft rule.

The AER notes that the draft rule's definition of a "prescribed connection service" allows for a relevant service to be provided under a *connection agreement* if it was first entered into before the commencement date (as extended or novated from time to time). The AER notes that there is a potentiality that grandfathering could continue indefinitely in some (albeit limited) circumstances.

The AER further notes that grandfathering will cease where a connection agreement is amended at the request of the user for the purpose of altering the relevant service. However, the AER queries, under actual commercial conditions, whether it will always be clear who has initiated the request for the amendment. The AER recommends that the draft rule be amended in such a manner so that upon the AER's request, a TNSP can be required to provide the AER with details of every relevant user's request for an amendment to a connection agreement and identification of the affected assets.

The AER also suggests the AEMC seeks clarification on situations where a connection service is provided without an accompanying connection agreement. Although such instances are likely to be rare, the AER understands that instances were known to exist at market start in 1998 and that these arose where generators and industrial customers had lost or misplaced the relevant connection agreement. It is uncertain whether all such instances have been resolved.

Thank you for the opportunity to comment on the draft rule. We look forward to the release of the final rule.

Yours sincerely

Michelle Groves
Chief Executive Officer