



3 November 2006

Australian Energy Market Commission
PO Box H166
AUSTRALIA SQUARE NSW 1215
By email: submissions@aemc.gov.au

Dear Sir/Madam

Re: Draft Rule Determination – Regulatory Test Principles

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide a submission in response to the Regulatory Test Principles Draft Rule Determination consultation.

The ERAA is an independent association representing 12 retailers of electricity and gas throughout the National Electricity Market (NEM) and the National Gas Markets. ERAA members collectively provide electricity to 11 million customers in the NEM and are the first point of contact for end use customers for both gas and electricity.

The ERAA considers that encouraging an appropriate level of transmission investment in the NEM is critical to ensuring competitive wholesale and retail markets in electricity. A clear, stable transmission regulatory investment framework which effectively assesses all the costs and benefits of transmission investments, and their practicable alternatives, provides an essential foundation for ensuring efficient generation and transmission investment occurs in the NEM over time.

We are therefore supportive of efforts by the Ministerial Council on Energy (MCE) to provide strong policy input into clarifying and better articulating the role and application of the regulatory test.

In our view, the policy principles proposed by the MCE are largely consistent with the needs of market participants. In particular, we agree that the test should focus on net market benefits, be competitively neutral among network and non-network alternatives and should only allow the efficient costs of meeting reliability requirements to be recovered from consumers.

AEMC Changes to the MCE's Proposed Regulatory Test Principles

The ERAA does not support changes to the process of assessing alternative options under the market benefits limb of the regulatory test.

The ERAA understands the MCE applied for a Rule change seeking to implement new principles for the regulatory test to be embedded in the Rules. One of those principles to be embedded in the Rules provides that all “genuine” and “practicable” alternative options to proposed new transmission investment are evaluated without bias. The rationale for this is to ensure that network service providers do not favour network only investment, rather the most efficient solution for the NEM as a whole is proposed.

The ERAA is concerned that the changes proposed by the AEMC that apply to the process of assessing alternative options under the market benefits limb of the regulatory test are inconsistent with competitive neutrality and economic efficiency, key principles to be embedded in the Rules. In fact, the Commission states that its proposed changes to the regulatory test provide for the “most likely” alternative investment option whereas the current test provides that all “genuine” and “practicable” projects be considered. That is, the current regulatory test ensures that the most efficient project occurs, whereas the proposed rule change may not. In these circumstances, we cannot see how the revised version of the regulatory test can be reconciled with the competitive neutrality and economic efficiency, key principles to be embedded in the Rules.

Codifying the Regulatory Test

Enshrining the regulatory test in legislation would greatly enhance the predictability and stability of the regulatory investment framework.

As such, it is disappointing that the AEMC has not proposed to codify the proposed regulatory test guidelines; with the effect that some of the critical content underpinning the test is subject to change at the AER’s discretion. The ERAA considers that the AER should not be in a position to amend key aspects of regulation that it administers and enforces: the responsibility for such changes better lie with the rule developer, the AEMC. In this way any change to key aspects of the regulatory test can undergo a formal consultation process where all parties can make an equal contribution. The MCE would be the final decision maker, which is consistent with its policy development role. In our view, ensuring that as much of the content of the regulatory test and the process of its application is contained within the rules would enhance certainty for market participants while improving governance.

Timing of Review

As recognised by the AEMC, the ERIG reform process is also considering the regulatory test, and is due to issue a draft report in early November. The ERAA is concerned that the recommendations by ERIG may impact on our position in relation to the MCE’s proposed regulatory test principles. The ERAA believes it would be appropriate for the AEMC to extend the deadline for comment on this draft determination until after the release of the ERIG report.

If you have any queries in relation to this submission, please feel free to contact either Scott Wallace on (07) 3405 9317 or myself on (02) 9369 3263.

Yours sincerely,

[Transmitted via Email]

Cameron O'Reilly
Executive Director
Energy Retailers Association of Australia