

20 March 2009



Dr John Tamblyn
Chairman
Australian Energy Market Commission
Level 5
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SYDNEY NSW 2000

Office of the
Chief Executive Officer

Email: submissions@aemc.gov.au

Dear Dr Tamblyn

Australian Energy Regulator (AER) Rule Change Proposal - Weighted Average Cost of Capital Reviews, Extension of Time (Project No ERC0083)

With reference to the above National Electricity Rule (Rule) change proposal (the AER Rule change proposal) this is ENERGEX Limited's (ENERGEX's) submission in response. This submission builds on the ENERGEX submission on the non-controversial nature of the Rule change dated 6 March 2009. In this letter ENERGEX also refers to the submission lodged by Ergon Energy on 19 March 2009 (the Ergon Energy Submission).

AER Rule Change Proposal

No Support

ENERGEX does not support the AER Rule change proposal in the current form.

Impact on ENERGEX

Under the AER Rule change proposal, the AER proposes to extend the time for the completion of its rate of return review, referred to in clause 6.5.4 of the Rules, to 1 May 2009. The AER Rule change proposal also embeds this deferral for all future rate of return reviews (at intervals not exceeding five years). As a consequence of the review the AER must issue a statement of regulatory intent (SoRI) under clause 6.5.4 (c).



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In its Rule change proposal, the AER states (in paragraph C “Request for Expedited Process” of Attachment A):

“Allowing a one month extension for the release of the AER's final decision will not affect the first businesses to which the outcomes of the review will apply”.

The AER also states (in paragraph C “Statement of Issues” part v “*Benefits and costs and potential impact on those likely to be affected by Rule change*” of Attachment A):

“The first businesses to submit a proposal subject to the outcomes of the AER's review must lodge their proposals on 31 May 2009. Therefore granting the AER an extension until 1 May 2009 to complete its review will not affect the first businesses to become subject to the outcomes of the review.

The AER expects that a one-month extension will not materially affect the ability of the Queensland and South Australian electricity businesses to prepare building block proposals to be lodged by 31 May 2009.”

From ENERGEX's position these statements are not correct.

The one month delay in the review and the issue of the SoRI will have a significant adverse impact on ENERGEX. In addition we believe that it will also have a significant adverse impact on the other immediately affected electricity businesses (Ergon Energy and ETSA Utilities).

Inconsistency with National Electricity Objective

ENERGEX acknowledges the AER's linkage of the importance of the rate of return review to the National Electricity Objective. ENERGEX believes that as the National Electricity Objective can be used to support the extension to the timing of the rate of return review, it must equally be applied to the maintenance of the rights of the immediately affected electricity business and their ability to submit a Regulatory Proposal that complies with the Rules.

Under the Rules, ENERGEX must submit, by 31 May 2009, its Regulatory Proposal for the regulatory control period commencing 1 July 2010.

For the reasons we have described, any delay in the finalisation of the AER's rate of return review and the issue of the SoRI will have a significant adverse impact on ENERGEX's ability to comply with the Rules. The compressed timeframe in which ENERGEX would have to finalise and submit its Regulatory Proposal under the AER's Rule change proposal will severely limit its ability to properly consider the SoRI and submit a fully considered, detailed and compliant Regulatory Proposal.

The process and timeframes set out in Chapter 6 of the Rules were established to give the AER, distribution entities and interested parties adequate time to consider and undertake the regulatory process, consistent with the National Electricity Objective. Any change to timeframes in isolation, without making consequential changes to the timeframes for the affected parties (or even considering their impact), we believe is inconsistent with the National Electricity Objective.

Regulatory Proposal

In its previous letter ENERGEX highlighted the significance of the Weighted Average Cost of Capital (WACC) parameters. Further to this ENERGEX's position is that the WACC is an essential input to the Regulatory Proposal (inclusive of the Regulatory Information Notice, Models and Schemes). The Rules currently provide for a period of time for ENERGEX to consider the SoRI and submit a considered, detailed and compliant Regulatory Proposal.

The finalisation of the rate of return review and the issue of the SoRI by the AER is a critical component in the formulation of ENERGEX's Regulatory Proposal. Any delay in the issue of the SoRI will have a significant adverse impact on ENERGEX's ability to submit its compliant Regulatory Proposal by 31 May 2009.

