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Dear Ms Rozyn

**SUBMISSION ON THE DISTRIBUTION NETWORK PLANNING AND EXPANSION FRAMEWORK
DRAFT DETERMINATION**

Ergon Energy Corporation Limited (Ergon Energy), in its capacity as a Distribution Network Service Provider in Queensland, welcomes the opportunity to provide comment to the Australian Energy Market Commission on its *Distribution Network Planning and Expansion Framework Draft Determination*.

Should you require additional information or wish to discuss any aspect of this submission, please do not hesitate to contact me on (07) 4092 9813.

Yours sincerely



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Group Manager Regulatory Affairs

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Encl: Ergon Energy's submission.

Ergon Energy Corporation Limited

Submission on the *Distribution Network
Planning and Expansion Framework*

Draft Determination

Australian Energy Market Commission

9 August 2012





**Submission on the *Distribution Network
Planning and Expansion Framework*
Draft Determination
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This submission, which is available for publication, is made by:

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1. INTRODUCTION

Ergon Energy Corporation Limited (Ergon Energy), in its capacity as a Distribution Network Service Provider (DNSP) in Queensland, welcomes the opportunity to provide comments to the Australian Energy Market Commission (AEMC) on its *Distribution Network Planning and Expansion Framework Draft Determination* (Draft Determination).

Ergon Energy appreciates the AEMC's consideration of issues raised in our previous submission¹ and welcomes the AEMC's draft decision to remove the following obligations:

- The requirement for DNSPs to conduct a public forum on their Distribution Annual Planning Report (DAPR);
- Certification of the DAPR by the Chief Executive Officer and a Director or Company Secretary;
- The establishment, maintenance and publication of a demand side engagement database of non-network proposals and / or case studies; and
- Additional powers for the Australian Energy Regulator (AER) to review and audit a DNSP's activities regarding the consideration of non-network options.

However, Ergon Energy believes the AEMC should give further consideration to a number of our earlier positions relating to:

- The 'most expensive' option;
- Exemptions from DAPR requirements; and
- Responsibility for carrying out the Regulatory Investment Test for Transmission (RIT-T).

Section 2 discusses our concerns on these matters, as well as a number of additional key issues arising from the Draft Determination. The remainder of our submission is structured as follows:

- Section 3 outlines our specific comments on various other aspects of the Draft Determination and the accompanying draft rule; and
- Section 4 provides specific comments, in tabular form, on the proposed wording of the draft rule.

Ergon Energy is available to discuss this submission or provide further detail regarding the issues raised, should the AEMC require.

¹ EECL (2011), *Response to the Distribution Network Planning and Expansion Framework Rule Change Consultation Paper*, 24 November 2011.



2. KEY ISSUES

This section discusses Ergon Energy's key issues and preferred positions in response to the AEMC's Draft Determination. Ergon Energy believes these key issues require further development and consideration by the AEMC.

2.1. RIT-D principles

The RIT-D process has been designed to focus on facilitating stakeholder engagement and enhancing the consideration of alternative investment options. It *"...is not intended to test the efficiency of a particular proposed investment per se, nor does it require that a particular investment that satisfies the RIT-D be undertaken"*.² Ergon Energy believes this is a fundamental concept. As such, it should be recognised in the RIT-D principles set out in clause 5.17.1 of the draft rule.

2.2. Most expensive potential credible option

In our previous submission,³ Ergon Energy strongly disagreed with the criteria that the Regulatory Investment Test for Distribution (RIT-D) be carried out where the most expensive option which is technically and economically feasible is more than \$5 million. We argued that this will potentially lead to almost every distribution investment being subject to the RIT-D and would result in an increased regulatory burden on DNSPs. To address this issue, the AEMC has amended the terminology used to describe the approach applying to the RIT-D cost threshold. Specifically, the term 'most expensive option which is technically and economically feasible' has been replaced with the 'most expensive potential credible option'.⁴

Ergon Energy has two issues with this approach. Firstly, a DNSP will still be required to undertake a 'mini regulatory investment test' prior to the non-network options stage. This is because the AEMC expects a RIT-D proponent to form *"at least an initial view on the possibility of potential options being both technically and commercially feasible, and likely to be implemented in a timely manner"*.⁵ To form this initial view, the AEMC suggests that the RIT-D proponent would undertake a desktop exercise, supported by credible evidence.⁶ In practice, Ergon Energy believes this would involve a net present value (NPV) analysis to determine whether an option is 'commercially feasible'.

