9 August 2012

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South, NSW 1235

Project number: ERC0131

Dear Mr Pierce,

RE: DISTRIBUTION NETWORK PLANNING AND EXPANSION FRAMEWORK – DRAFT RULE DETERMINATION

The Victorian DNSPs (CitiPower and Powercor Australia, United Energy, SP AusNet and Jemena Electricity Networks) welcome this opportunity to respond to the AEMC's (the Commission) Draft Rule determination on the Distribution Network Planning and Expansion Framework, dated 14 June 2012.

The Victorian DNSPs (the Businesses) have previously lodged a submission in response to the AEMC's Consultation Paper and a supplementary submission in relation to the proposed transitional arrangements. The Businesses are pleased that the Commission has addressed many of the issues raised these submissions. This submission is focused, therefore, on a number of outstanding issues where the Businesses consider that further change would materially improve the draft rule.

This submission sets out the Businesses' comments on the following issues:

- Section 1 comments on the annual planning and reporting requirements;
- Section 2 comments on the various elements of the proposed Regulatory Investment Test for Distribution (RIT-D);
- Section 3 discusses the Businesses' remaining concerns regarding the dispute resolution process; and
- Section 4 highlights an outstanding implementation and transition issue.

- Section 5 comments on miscellaneous issues.

Before turning to these matters, we wish to note that the Businesses concur with the submission lodged by the Energy Networks Association (ENA) under separate cover.

1. Annual planning and reporting requirements

1.1 Overview and key points

The draft rule requires each DNSP to undertake an annual planning process covering a minimum forward planning period of five years for their distribution assets (and ten years for dual function assets). The forward planning period would commence one day after the 'jurisdiction specified date', which has a default date of 31 December. The Commission expects the Rule to commence on 1 January 2013, and the transitional provisions provide for the RIT-D to commence 12 months later (i.e. on 1 January 2014).

The planning process would apply to all distribution network assets and activities undertaken that would be expected to have a material impact on the distribution network in the forward planning period. In carrying out the planning process, DNSPs would, at a minimum, be required to:

- prepare forecasts of maximum demands for the relevant network assets;
- identify system limitations; and
- take into account non-network options when considering investment options.

The Commission has made a number of amendments to its proposed Rule following stakeholder consultation. The Businesses strongly support the following amendments proposed by the Commission:

- removal of the requirement for consistent starting dates across jurisdictions for the DAPRs;
- removal of the requirement for DNSPs to conduct a public forum on the content of the DAPR;
- removal of the requirement for DAPRs to be certified by the Chief Executive Officer (CEO), and a Director or Company Secretary of the DNSP;
- removal of the requirement for DNSPs to establish, maintain and publish a database of non-network proposals and/or case studies of non-network proposals as part of the proposed demand side engagement strategy; and
- removal of specific review and audit powers for the AER in relation to DNSPs' consideration of non-network options.

The Businesses welcome the removal of these requirements, which would otherwise add significantly to the costs of the annual planning process without delivering

material benefit. The Businesses also accept the Commission's reasoning for removing AER exemptions or variations to the annual reporting requirements.

In addition to supporting the above changes, the Businesses believe that further amendments would enhance the draft rule in relation to:

- Joint planning projects. As explained in section 1.2 below:
    - The threshold provisions appear to apply differently depending on whether the joint planning project is subject to the RIT-T or RIT-D. The Businesses consider that the threshold should apply to the value of the distribution component on the lead DNSP's network if the RIT-D applies. This approach would mirror the application of the threshold if the RIT-T were to apply.
    - The Businesses consider that the definition of 'joint planning project' is potentially confusing because it refers to a project that has been 'initiated'. To avoid confusion, the Businesses suggest that the reference to 'initiated' should be removed.
    - The Business cannot understand why interested parties should be allowed to conduct joint planning for declared networks. This proposal appears to have no rationale and should be removed.
- The application of the RIT-T to transmission-distribution connection augmentations. As explained in section 1.3 below, the Businesses do not understand why this category of investment is excluded from the RIT-T. This is an issue that was raised by the Businesses in their earlier submission, but has not been addressed.
- Demand Side Engagement Strategy. Section 1.4 below explains that subject to a relatively minor drafting clarification the Businesses support the draft rule.