When preparing the Regulatory Proposal, ENERGEX must make a choice whether to accept and apply the AER's SoRI or whether to propose departures from the SoRI. Schedule 6.1.3(9) of the Rules provides that a building block proposal must contain:

"the provider's calculation of the proposed rate of return, including any proposed departure from the values, methods or credit rating levels set out in an applicable *statement of regulatory intent*;"

This means that ENERGEX must access the AER's final SoRI, in order to either accept the relevant provisions of the SoRI or propose a departure from those provisions. If ENERGEX proposes to depart from the SoRI, the departure must be explained with reference to the SoRI. In addition, as the Rules require "persuasive evidence justifying the departure", ENERGEX may need to collate appropriate supporting material to substantiate the departure and include this material in its Regulatory Proposal.

Following the decision to accept or depart from the SoRI, ENERGEX must apply the WACC parameters to its forecasts and modelling to produce its Regulatory Proposal (inclusive of Models).

The compressed time frame proposed through the AER Rule change proposal is insufficient to allow ENERGEX to assess the SoRI and have adequate time to review, develop, justify and integrate the SoRI or any departures.

Governance Arrangements

ENERGEX as part of the development of the Regulatory Proposal has implemented a governance framework to meet both the obligations of a Government Owned Corporation and of the requirements of the Rules and other applicable regulatory instruments. This framework was developed and implemented based on the timeframes currently set out in the Rules. While the current two month period between the release of the SoRI and the submission of the Regulatory Proposal is extremely restrictive, a reduction of one month will immediately and critically limit our governance framework and ultimately impact on ENERGEX's ability to meet certification and declaration requirements of the Rules and the Regulatory Information Notice currently being consulted by the AER.

Ongoing Impact of the AER Rule Change Proposal

The AER's justification for the Rule change proposal is that it will not have time to finalise its first rate of return review by 31 March 2009.

The impact of the AER's proposed change to clause 6.5.4(b) of the Rules is that the additional one month time period will apply not only to the first review, but also to every subsequent review on a 5 year cycle.

If the change to clause 6.5.4 of the Rules was made (with no corresponding change to clause 6.8.2 (b)) the three immediately affected electricity businesses may have less than one month after receipt of the relevant SORI to finalise and submit its Regulatory Proposals for not only the next regulatory control period but for all subsequent regulatory control periods.

Suggested Amended Rule Change

ENERGEX does not support the changes to the Rules as proposed by the AER. ENERGEX believes that, consistent with our previous submission, any extension of time should not adversely impact or disadvantage the three immediately affected electricity businesses.

ENERGEX supports and endorses the proposed changes to the Rules as put forward by Ergon Energy as an annexure to their submission dated 19 March 2009. ENERGEX believes that the approach being put forward by Ergon Energy will:

- (a) enable the AER to finalise its review of the matters referred to in clause 6.5.4 of the Rules by 1 May 2009;
- (b) ensure that the extension of time only applies to the first review currently being undertaken by the AER; and
- (c) extend the time that ENERGEX and other immediately affected electricity businesses have to submit their regulatory proposals, so that they are not disadvantaged by the extension of time under clause 6.5.4.

Under Ergon Energy's proposed approach to the Rule change, any extension of time for the AER and the relevant distribution entities does not impact on the commencement and length of the regulatory control period for each of the relevant distribution entities. For ENERGEX, the regulatory control period will continue to run on a financial year basis, and the next regulatory control period would commence on 1 July 2010.

ETSA SUBMISSION

ENERGEX agrees with the majority of the arguments and issues raised by ETSA Utilities in their submissions.

However, despite agreeing with the intent of the ETSA Submissions, ENERGEX does not support the specified changes to the Rules proposed by ETSA. The changes proposed by ETSA only grant an extension of time to ETSA. The extensions of time should be granted to all relevant electricity businesses.

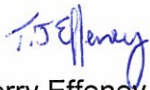
ENERGEX believes that the most appropriate changes to the Rules are those set out in the Ergon Energy Submission dated 19 March 2009.

AER Options

The AER has put forward a number of options as alternatives to amendments to the AER Rule change proposal. All of the options nominated by the AER would require ENERGEX to either not comply with the Rules or to submit a non-compliant Regulatory Proposal. ENERGEX's position is that any Rule change should not require or anticipate a non-compliance with the Rules or any other regulatory instrument in order for a regulated business to prepare and submit its Regulatory Proposal.

Please do not hesitate to contact myself or Kevin Kehl, Director Revenue Strategy on (07) 3223 1703 should you wish to discuss this submission.

Yours sincerely



Terry Effeney
Chief Executive Officer