This appears contradictory to another statement made by the AEMC that indicates the term 'potential' has been introduced *"to recognise that... a RIT-D proponent is not expected to have carried out the necessary analysis to enable it to have fully formed a view on which options are credible options..."*.⁷ Ergon Energy strongly supports this statement and believes that DNSPs should not be required to carry out a 'mini regulatory investment test' in applying the cost threshold. The AEMC should also recognise that, at this stage, some information will not be available to DNSPs.

Secondly, a DNSP is unlikely to build the 'most expensive' option. Therefore, Ergon Energy is uncertain of the reasoning behind adopting this term to apply the RIT-D cost threshold. We believe the AEMC should re-consider using the term 'least expensive' option.

2.3. Non-network options report

Ergon Energy does not support a four month consultation period for non-network options. This is disproportionate to other consultation periods specified in the National Electricity Rules (the Rules). Further, Ergon Energy suggests that the Rules should be amended to allow RIT-D proponents to adopt a staged consultation approach to the non-network options report (if desired). In our experience, non-

² AEMC (2012), *Draft Rule Determination, National Electricity Amendment (Distribution Network Planning and Expansion Framework) Rule 2012*, 14 June 2012, p174.

³ Ibid 1, p4.

⁴ Ibid 2, pp93-95.

⁵ Ibid 2, p95.

⁶ Ibid 2, p93.

⁷ Ibid 2, p95.





network providers prefer a staged approach as it enables them to manage their risk by minimising the information they are required to prepare in the first instance. Under the current regulatory test, Ergon Energy publishes an initial Request for Information and seeks submissions from proponents outlining their proposed option at a high level. Following this, Ergon Energy reviews and analyses the information, potentially with a shortlist of preferred candidates. This is likely to involve further consultation with proponents and additional data may be requested on the options that are better placed to address the identified need. The Consultation Paper and Draft Recommendation (similar to the draft project assessment report) are then published. Ergon Energy believes the AEMC should consider this approach and provide sufficient flexibility in the Rules for its adoption.

2.4. Dispute resolution process

2.4.1 Reapplication of the RIT-D

The draft rule indicates that parties may raise a dispute in relation to the RIT-D on the grounds that the RIT-D proponent has not applied the RIT-D (i.e. the test developed and published by the AER) in accordance with the Rules or in cases where there was a manifest error in the calculations performed by the RIT-D proponent in applying the RIT-D.⁸

Ergon Energy questions whether a DNSP's decision to reapply / not reapply the RIT-D is subject to the dispute resolution process. We believe the Rules already provide the AER with sufficient power to independently review a DNSP's reapplication assessment (i.e. via their monitoring and enforcement role). Accordingly, a DNSP's decision should not be subject to dispute.

2.4.2 Quantification of market benefits

Under the draft rule, a RIT-D proponent is required to consider, but not quantify market benefits for each credible option.⁹ A RIT-D proponent may quantify each class of market benefit where they consider that:

- Any applicable market benefits may be material; or
- The quantification of market benefits may alter the selection of the preferred option.

The AEMC has adopted this policy position because, in many cases, RIT-D projects will tend to have limited market benefits. Ergon Energy supports this position. However, we are concerned by the AEMC's statement relating to the dispute resolution process. That is, it will "*provide discipline on relevant NSPs to consider and quantify any applicable market benefits where these are material or where they may alter the outcome of the RIT-D assessment*".¹⁰ Ergon Energy understands this to mean that a DNSP's decision not to quantify market benefits will be subject to dispute. We disagree with this position since the quantification of market benefits is optional. The Final Determination should clearly state that a DNSP's decision in this regard is not subject to dispute.

2.5. Responsibility for carrying out the RIT-T

As highlighted in our earlier submission,¹¹ Ergon Energy does not believe that DNSPs should be responsible for carrying out the RIT-T. The RIT-T and RIT-D differ on a number of aspects, and DNSPs are not equipped nor have sufficient resources to undertake both these tests. If this approach is adopted, DNSPs will be required to develop new processes and systems, and undertake training on the RIT-T. For joint planning, Ergon Energy believes the TNSP should be deemed the lead party, unless otherwise agreed between parties.

2.6. Forward planning period

Ergon Energy does not support the forward planning period for the DAPR beginning on the date one day after the DAPR date.¹² This means, for example, that if a DAPR date under jurisdictional legislation is

⁸ Draft clause 5.17.5(a).

⁹ Draft clauses 5.17.1(c)(4) and 5.17.1(d)

¹⁰ Ibid 2, p92, footnote 350.

¹¹ Ibid 1, p4.

¹² Draft clause 5.13.2(b).