1.2 Joint Planning Projects

The draft rule contains provisions relating to the conduct of joint planning between TNSPs and DNSPs, and the application of the appropriate investment test.

In its draft determination, the Commission maintains its view that it is prefers a single project assessment and consultation process to be applied to joint planning projects, irrespective of the location of a system limitation. As the RIT-T mandates the quantification of material market benefits, the Commission argues that the application of the RIT-T to joint planning projects would ensure that any applicable market benefits were appropriately considered and quantified. The Commission therefore concludes that the RIT-T process, rather than the RIT-D, is the appropriate process to apply to joint planning projects, as the general rule.

The only exception to this general rule applies where minimal investment is required on the transmission network and the primary issues relate to distribution network constraints.

The draft rule therefore requires that the RIT-T project assessment and consultation process be applied to all joint planning projects where at least one potential credible option to address an identified need contains a network or non-network option on a transmission network (other than dual function assets) with an estimated capital cost greater than $5 million. In other cases, NSPs would have the option of undertaking the RIT-D process as an alternative to the RIT-T process (where the relevant RIT-D criteria are met).

The Businesses address the issue of the threshold for applying the RIT-D in detail in section 2 of this submission. However, in the context of the joint planning arrangements, it is important to clarify the intended operation of the thresholds. The Businesses note that the RIT-T is to be applied to joint planning projects where:

(i) at least one potential credible option to address to address the identified need includes investment in a network or non-network option on a transmission network (other than dual function assets) with an estimated capital cost greater than $5 million (as varied in accordance with a cost threshold determination); or

(ii) the Network Service Providers affected by the joint planning project have agreed that the regulatory investment test for transmission should be applied to the project.

It is evident from the above provisions that the transmission component of the joint planning project must exceed the threshold amount in order for the RIT-T to apply. The threshold, therefore, does not apply to the total costs of the joint planning project, but only to the transmission component.

The Businesses consider that this approach is appropriate because the regulatory burden imposed on the lead NSP should be commensurate with the commercial value of the project to that NSP. This is especially so in relation to joint planning projects, which will tend to be more complex and costly given the need to work with other NSPs through the regulatory test process.

However, the draft rule is not clear that the threshold will be applied in the same way to joint projects that are subject to the RIT-D. The problem arises because:

- A RIT-D project is defined to include a joint planning project that is not a RIT-T project; and

- A joint planning project is defined as a project initiated to address a need identified under clause 5.14.1(d)(3) or clause 5.14.2(a), and these clauses do not apply any threshold tests.

It follows from these provisions that a joint planning project that is a RIT-D project will be subject to a $5 million threshold, even if the investment on the transmission or distribution network may be below $5 million. This outcome is inconsistent with the treatment of joint planning projects under the RIT-T, where the threshold applies to the augmentation component on the transmission network.

The Businesses recommend that the Commission should amend the draft rule to address the inconsistent operation of the threshold to joint planning projects depending on whether they are subject to the RIT-T or RIT-D. The Businesses propose that the draft rule should be amended so that the $5 million threshold applies to the augmentation of the network of the lead DNSP if the joint planning project is subject to the RIT-D.

The Businesses also query the proposed definition of 'joint planning project'. The query is a 'housekeeping' drafting issue rather than a policy concern. As currently drafted, 'joint planning project' is:

> a project initiated to address a need identified under clause 5.14.1(d)(3) or clause 5.14.2(a) (emphasis added)

Evidently, as the joint planning arrangements are focused on developing forward-looking plans for augmentation, it is not appropriate to define a 'joint planning project' as a project that has been initiated. Similar problems arise in the definition of RIT-D projects and RIT-T projects, as each definition refers to projects that have been initiated.

The Businesses note that the term 'project' may be used in one or two ways:

- To refer broadly to the range of options that may alleviate an identified network issue; or

- To refer to the preferred solution to address an identified network issue.

