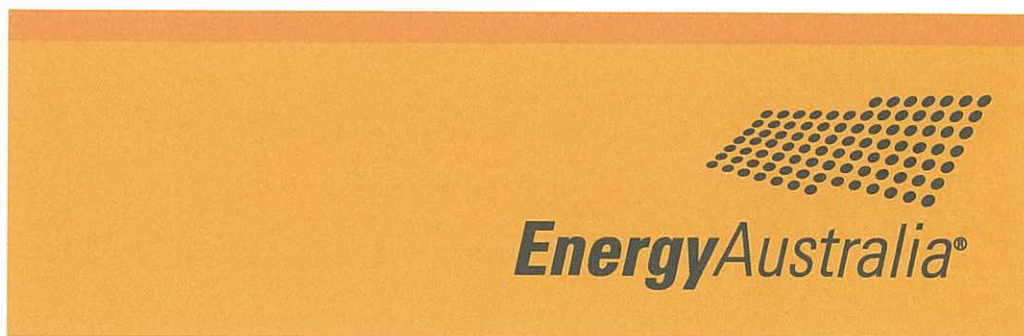


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21 May 2010

Dr John Tamblyn
Chairman
Australian Energy Market Commission
Level 5, 201 Elizabeth Street
SYDNEY NSW 2000

Dear Dr Tamblyn

EnergyAustralia's submission on AEMC draft Rule for payments under feed in schemes

EnergyAustralia welcomes the opportunity to respond to the AEMC's draft determination on payments under feed-in schemes and climate change funds. We support the AEMC's decision to make an alternative rule and support the draft Rule and policy position.

Apart from supporting the AEMC's approach, our submission proposes minor changes to the drafting of the Rule in respect of amendments to the side constraints provisions in a way that is consistent with the policy intent. We also reference the submission prepared by the Department of Industry and Investment, which discusses potential limitations with the definition of jurisdictional schemes.

The AEMC's more preferred Rule which amends both Chapter 6 and the "Transitional Rules" (Appendix 1 of Chapter 11 of the Rules) will enable NSW distributors to apply the proposed cost recovery mechanism to recover payments (credits) it has made pursuant to the NSW Solar Bonus Scheme during our current regulatory period. We strongly support this approach. It is consistent with the AEMC's policy position to enable distributors to recover any payments mandated by legislation, where no other recovery mechanism is available outside of the Rules.

However, we have a minor issue with amendments to Chapter 11 of the Rules which may result in an inconsistent application of the side constraint provisions between years.

Under the new draft provisions (clause 6.18.6(d)(3)), jurisdictional schemes are to be disregarded when deciding if the permissible percentage increase in weighted average revenue for a tariff class has been exceeded. The proposed Transitional Rules require NSW and ACT distributors to comply with clause 6.18.6(d)(3) of the general chapter 6 Rules, in respect of approved jurisdictional schemes in respect of each regulatory year commencing after the end of the year in which an election is made to recover amounts under jurisdictional schemes.

As a general point, we agree with the AEMC that jurisdictional scheme payments should not be included in the calculation of the movement in weighted average revenue for standard control services. The key purpose of side constraints is to limit the extent of re-balancing between tariff classes that can be achieved under the X factor constraint.¹

Under the proposed Rule, the recovery of jurisdictional scheme payments would be additional to the recovery of X-factors in a building block determination. The payments are therefore unrelated to the control mechanism for distribution (standard control) services and the side constraints applying to individual tariff classes, which are based on the X-factor constraint.

It is for this reason that the Australian Energy Regulator's determination for NSW distributors excludes Climate Change Fund payments from the side constraint equation, despite no such explicit requirement to do so under the current Transitional Rules.² EnergyAustralia considers that the draft Rule formalises this arrangement and provides additional certainty that jurisdictional scheme payments are not subject to side constraint calculations for the regulatory years commencing after the end of the year in which an election is made to recover amounts under jurisdictional schemes. On this basis we support the Rule.

However, we note that the proposed Chapter 11 amendments may not achieve the AEMC's purpose to ensure that jurisdictional scheme payments are not subject to side constraint calculations. The problem arises from the proposed drafting of the Transitional Rules and general transitional provisions, which set out the process to be applied if a jurisdictional scheme commences during a regulatory period. Proposed Clauses 11.12(h)(2), and clause 6.18.7C(f)(2) of Appendix 1 of Chapter 11 of the Rules, require a distributor to comply with new clause 6.18.6(d) of general Chapter 6 of the Rules:

"... in respect of each regulatory year of the regulatory control period that commences after the end of the first regulatory year in relation to which an election is accepted..."³

This phrase "after the end of the first regulatory year" may be interpreted to suggest that jurisdictional scheme payments are subject to side constraint limits in the first regulatory year to which a distributor is entitled to recover payments. If interpreted in this manner, there is a risk that side constraints will limit the ability of a distributor to recover its total revenue requirements (X-factors and jurisdictional scheme payments) for that regulatory year.

