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Dear Mr Howes

**NATIONAL ELECTRICITY AMENDMENT (NETWORK SERVICE  
PROVIDER EXPENDITURE OBJECTIVES) RULE 2013 – DRAFT RULE  
DETERMINATION**

Thank you for the opportunity to comment on the *Draft National Electricity Amendment (Network Service Provider Expenditure Objectives) Rule 2013 (Draft Rule)*.

CitiPower and Powercor Australia (**Businesses**) understand the policy intention of the Australian Energy Market Commission (**AEMC**) to be that, where there is no mandatory prescribed level or standard in place for reliability, quality or security (as in Victoria for reliability), the National Electricity Rules should require the Australian Energy Regulator (**AER**) to allow expenditure required to ‘maintain’ the quality, reliability or security (as the case may be) of the network. The AEMC contemplates that, if the jurisdiction does not consider it appropriate for the current levels of performance to be maintained for any reason, then it has the power to address this concern through the creation of new regulated standards.<sup>1</sup>

The Businesses consider that the AEMC's policy intent is sound and correct. However, the Businesses also consider that the Draft Rule is contrary to this AEMC policy intent, with the consequence that, applied in Victoria, it will create practical difficulties that will lead to uncertainty both for the Businesses and the AER.

The Draft Rule contemplates that in circumstances where there is a ‘regulatory obligation or requirement in relation to [the quality, reliability or security of supply of standard control services or the reliability or security of the distribution system through the supply of standard control services]’, the expenditure proposed by a

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<sup>1</sup> AEMC, *Draft Rule Determination: National Electricity Amendment (Network Service Provider Expenditure Objectives) Rule 2013*, pii and section 5.2 at p21.

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Distribution Network Service Provider (**DN**SP), and approved by the AER, will be that expenditure required to 'comply with' that regulatory obligation or requirement. In other circumstances (i.e. where there is no such regulatory obligation or requirement), the expenditure proposed by a DN

SP and approved by the AER will be that required to 'maintain' the quality, reliability or security of supply of standard control services and the reliability or security of the distribution system through the supply of standard control services.

As the AEMC will be aware, in Victoria there is no mandatory reliability standard (in the sense of a clear level of reliability that DN

SPs are required to meet) imposed by the *Victorian Electricity Distribution Code (Code)*. The Code instead requires each DN

SP to publish on its website reliability targets, and to use best endeavours to meet those targets and otherwise meet reasonable customer expectations of reliability of supply (clauses 5.1 and 5.2 of the Code).

While there is no mandatory reliability standard set out in the Code, it may nonetheless be arguable that a 'regulatory obligation or requirement' in relation to reliability exists. This is because 'regulatory obligation or requirement' is defined to include not only a 'distribution reliability standard' but also a regulatory obligation or requirement under any instrument made or issued under or for the purposes of an Act of a participating jurisdiction that 'materially affects the provision ... of electricity network services that are the subject of a distribution determination' (Chapter 10 of the National Electricity Rules and section 2D of the National Electricity Law). Even where an obligation in relation to reliability is not considered to be a 'distribution reliability standard' because it does not prescribe a specific level or standard or is an obligation only to use best endeavours to meet reliability targets, that obligation could nonetheless be considered an obligation or requirement in relation to reliability that materially affects the provision of electricity network services.

Under the Draft Rule, such an interpretation would mean that Victorian DN

SPs would be required to propose, and the AER would be required to approve, expenditure required to 'comply with' that regulatory obligation or requirement, rather than expenditure required to maintain reliability. In circumstances where each Victorian DN

SP nominates the reliability standards applicable to it and is required to use best endeavours to meet those standards, there is considerable uncertainty as to how the AER would assess that expenditure. For example, would the AER second guess the reliability targets specified or proposed to be specified by the DN

SP pursuant to the requirements of the Code? Would the AER only accept a level of expenditure lower than the level of expenditure required to meet the reliability targets specified by the DN

SP on the basis that the obligation is only a 'best endeavours' obligation?

The Businesses consider the Draft Rule could be amended to better give effect to the AEMC's intention by ensuring that proposed clauses 6.5.6(a)(3) and 6.5.7(a)(3) apply where there is no applicable regulatory obligation or requirement that imposes a mandatory prescribed level or standard (i.e. in the sense of a clear level of quality, reliability or security that DN

SPs are required to meet under the relevant regulatory obligation or requirement). For example, the AEMC could consider amending proposed clauses 6.5.6(a)(3) and 6.5.7(a)(3) as highlighted below:

- (3) *to the extent that there is no mandatory prescribed level or standard imposed by any applicable regulatory obligation or requirement in relation to:*
- (i) the quality, reliability or security of supply of standard control services; or*
  - (ii) the reliability or security of the distribution system through the supply of standard control services,*
- to the relevant extent:*
- (iii) maintain the quality, reliability and security of supply of standard control services; and*
  - (iv) maintain the reliability and security of the distribution system through the supply of standard control services; ...*

A further concern, that even the above amendments would not address, is that the AER would not be permitted to approve expenditure higher than historical expenditure, even in circumstances where the AER considers that expenditure to be prudent and efficient and would serve to promote the national electricity objective (NEO). This is because where there are no relevant standards, the expenditure to be allowed by the AER is the expenditure required to ‘maintain’ quality, reliability and security of supply’ which the Businesses have understood the AEMC as implying equates to preserving historical standards.

The intention to constrain quality, reliability and security of supply standards to historical standards appears to run contrary to the AEMC’s *Consultation Paper, Review of the national framework for transmission and distribution reliability*, which envisions a consultative process in which stakeholders may agree to amend standards and in a Victorian circumstance, those higher standards will be realised through output based incentive arrangements.

Please do not hesitate to contact me on (03) 9683 4465 or [bcleeve@powercor.com.au](mailto:bcleeve@powercor.com.au) if you would like to discuss the positions presented in this submission further.

Yours sincerely



**Brent Cleeve**  
**MANAGER REGULATION**