It is important that the final Rules distinguish more clearly between these different applications of the term 'project'. For example, the draft rule appears to employ the term in alternative ways in clause 5.17.3 below:

(a) A RIT-D proponent must apply the *regulatory investment test for distribution* to a RIT-D project except in circumstances where:

  (1) the RIT-D project is required to address an urgent and unforeseen *network* issue that would otherwise put at risk the reliability of the *distribution network* or a significant part of that *network* as described in paragraph (c)

The Businesses regard the 'RIT-D project' in (a) as referring to the range of options that may alleviate an identified network issue. However, the RIT-D project in (1) presumably refers to the preferred solution to address the identified network issue. As already noted, defining 'RIT-D project' as a project that has been initiated is not appropriate in either example. In view of these observations, we recommend that the Commission should carefully review the drafting of the draft rule to ensure that:

- the terms 'joint planning project', 'RIT-D project' and 'RIT-T project' are defined appropriately; and

- the various applications of these terms work as intended and are not open to misinterpretation.

While the above matter is purely a technical drafting issue, a policy concern does arise, however, in relation to clause 5.14.1(b) which states:

> "In the case of the declared shared network of an adoptive jurisdiction, the relevant declared transmission system operator, the relevant Distribution Network Service Provider, AEMO and any interested party that has informed AEMO of its interest in the relevant plans, shall conduct joint planning."

The Businesses do not understand how or why an interested party should be involved in the joint planning of a declared shared network. It is important to note that rule changes must promote the National Electricity Objective. The Businesses are not aware of any reason why the Commission considers this proposal would promote the National Electricity Objective.

1.3 Application of the RIT-T to transmission-distribution connection

In previous submissions to the Commission, the Businesses have noted the need for the Rules to provide for a regulatory investment test to be applied to transmission-to-distribution connection decisions. The Businesses also explained that the MCE's Rule change proposal states that the RIT-T would be applied to any investments identified through the joint planning process, including transmission-distribution connection projects. However, the Commission's draft determination provides the following comment by way of clarification[1]:

> "To clarify, under draft clause 5.16.3(6) a RIT-T proponent is not required to apply the RIT-T to a RIT-T project where the identified need can only be addressed by expenditure on a 'connection asset' (as defined in Chapter 10 of the NER)."

Contrary to the Commission's draft determination, the Businesses are not aware of any reason why the regulatory investment test ought to apply to shared network augmentations, but not to augmentations of transmission-to-distribution connection assets. The Businesses also note that the joint planning requirements includes planning for transmission-to-distribution connection assets. In particular, clause 5.14.1(d) requires each DNSP and TNSP to:

> "meet regularly and as required to assess the adequacy of existing transmission and distribution networks and transmission-distribution connection points over the next five years and to undertake joint planning of projects which relate to both networks (including, where relevant, dual functions assets)."

If it is appropriate to include transmission-distribution connection points in the joint planning arrangements – and the Businesses accept that it is – it also appropriate to apply the same regulatory test provisions. The Businesses are concerned that this issue remains outstanding.

1.4 Demand side engagement strategy

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[1] AEMC, Draft National Electricity Amendment (Distribution Network Planning and Expansion Framework) Rule 2012, page 162.

Under the draft rule DNSPs would be required to publish a Demand Side Engagement Strategy which would outline each DNSP's processes for considering non-network proposals and engaging with non-network providers. As noted above, the Businesses welcome the Commission's conclusion that it is not appropriate for DNSPs to maintain a database of non-network case studies.

However, the Businesses note that schedule 5.9(e) requires a DNSP's demand side engagement document to include:

> "an outline of the criteria that a potential non-network provider is to meet or consider in any offers or proposals".

The Businesses do not consider that the proposed drafting is sufficiently clear. In particular, it is not appropriate for DNPSs to outline criteria that a potential non-network provider is "to consider" in any offer or proposal. The Businesses therefore propose the following drafting:

> "an outline of the criteria that may be applied by the DNSP in evaluating non-network proposals".

2. Regulatory Investment Test for Distribution

2.1 Overview and key points

The draft rule provides for a Regulatory Investment Test for Distribution (RIT-D) that requires the RIT-D proponent to undertake assessment and consultations for distribution investments. In its draft determination, the Commission concludes that the draft rule is likely to promote efficient investment in distribution networks for the long term interests of consumers of electricity through[2]:

- promoting greater consultation with stakeholders which should help to ensure that all relevant investment options are identified, considered and quantified;
- improving consistency and transparency of distribution investment assessments, thereby promoting more efficient decision making by NSPs; and
- facilitating a more strategic assessment of projects which should optimise decision making and improve the efficiency of the distribution assessment process.