To overcome this drafting issue, we consider that the AEMC could amend Clause 11.12(h)(2), and Appendix 1 of Chapter 11 (6.18.7C(f)(2)) to read:

"... in respect of each regulatory year of the regulatory control period ~~that commences after the end of the first regulatory year~~ in relation to which an election is accepted."

A further drafting issue is that the side constraint exemption clause (Clause 6.18.6(d)(2)- which applies to the Transitional rules by virtue of proposed clause 6.18.7C(f)) refers to "approved jurisdictional schemes" only. The definition of 'approved jurisdictional schemes' would not capture Climate Change Fund payments. This is because the provisions of 6.18.7C(i) (which operate to effectively deem jurisdictional scheme payments reported under 6.18.7.C to be subject to the reporting and determination process under the new general Chapter 6 clause 6.6.1A) does not apply to Climate

¹ A report, "Distribution Pricing Rule Framework" prepared by NERA in December 2006 for the Network Policy Working Group of the MCE, provides further discussion on the purpose of side constraints (pp37-39)

² AER, Final decision: NSW distribution determination 2009-10 to 2013-14, April 2009, p63. The AER's side constraint equation does not include climate change fund payments within the calculation, as seen from the extract of the equation below:

$$\frac{\sum_{k=1}^m d_k^t \times q_k^{t-2}}{\sum_{k=1}^m d_k^{t-1} \times q_k^{t-2}} \leq (1 + \Delta CPI_t) \times (1 - X_t) \times (1 + D_t) \times (1 + 2\%) \pm (\text{pass through,})$$

³ AEMC, Draft National Electricity Amendment (Payments under feed in schemes and climate change funds) Rule 2010, pp14 and 19.

Change Fund payments. This means that the side constraint provision would not explicitly extend to these types of payments.⁴ This is inconsistent with the proposed amendments to General Chapter 6 Rules, where Climate Change Fund payments are included in the definition of jurisdictional scheme payments. There may be merit in the AEMC explicitly identifying that Climate Change Fund payments are to be disregarded from side constraint calculations, to ensure consistency with general chapter 6 of the Rules. This could be achieved through a new provision in Schedule 2 to amend clause 6.18.6(d) of the Transitional Rules to add an additional subclause (4) along the following lines:

“(4) the recovery of revenue to accommodate pass through of Climate Change Fund payments.”

On a final matter, we wish to refer the AEMC to the submission prepared by the NSW Department of Industry and Investment. The Department raises two substantive issues with the draft Rule:

- The definition of a jurisdictional scheme should be amended to clarify that a jurisdictional scheme will continue to be covered by the Rule, even where there are subsequent legislative or regulatory amendments to the Scheme.
- There may also be other enforceable obligations imposed on distribution network service providers (DNSPs) in relation to the Scheme (for example, licence conditions imposed by the Minister or directions under the State Owned Corporations Act 1989) and these should be considered as part of the Scheme (where relevant) for the purposes of the Rule.

We request that the AEMC give close consideration to the issues raised by the Department of Industry and Investment. In our view, the Rule should enable a distributor to continue to recover payments under a single scheme, in the event that obligations change over time, or where obligations in relation to the scheme arise from more than one regulatory instrument. We believe this would meet the objective of promoting administrative efficiency, by avoiding the need to establish a separate jurisdictional scheme for cost recovery purposes.

In the case of schemes relevant to NSW distributors, we consider the matter could be addressed by the following revisions to proposed clause 6.18.7A(e) of Schedule 1 of the Draft Rule:

“For the purposes of paragraph (d)(1), the schemes established under the following laws of participating jurisdictions are jurisdictional schemes:

(5) Section 15A of the Electricity Supply Act 1995 (NSW) (as amended from time to time) and any licence conditions or directions made to give effect to that scheme; and

(6) Part 6A of the Energy and Utilities Administration Act 1987 (NSW) (as amended from time to time) and any licence conditions or directions made to give effect to that scheme.”

In conclusion, we reiterate our strong support the AEMC's draft Rule and policy approach on this matter and we trust that the AEMC will give careful consideration to the issues we have raised in our submission. Please do not hesitate to contact Ms Jane Smith on 9269 4171 if you have any questions or concerns.

Yours sincerely



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Executive General Manager
System Planning and Regulation

⁴ This is unlikely to be an issue of substance for NSW distributors. The applicable side constraint equation in the AER's determination for NSW distributors does not include Climate Change Fund payments.