



Hydro Tasmania
the renewable energy business

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Mr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H1666
Australia Square NSW 1215

By email: submissions@aemc.gov.au

Dear John

National Electricity Amendment (Reform of the Regulatory Test Principles) Rule 2005

Hydro Tasmania appreciates the opportunity to provide a submission on the proposed rule change. Our comments focus on *regulatory test* governance – to make it as simple and robust as possible.

The MCE's letter "Reform of the Regulatory Test Principles" sets out clear policy intent for the *regulatory test*, including:

- "To promote confidence in the *regulatory test*, and minimise avenues for legal dispute, the *regulatory test* must be transparent, robust, defensible and capable of consistent application."
- "The proposed rule should allow the AER to vary the *regulatory test* from time to time, but only if the AER meets certain requirements prior to ensure investment certainty in the NEM."

The MCE notes that the "challenge in setting the principles is to strike a balance such that the AER is not both rule maker and rule enforcer with respect to the *regulatory test*."

Finally, consideration "was given to including a highly prescriptive *regulatory test* in the Rules. This approach was however discarded as it would go beyond setting policy requirements and would leave the NSP and the AER with little discretion in applying the test."

On these and other grounds, the MCE concludes that the National Electricity Rules should include principles for the promulgation of the *regulatory test*.

Hydro Tasmania submits instead that the existing *regulatory test* should be incorporated in the National Electricity Rules and subjected to the Rules' change process.

In our view, this arrangement has a number of advantages over the MCE proposal:

- the layers of governance for the *regulatory test* are simplified, reducing the avenues for legal dispute and the complexity of the matters in any dispute;
- the *regulatory test* is treated the same as other network investment and revenue matters, allowing the AEMC to take an integrated view of these matters;
- the AER is not both rule maker and rule enforcer with respect to the *regulatory test*;
- the AEMC must have regard to the NEM objective and MCE Statements of Policy, where the AER looks only to the NEM objective in discharging its duties;
- the Rules already contain provisions for consultation on Rule changes, rather than establishing a new process specifically for the *regulatory test*;
- the existing *regulatory test* has been subject to extensive recent review.

The current arrangements appear to be a historic anomaly to ensure that the *regulatory test* could be amended without recourse to a time consuming Code Change. Since the Rule Change process has been streamlined, this special treatment is no longer necessary.

We agree with the MCE that there would be little advantage in having a more prescriptive *regulatory test* in the rules. We also agree that there would be benefit from more detailed guidelines, analogous to the Statement of Regulatory Principles and so on. This would ensure consistency of application of the *regulatory test* by the NSPs.

Consequently, Hydro Tasmania also submits that the AER should be required to publish guidelines for the application of the *regulatory test*. The guidelines should be amended, as necessary, when changes are made to the Rules in respect of the *regulatory test*.

If you have any queries about this submission, please contact me on (03) 6230 5485 or via e-mail at greg.jones@hydro.com.au

Yours sincerely,



Greg Jones

Manager Product Delivery