The Commission also considers the draft rule will promote good regulatory practice by balancing the appropriate range of projects subject to a robust economic assessment and the timing and resources required to conduct the planning process.

The Businesses generally support the Commission's draft provisions for the RIT-D, although there remain a number of issues where further improvement or clarification could be provided. The key issues raised in the remainder of this section are summarised below:

[2] Ibid, pages 104 and 105.

- **RIT-D principles.** As explained in section 2.2, it is important to state that the RIT-D does not require DNSPs to undertake network investment. A similar principle should also be stated in respect of the RIT-T.

- **Exemptions from the RIT-D.** Section 2.3 reiterates the Businesses' concern regarding the application of the $5 million threshold. The Commission has maintained its earlier view that the threshold should be applied to the most expensive option, rather than the preferred option. The Businesses consider that the draft provisions are unclear and may produce unintended consequences. The Businesses propose amendments that would apply the threshold to the expected costs of the preferred option, and the RIT-D would be applied if the actual costs of the preferred option exceeded the threshold.

- **Urgent projects should be exempt from the RIT-D.** As presently drafted, the rules would require a project to be subject to the RIT-D process if the project need had been reasonably foreseeable. The effect of this provision is to penalise customers by exposing them to unacceptable reliability issues because an urgent need was not foreseen by the network company. The draft rule should be amended to ensure that delivering network reliability is the overriding objective. It is important that 'urgent projects' are defined in a manner that does not relate to the foreseeability of the project need and provides sufficient time for the project to be delivered without exposing customers to unacceptable network reliability risks.

- **Non-network options.** Section 2.4 explains that the Businesses support the draft rules in relation to non-network options with the exception of the four month consultation period for submissions to the non-network options reports. The proposed period is excessive when compared to the distribution consultation procedures, which allow for 30 business days.

The remaining sections 2.5 to 2.8 note that the Businesses support the Commission's draft rules in relation to:

- The publication of draft and final project assessment reports.

- Provisions for re-applying the RIT-D in certain circumstances, subject to the changes noted above; and

- The RIT-D application guidelines.

2.2 RIT-D principles

The Businesses generally support the RIT-D principles. In particular, it is appropriate for the RIT-D to combine the reliability and market benefits limbs of the current regulatory test into a single cost-benefit framework. However, the Businesses consider that the draft rule should also clarify that the RIT-D does not require NSPs to undertake network investment. The same principle applies equally to the RIT-T, noting that DNSPs may be required to apply the RIT-T in the course of a joint planning process. The Businesses consider that the draft rule would be improved if this important principle were clearly stated in relation to the RIT-D and the RIT-T.

2.3 Exemptions from the RIT-D

As already noted, the Businesses are concerned that:

- the definition of RIT-D project refers to projects that have already been initiated; and
- transmission-distribution connection points are excluded from the regulatory investment test without good cause.

It will be helpful for the Commission to clarify these issues in its final determination.

As already noted, the draft rule provides for a RIT-D cost threshold, below which the RIT-D should not apply. The Commission explains that the purpose of the RIT-D cost threshold is to ensure that the administrative burden on RIT-D proponents from conducting the RIT-D process remains proportionate to its potential benefits. The draft rule attempts to achieve this outcome by specifying a dollar amount below which the RIT-D would not be applied.

The draft rule sets the RIT-D cost threshold at $5 million and requires this to be applied to the estimated capital cost (to the NSPs affected by the RIT-D project) of the 'most expensive potential credible option'. The Commission explains that the draft rule has adopted the reference to the 'most expensive potential credible option' in preference to the 'the most expensive option which is technically and economically feasible', which the Commission had adopted in the proposed Rule. It is also noted that the latter words continue to be adopted in relation to the RIT-T.

The term 'credible option' is defined in clause 5.15.2 as follows:

> "an option (or group of options) that:
>
> (1) addresses the identified need;
>
> (2) is (or are) commercially and technically feasible; and
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> (3) can be implemented in sufficient time to meet the identified need,
>
> and is (or are) identified as a credible option in accordance with paragraph (b) or (d) (as relevant)".