30 September, the DAPR must report on the forward planning period of 1 October to 30 September. Ergon Energy believes that, in line with the DAPR date, jurisdictions should be able to prescribe the start date of the forward planning period. If no such date is specified in jurisdictional electricity legislation, Ergon Energy suggests the default date should be the beginning of the financial year, 1 July.

Ergon Energy supports financial year reporting for the following reasons:

- It aligns with Ergon Energy's expenditure, Statement of Corporate Intent and regulatory control period, which are all based on financial year periods;
- It aligns with our capital planning, budgeting and other reporting processes; and
- Continuing to report on a financial year basis will enable greater comparison to our previous planning report, the Network Management Plan, which details how Ergon Energy will manage and develop its supply network over the following five financial years.¹³

Further, we suggest that any intervening period arising between the end of a planning period and the publication of a new DAPR should be dealt with in a similar manner as Distribution Determinations (refer to clause 6.11.3 of the Rules).

To enact this proposal, we suggest the AEMC makes the following amendments to draft clause 5.13.2:

(a) For the purposes of this clause 5.13.2:

DAPR date means for a *Distribution Network Service Provider*:

- (1) the date by which it is required to *publish a Distribution Annual Planning Report under jurisdictional electricity legislation*; or
- (2) if no such date is specified in *jurisdictional electricity legislation*, 31 December.

(b) For the purposes of this clause 5.13.2:

Forward planning date means for a *Distribution Network Service Provider*:

- (1) the commencement date of the forward planning period under *jurisdictional electricity legislation*; or
- (2) if no such date is specified in *jurisdictional electricity legislation*, 1 July.

(c) By the DAPR date each year, a *Distribution Network Service Provider* must *publish the Distribution Annual Planning Report* setting out the results of the *distribution annual planning review* for the forward planning period beginning on the forward planning date.

Note

Under clause 5.12.2(a1), if a person is a *Transmission Network Service Provider* only because it owns, operates or controls *dual function assets* then it may *publish its Transmission Annual Planning Report* in the same document and at the same time as its *Distribution Annual Planning Report* under this clause 5.13.2.

(d) If a period intervenes between the end of one forward planning period and the *publication of a new Distribution Annual Planning Report* providing for the next forward planning period, the previous *Distribution Annual Planning Report* continues in force during the intervening period.

(e) ... [As per draft clause (c)].

2.7. Exemptions or variations to the DAPR requirements

Ergon Energy believes the AEMC should re-consider its position on the ability for DNSPs to apply for exemptions or variations to the annual reporting requirements. As highlighted in our earlier submission,¹⁴ complying with the proposed DAPR requirements will necessitate changes to our current processes and

¹³ Clause 2.3.1(b) of the Electricity Industry Code.

¹⁴ Ibid 1, p8.





require additional resources. It may also require significant and costly modifications to our IT system (see Section 2.8 below).

We consider that a DNSP would apply for an exemption or variation only in circumstances where the DNSP cannot meet the specific requirement or the costs of providing the information outweigh the benefits. Further, the AER would only grant an exemption or variation where the DNSP has sufficiently justified their position.

2.8. Contents of the DAPR

In its Draft Determination, the AEMC has sought feedback from stakeholders on whether any of the reporting requirements set out in draft Schedule 5.8 are likely to be particularly problematic, and reasons why.¹⁵ In response to this request, Ergon Energy provides the following comments:

