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20 May 2010

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

  
Dear Dr Tamblyn

**Draft Rule Change: Feed-in Schemes Climate Change Fund Payments (AEMC Reference: ERC0097)**

I refer to the Commission's draft rule determination regarding the *National Electricity Amendment (Payments under Feed-in Schemes and Climate Change Funds) Rule 2010*. The Australian Energy Regulator (AER) welcomes the opportunity to respond to the proposed rule change.

In broad terms, the AER supports the Commission's rule change proposal. The proposed mechanism for cost recovery will eliminate the need for the AER to assess those components of jurisdictional scheme amounts that are uncontrollable and are not directly related to the provision of standard control services by a DNSP. Furthermore, by separately identifying additional tariff components to recover jurisdictional scheme amounts as part of a DNSP's pricing proposal, the transparency of qualifying scheme costs to end users will be potentially improved.

However, I wish to raise a number of issues that I consider have not been fully resolved in the draft rule change as it stands. Specifically, these issues are: the treatment of jurisdictional scheme administrative costs; the principles against which scheme costs are to be allocated across tariff classes; and the implied time frame for revocation and substitution of distribution determinations.

### *Controllable jurisdictional scheme costs*

In its previous submission to the Commission on 12 February 2010 regarding the rule change requested by ETSA Utilities, the AER indicated that it was unclear whether costs incurred by distribution businesses pursuant to jurisdictional schemes fit within the definition of distribution services under chapter 6 of the National Electricity Rules (NER).

Under the proposed rule change, jurisdictional scheme amounts would no longer be assessed against the opex objective. However, controllable costs, such as those associated with the administration of a scheme, that are not ‘jurisdictional scheme amounts’ would continue to be subject to review against the opex objective. In particular, the AER notes the proposed rule change does not address whether such costs are to be treated as operating expenditure associated with the provision of standard control services, notwithstanding that such payments may be considered a regulatory obligation.

In the absence of this clarification, it cannot be implied that the controllable costs associated with jurisdictional schemes will meet the operating expenditure objective of the NER.

### *Allocation of jurisdictional scheme costs to tariffs*

Under proposed clause 6.18.2(b)(6A) a Distribution Network Service Provider is required to set out how the jurisdictional scheme amounts are to be allocated across customers as part of its annual pricing proposal for approval by the AER. I note the draft rule change does not indicate any criteria against which the AER should assess the proposed distribution of these costs. In the absence of a jurisdictional scheme that sets out how costs are to be recovered, a DNSP would have broad scope under the NER to recover scheme costs through its pricing proposal.

I understand that for at least one existing jurisdictional scheme, an indication has been made as to how jurisdictional scheme costs should be allocated across tariff classes. In particular, the NSW Department of Environment, Climate Change and Water limited the extent to which its climate change fund contributions could be recovered from residential customers. For other existing jurisdictional schemes, issues relating to cost recovery are not addressed. In these instances, the AER’s consideration of the recovery of costs proposed by a DNSP would be limited by the existing provisions of the NER in regard to pricing proposals. Unsurprisingly, the pricing principals were not designed to determine how costs relating to jurisdictional schemes should be allocated to users of electricity distribution services.

The AER considers the approach to the recovery of jurisdiction scheme costs should be specified by the architects of the scheme. The AER considers an additional criterion should be added to the jurisdictional scheme eligibility criteria. Under such a clause, the AER could only approve a future scheme as a ‘jurisdictional scheme’ if direction regarding the intended allocation of costs is explicitly set out in the relevant jurisdictional scheme legislation. The objective would be to ensure that in future, jurisdictional schemes would be required to address the issue of who should pay.

This additional criterion would have no effect on schemes that are pre-qualified as eligible schemes under proposed clause 6.18.7A(e). In the case of these pre-qualified schemes, the AER may seek advice from jurisdictions to clarify how costs should be allocated amongst customers. Nevertheless, the AER may be somewhat constrained as the pricing principles

contained in the NER provide little specific guidance in assessing the recovery of jurisdictional scheme costs that may be proposed by a DNSP.

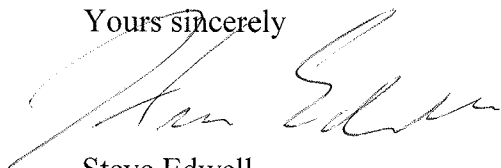
*Timetable for revocation of existing determinations*

I note that under proposed clause 6.18.7C(a), a business may apply to the AER during the transitional period to incorporate the proposed new treatment of jurisdictional schemes into its existing determination. According to the draft rule, a business wishing to do so must apply to do so at least 20 business days before the due date of its pricing proposal. On receiving such an application, the AER may be therefore required to revoke and substitute a distribution determination and provide revised modelling to the business within less than 20 business days in order to allow the business sufficient time to complete an updated pricing proposal.

The AER considers this is an inadequate timeframe that could only be achieved in ideal circumstances. If a number of DNSPs sought to adopt the proposed new mechanism simultaneously, this would impose an onerous burden on the AER. Consequently, the AER considers that the 20 business day minimum window for notification of an election under clause 6.18.7C(a) be extended to at least 40 days.

If you have any further questions about the issues raised in this submission, please contact Moston Neck on (07) 3835 4669.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Edwell', written in a cursive style.

Steve Edwell  
Chairman