The Commission explains how it intends the words 'most expensive potential credible option' to be interpreted in applying the threshold[3]:

> "The Commission considers that it would be more meaningful to relate the RIT-D cost threshold to the subset of potential options to which the RIT-D must be applied (that is, to the group of potential 'credible options' as defined under section 5.15.2 of the draft rule). Consequently, an extremely high cost option which is unlikely to deliver materially higher market benefits compared to other potential options would not be expected to be included in the list of potential options to which the RIT-D cost threshold level would be applied."

[3] Ibid, page 94.

As noted above, the draft rule adopts different wording for the RIT-T and RIT-D, even though the intended operation is the same for both tests. As the Commission explains, it considers the different terms used to be interchangeable with one another[4]:

> "A key assumption made in preparing the draft rule is that an option that is determined to be 'commercially feasible' must also be 'economically feasible' (and vice versa). As such, the approach to applying the RIT-D cost threshold is the same as the approach used in applying the RIT-T cost threshold. The use of different terminology in the context of the RIT-D rules (compared to the RIT-T) is intended only to address the concerns of DNSPs that, as drafted, the approach to applying the RIT-D cost threshold was not sufficiently clear."

The Businesses agree with the Commission that the reference in the RIT-D to 'most expensive potential credible option' is similar to the RIT-T provisions in clause 5.16.3(2), which are reproduced below:

> "the estimated capital cost of the most expensive option to address the identified need which is technically and economically feasible is less than $5 million (as varied in accordance with a cost threshold determination)".

However, the Businesses disagree with the Commission that 'commercially feasible' and 'economically feasible' are interchangeable expressions. 'Commercially feasible' is reasonably well-understood expression in a general business context, but it is open to broad interpretation. On the other hand 'economically feasible' is neither a widely used nor a particularly meaningful expression. In practice, it is difficult to define either term in a way that avoids NSPs adopting materially different interpretations. In addition, the Businesses consider it preferable to adopt identical drafting for the RIT-T and RIT-D if the intended application of the threshold is the same in both cases.

The Businesses' strongly held view is that the drafting issues in relation to 'commercially feasible' and 'economically feasible' can be readily overcome by improving the design of the threshold directly. As explained below, it is appropriate to change the threshold so that it applies to the cost of the preferred project, not to cost of most expensive option.

The Businesses note that the Commission has argued that the setting of the threshold is inextricably linked to the question of whether it applies to the most expensive option or the preferred option. The Commission explains this point in the following terms[5]:

> "…changing the approach to applying the RIT-D cost threshold would require reconsideration of whether the $5 million cost threshold level remains appropriate. This is because making a change to the application of the cost threshold without making a corresponding change to the cost threshold level would upset the balance currently achieved by the $5 million cost threshold being applied to the most expensive economically and technically feasible option."

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4 Ibid, page 95.

5 Ibid, page 94

In contrast to the Commission's position, however, the Businesses consider that $5 million is an appropriate threshold only if it is applied to the preferred capital project (not the most expensive option). The Businesses' proposed approach is better able to ensure that the costs of conducting the RIT-D do not exceed the likely benefits for a particular project. For example, the draft rule could yield the following anomalous outcomes:

- A RIT-D is required for a $400,000 capital project because the most expensive option was $6 million; and

- A RIT-D is not required for a $4 million capital project because this was the most expensive option under consideration.

It is good business and regulatory practice to ensure that the investment analysis and stakeholder consultation is commensurate with the cost of the proposed project. As the above hypothetical example illustrates, however, the draft rule is inconsistent with this principle. This is because threshold for applying the RIT-D is dependent on the cost of the most expensive option, not the costs of the project that will actually proceed.

A further possible unintended consequence of the Commission's draft rule is that NSPs may be discouraged from considering more expensive capital projects. Instead, the focus of the NSPs' network analysis may narrow to the lowest cost network options so that the regulatory test is not inadvertently triggered. This narrowing of the NSPs' focus would not encourage the active consideration of more innovative network solutions with higher costs and benefits.

