Mr John Pierce
Mr Neville Henderson
Dr Brian Spalding
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

EnergyAustralia
ABN 99 086 014 968

Level 33
385 Bourke Street
Melbourne Victoria 3000

Phone +61 3 8628 1000
Facsimile +61 3 8628 1050

enq@energyaustralia.com.au
energyaustralia.com.au

Dear Commissioners,

Reference: ERC0134/ERC0135/GRC0011

Draft Rule Determination – Draft National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012

Draft National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012

EnergyAustralia welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) Draft Rule Determination.

We support the AEMC's Draft Rule Determination and consider that the proposed changes to the National Electricity Rules (NER) & the National Gas Rules (NGR) will improve the efficiency of the regulatory arrangements.

We consider that the proposed changes to the NGR & the NER are consistent with the principles of good economic regulation and would be expected to improve accountability and transparency, reduce information asymmetry and enhance the economic efficiency of regulatory determinations.

In particular, we support the proposals to:

1. Amend the rate of return provisions in the NER and NGR to provide for a common framework that enables the regulator to make the best possible estimate of the rate of return at the time a regulatory determination is made. Currently, there are three different frameworks with varying degrees of flexibility and prescription in how the rate of return should be determined. The proposed common framework will allow the regulator to more accurately make an estimate of the rate of return that is consistent with an efficient service provider.

2. Include a range of "tools" that the Australian Energy Regulator (AER) could apply to provide adequate incentives for Network Service Providers (NSPs) to spend capital efficiently. This should help to ensure that only "efficient "capital expenditure enters the Regulated Asset Base (RAB).

   The tools include:

   - applying capital expenditure sharing schemes that provide incentives to incur efficient capital expenditure

   - undertake reviews of efficiency of past capital expenditure, including the ability to preclude inefficient expenditure from being rolled into the RAB.

3. Clarify and remove the ambiguities regarding the powers of the AER to interrogate, review and amend capital expenditure and operational expenditure proposals submitted by NSPs. As we understand it, currently the NER does not allow the AER to reject an NSP's capital or operational expenditure program and replace it with its own if the AER considers it to be "reasonable". We agree with the AEMC that this has resulted in capital and operational expenditure allowances that are inefficient. For this reason, we support the AEMC's proposal to amend the NER so that it does not place any restriction on the analytical techniques that the AER can use to scrutinise and, if necessary, amend or substitute the NSP's capital expenditure or operating expenditure forecasts.

4. Change the regulatory determination processes in Chapter 6 and 6A of the NER including the proposals to:

   - lengthen the regulatory determination process by commencing six months earlier, for both electricity distribution and transmission to provide time for the regulator to hold a public forum

   - include an application of an optional framework and approach paper for electricity transmission and distribution to settle a number of issues before regulatory proposals are submitted

   - improve transparency and accountability by requiring the NSP to outline to the AER the key reasons why it classifies any material as being "confidential" and ensure that material is only made confidential when absolutely necessary to allow other parties to respond meaningfully to reviews

   - allow adequate time for other parties to provide submissions to reviews, particularly for appeals and cost pass through applications which arise midway through the regulatory period.

5. Take into account customers' interests in making determinations and in publishing information. Consideration or communication of downstream impacts is frequently overlooked. It would be helpful to customers, retailers and other interested groups if financial and operational impacts and the timing of these impacts are assessed at key points in the NSP regulatory review process and are explicitly outlined in key publications. These publications would include the issues and overview papers and any draft or final determinations.

We also agree that the Merits Review process has moved away from the focus of the objectives in the National Electricity Law (NEL) & the National Gas Law (NGL) and has not delivered outcomes that are in the long term interests of consumers. As such, we look forward to the final report of the limited merits review panel and subsequent changes to the law and rules to provide a more effective and efficient merits review framework focussed on consumer outcomes.

We consider that the proposed changes to the NER & NGR will improve the regulatory arrangements. We thank the AEMC for the opportunity to respond to this Rule change. For any questions regarding this submission, please contact Mr. Con Noutso - Regulatory Manager at EnergyAustralia on Tel: 03 8628 1240

Regards

Signed for email

Con Noutso
Regulatory Manager
TRUenergy