To address the Businesses' concern, it is proposed that clause 5.17.3(a)(2) should be amended as follows:

> "the estimated capital cost ~~to the Network Service Providers affected by~~ of the ~~RIT-D~~ preferred project ~~of the most expensive potential credible option to address the identified need~~ is less than $5 million (as varied in accordance with a cost threshold determination)"

The Businesses recognise that the above drafting introduces the possibility that the actual costs of the preferred project may exceed the threshold, whereas the estimated costs did not. Such an outcome may be regarded as undesirable because it introduces the possibility that a network investment may not be subject to the RIT-D even though the actual costs turn out to exceed the threshold.

The Businesses consider that this relatively minor concern could be readily addressed by amending the provisions relating to the reapplication of the RIT-D, as shown below:

> "(t) If:
>
> (1) a Network Service Provider becomes aware that the actual capital costs of a proposed preferred option are likely to exceed the applicable RIT-D threshold; Or

(2~~1~~) a RIT-D proponent has published a final project assessment report in respect of a RIT-D project; and

(i~~2~~) a Network Service Provider still wishes to undertake the RIT-D project to address the identified need; and

(ii~~3~~) there has been a material change in circumstances which, in the reasonable opinion of the RIT-D proponent means that the preferred option identified in the final project assessment report is no longer the preferred option,

then the Network Service Provider or RIT-D proponent must apply or reapply the regulatory investment test for distribution to the RIT-D project, unless otherwise determined by the AER.

(u) When making a determination under paragraph (t) the AER must have regard to the credible options (other than the preferred option) identified in the final project assessment report (if applicable) and the change in circumstances identified by the RIT-D proponent. The AER must also consider whether the benefits of applying or reapplying the regulatory test for distribution outweighs the costs involved."

The amended provisions shown above also clarify that the AER must consider whether the benefit of applying or reapplying the regulatory test outweighs the costs involved. This change is consistent with the National Electricity Objective because it ensures that the regulatory test is applied or reapplied where it is considered efficient to do so.

As previously noted, the original drafting will also need to address the use of the term 'RIT-D project.'

In relation to the issue of the exemptions from the RIT-D in relation to "urgent and unforeseen" projects, the Businesses accept the Commission's view that this exemption is only to be used on rare occasions where the need for investment results from extenuating circumstances. However, the Businesses do not support clauses 5.17.3(a)(1) and 5.17.3(c) because they fail to recognise that the overriding objective should be to maintain the reliability of the distribution network.

As presently drafted, these provisions require an urgent project to be subject to the RIT-D process if the need for the project had been 'reasonably foreseeable'. The intention of the drafting is to provide an incentive on the distributors to conduct the RIT-D in a timely manner. The Businesses support this objective, but note that it is not achieved by exposing customers to unacceptable network reliability risks.

The Businesses' view is that urgent projects should be allowed to proceed without applying the RIT-D process, and the definition of 'urgent' should refer to a period of at least 12 months in order to provide sufficient time for the investment to be delivered. A separate question arises as to whether sanctions should apply to a network business that invokes this provision because it has not foreseen a need that turns out to be urgent. The draft rule, however, is not appropriate because it would prevent an urgent project from proceeding in a timely manner, which would be to the detriment of customers.

2.4 Non-network options

The draft rules enable DNSPs to screen for credible non-network options. In particular:

- A RIT-D proponent must prepare and publish a non-network options report for all RIT-D projects except where a RIT-D proponent determines that there will not be a non-network option that is a potential credible option to address the identified need.

- If a DNSP determines that a non-network options report is not required, then as soon as possible after making the determination it must publish on its website a notice setting out the reasons for its determination, including any methodologies and assumptions it used in making its determination.

The Businesses note that the draft rule differs from the specification threshold test in the proposed Rule. The Businesses concur with the Commission's view that the draft rule provides a better method for streamlining the RIT-D where non-network options are not credible.

The Businesses do not support the proposal that stakeholders should be provided with a period of at least four months to make submissions on the non-network options report. The Businesses regard the length of the consultation process as disproportionate compared to other consultation processes in the Rules. For example, the distribution consultation procedures in clause 6.16(c) provide a minimum of 30 business days for submissions to the AER in relation to proposed guidelines, models or schemes.

The Businesses are concerned that the proposed four month consultation period will delay the timely delivery of projects, which would be contrary to the National Electricity Objective. Furthermore, non-network options will, in any event, be actively considered during the draft and final project assessment report stages of the RIT-D process. Therefore, the RIT-D process provides ample opportunity for engagement with non-network proponents and so an extended 'front-end' consultation period is unnecessary.

In light of the above comments, the Businesses request that the Commission reconsiders its position in relation to the proposed consultation period. The Businesses regard 30 business days, which is the same as the period specified in the distribution consultation procedures in clause 6.16(c) as an appropriate consultation period.

2.5 Draft and final project assessment reports

The Businesses support the Commission's approach in relation to the draft and final assessment reports. It is noted that the RIT-D proponent is exempt from the requirement to prepare and publish a draft project assessment report where:

- a non-network options report is not required to be published; and

- the estimated capital cost of the preferred option is less than $10 million.

In addition, the draft rule allows a DNSP to publish a final project assessment report as part of its DAPR, where the preferred option has an estimated capital cost of less than $20 million. The Businesses concur with the Commission that allowing the DNSP to discharge its obligations in this way will assist in managing compliance costs.

2.6 Provisions for re-applying the RIT-D in certain circumstances

As noted in section 2.2 above, the Businesses propose a minor amendment to the provisions for reapplying the RIT-D as a consequence of the proposed drafting changes to the threshold provisions. The Businesses have also noted the need to amend the definition of RIT-D project. Apart from these issues, the Businesses support the Commission's draft rule in relation to the reapplication of the RIT-D.

2.7 RIT-D application guidelines

The draft rule requires the AER to publish the test and guidelines nine months from commencement of the rule. The Businesses support this change from the proposed rule, which did not specify a timeframe.

3. Dispute resolution process

3.1. Overview and key points

The draft rule maintains the Commission's earlier view that any party who may be impacted by a DNSP's decisions under the RIT-D, including any non-network providers and interested parties, should be able to raise a dispute with the AER. The dispute resolution process would allow the AER to dismiss disputes that are misconceived or lacking in substance. However, the draft rule removes an earlier provision that would have allowed the AER to exempt a proposed investment from the dispute resolution process if the benefits of doing so outweighed the benefits of allowing the dispute.

As explained in section 3.2 below, the Businesses accept the Commission's view on the scope of the parties that should be allowed to raise disputes, subject to one point of clarification. However, the Businesses support the inclusion of provisions that would allow the AER to grant exemption from dispute process. The benefits of including such a provision are very likely to outweigh the costs.

3.2. Scope of disputes and exemptions

In response to the Commission's consultation paper, the Businesses expressed concern that the scope of parties that may seek to raise a dispute is too broad. In addition, the possibility of vexatious claims creates the potential for significant delays in the construction of critical projects. The Businesses note the following clarification in the draft determination regarding the scope of the dispute[6]:

[6] Ibid, page 113.

> "To be clear, it is not the purpose of the dispute resolution process to provide an avenue for stakeholders to raise disputes simply because they disagree with the conclusions reached by an NSP in its final project assessment report. Rather, the dispute resolution process is intended to provide stakeholders with an opportunity to identify to the AER instances where a RIT-D proponent may not have applied the RIT-D in accordance with the rules, potentially resulting in the RIT-D proponent failing to identify the most efficient option in its final project assessment report. In this instance, it would be necessary for the effectiveness of the process to require the relevant NSP to amend the matters set out in the final project assessment report based on the correct application of the RIT-D rules."

The Businesses concur with the Commission that the draft rule provides safeguards to reduce the risk of frivolous disputes. In addition, the Businesses strongly support the clarification of the definition of interested party, which now provides that:

- whether or not a person is an interested party for the purposes of this definition is solely a matter for the AER (in its opinion); and

- the material and adverse market impact experienced by the interested party must arise in the national electricity market.

The Businesses accept that these changes will appropriately minimise the scope for frivolous disputes to be raised, particularly by end-use customers that may not understand the purpose and scope of the RIT-D.

The Businesses note that the proposed Rule included provisions that would enable the AER to exempt a proposed investment from the dispute resolution process if the need for the distribution project outweighed the benefits of conducting the dispute. In removing this provision from the draft rule the Commission argues that[7]:

> "Having considered the proposal in detail, the Commission is not convinced of its need. Importantly, the Commission does not consider it appropriate to require the AER to determine the need for a particular project to proceed. As noted previously, it is not appropriate for the regulator to take over the role of network planner once a dispute has been lodged.
>
> In addition, the circumstances in which the AER may grant an exemption from the dispute resolution process are adequately dealt with in other provisions in the draft rule. For example, the draft rule provides for the AER, upon receipt of a dispute notice, to dismiss disputes if the grounds for dispute are invalid, misconceived or lacking in substance. In addition, urgent and unforeseen investments (which, arguably, would be the investment type most likely to meet the proposed exemption criteria) are exempt from the RIT-D, and therefore also exempt from the dispute resolution process."

The Businesses agree with the Commission that the AER must not adopt the role of network planner. However, enabling the AER to grant an exemption from a dispute process does not amount to the AER adopting the role of network planner. In addition, contrary to the Commission's comments, it is unclear whether a DNSP would be able to invoke the urgent and unforeseen investments provisions in 5.17.3(a)(1) in relation to a dispute. These provisions relate to the application of the

[7] Ibid, pages 116 and 117.

regulatory investment test for distribution, and it is doubtful if these provisions could be applied in relation to a dispute regarding the application of the RIT-D.

Furthermore, the Businesses consider that the advantages of including a provision for an exemption from the dispute process substantially outweigh any disadvantages. If the Commission's reasoning proves correct, then the provision will be redundant, but its inclusion would have no adverse effects or consequences. On the other hand, the provision will continue to guard against the risk that the benefits of conducting a dispute will be substantially outweighed by the detriment associated with delaying the proposed investment.

In summary, the Businesses accept the Commission's position that the draft rules provide sufficient safeguards against frivolous disputes and appropriately limit the definition of interested parties. However, the Businesses support the reinstatement of the provisions that would allow the AER to grant exemption from dispute process.

4. Implementation and transition

The Businesses note that the Commission's draft rule addresses the implementation and transitional issues raised by the Businesses, with one exception. As currently drafted, the proposed Rule would require the application of the RIT-T to joint planning projects from the commencement date.

As explained in section 1.2 of this submission, the Businesses note that there is no rationale for transmission-distribution connection augmentations to be excluded from the RIT-T. If the Commission accepts this position, it follows that the Businesses would be responsible for conducting the RIT-T for these augmentations. Given this new formal obligation, it would be highly desirable for the Rules to provide a 12 month transition period (consistent with the proposed period for transition to the RIT-D), so that the RIT-T would begin to be applied to joint investments from 12 months after the commencement date.

The draft rule does not currently provide for this transitional period, and therefore the Businesses recommend that it draft rule should be amended to provide a smooth transition to the new arrangements.

5. Miscellaneous matters

5.1 Use of local definitions

Clause 5.10.2 sets out local definitions used in Part B of the draft rule. The terms defined in that clause are not italicised nor are they distinguishable in any other way from undefined terms when they appear throughout Part B. It would enhance the clarity of the draft rule, and reduce the potential for misinterpretation if all locally-defined terms were distinguishable from undefined terms. Ideally, all definitions would be contained in the glossary (chapter 10) of the rules, and all defined terms would be italicised.

5.2 Application of civil penalty provisions to the RIT-T or the RIT-D

The draft rule determination explains that the Commission has not proposed to recommend to the MCE that any provisions related to the RIT-T or the RIT-D be classified as civil penalty provisions under the National Electricity (South Australia) Regulations. The Commission states (on page 14 of the draft rule determination):

> "While classification of these provisions as civil penalty provisions may encourage compliance with these provisions, the Commission does not consider that a breach of these rules would pose a direct risk to the secure operation of the NEM."

The businesses concur with the Commission's view that civil penalty provisions should not apply to any provisions related to the RIT-T or the RIT-D.

5.3 Requirement to quantify market benefits

It is noted that the drafting in clause 5.17.1(d) does not make it clear that the NSP is required to quantify market benefits, as noted in footnote 350 of the draft rules determination. The Businesses consider that this matter should be clarified.

6. Closing

The Businesses appreciate the opportunity to make this submission and would welcome the opportunity to discuss any of the matters raised in this submission.

If you have any questions, please contact Brent Cleeve on (03) 9683 4465 or by email at bcleeve@powercor.com.au.

Yours sincerely,

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