- S5.8(b)(2)(ii) – Ergon Energy does not currently produce information on sub-transmission lines. This provision will require Ergon Energy to implement new systems, which are both time-consuming and costly. We presently provide an exceedance report for sub-transmission line segments;
- S5.8(b)(2)(v) – Ergon Energy does not presently differentiate between summer and winter firm capacity. For practical purposes, the difference between summer and winter firm capacities is negligible;
- S5.8(b)(2)(vi) – Ergon Energy is able to provide summer and winter peak loads, but it is not possible to provide the number of hours per year that 95 per cent of peak load is expected to be reached with our present systems. As noted above, implementing new systems will be time-consuming and costly;
- S5.8(b)(2)(vii) – Ergon Energy does not currently report this in its Network Management Plan. We would only be able to provide this information for zone and bulk supply substations;
- S5.8(b)(2)(ix) – Data on the generation capacity of embedded generating units is not separately reported at present. However, it is taken into account in the demand forecasts. Ergon Energy would need to implement a new system to ensure data can be reported as required;
- S5.8(b)(5)(iv) – To provide forecasts of factors affecting ageing and potentially unreliable assets, Ergon Energy will need to implement, at least, a two-stage program. Firstly, we would need to create an interface between network load forecasts and correlate it with ageing and unreliable assets. We would then need to transfer adjusted (or corrected) load forecasts into the capital augmentation programs;
- S5.8(c)(1) – Ergon Energy can not provide timing by month and year. This is currently provided by season (e.g. summer period) to reflect the nature of our network. We suggest deleting the reference to “month and year” from this clause;
- S5.8(c)(5) – Deferrals of system limitations by 12 months, based on an estimated reduction in forecast load, requires a sophisticated data management and forecasting system. In addition, depending on the level and type of constraints, deferral of a major project by 12 months based on an estimated load reduction (which may after 12 months, fail) will put at risk our network and supply to customers;
- S5.8(d)(1) – Ergon Energy suggests inserting “based on 4/3 planning criteria (75 per cent utilisation of feeder normal cyclic rating)” at the end of this clause;
- S5.8(d)(2) – It is normal planning practice to load distribution feeders up to a utilisation factor that accommodates one feeder out of service. Therefore, the number will not be 100 per cent. We suggest “100% of its normal cyclic rating” should be replaced with “75% of its normal cyclic rating”;
- S5.8(d)(6) – Ergon Energy does not currently report on this information in its jurisdictional Network Management Plan. To meet this requirement, Ergon Energy will need to implement system changes that are costly and time-consuming; and

¹⁵ Ibid 2, p43, footnote 135.





- S5.8(d)(7) – It is difficult to forecast overloads at the primary distribution feeder level. To report 12 months' potential variations in forecasting at this level, Ergon Energy will need to develop a sophisticated data management and forecasting system and will require additional resources.

Finally, many of the requirements relating to the RIT-D duplicate information already available under the RIT-D process (e.g. S5.8(e)). For information that is available elsewhere, Ergon Energy considers that a specific reference to that source is sufficient.





3. SPECIFIC COMMENTS

This section outlines Ergon Energy's specific comments on various other aspects of the Draft Determination and draft rule.

3.1. Civil penalty provisions

3.1.1 RIT-T and RIT-D

In its Draft Determination,¹⁶ the AEMC indicated it will not be proposing to recommend to the Standing Committee on Energy and Resources (SCER) that any provisions related to the RIT-T or the RIT-D be classified as civil penalty provisions. The AEMC does not consider a breach of the Rules would pose a direct risk to the secure operation of the National Electricity Market. Ergon Energy supports the AEMC's position on this matter.

3.1.2 Proposed Civil Penalty Provisions

Table 3.3 in the Draft Determination indicates that the AEMC will recommend to the SCER that draft clauses 5.13.2(a) and 5.13.2(e) should be civil penalty provisions. Ergon Energy notes the reason for these recommendations does not align to the draft clause references provided. For example, draft clause 5.13.2(a) relates to the DAPR start date while the description in the table refers to the obligation on DNSPs to analyse expected future operation of the network. Ergon Energy believes the correct references should be draft clause 5.13.1(a)(2) and draft clause 5.13.1(d).

3.2. Distribution consultation procedures

Ergon Energy notes that the AER must develop and publish the RIT-D and RIT-D Application Guidelines in accordance with the "distribution consultation procedure".¹⁷ Ergon Energy understands this to mean the procedures outlined under Part G of Chapter 6 of the Rules. Accordingly, the draft clauses should reference the "distribution consultation procedures" (i.e. the defined term in Chapter 10 of the Rules).

3.3. Annual deferred augmentation charge

The AEMC states that the 'annual deferred augmentation charge' is the value of any deferral in a network solution from the implementation of a non-network solution. Ergon Energy believes the AER's RIT-D Application Guidelines should address how this charge will be calculated.

3.4. Urgent and unforeseen network issue

Ergon Energy does not believe the AEMC has adequately considered our issue in relation to amending the wording in the draft rule from 'required to be operational' to 'required to be commenced'. As highlighted in our earlier submission, the requirement for the investment to be 'operational' is not workable in practice (given the majority of investments will take longer than 6 months to be operational) and would not capture those projects that would need to commence earlier than the time taken to complete the RIT-D process (even if not operational) to ensure reliability and system criteria are met.¹⁸ Ergon Energy would like the AEMC to re-examine this issue.

3.5. Reapplication of the RIT-D

Draft clause 5.17.4(t) states that a RIT-D proponent must reapply the RIT-D when there has been a 'material change in circumstances'. Ergon Energy seeks the AEMC's view on what may constitute a 'material change'. For example, would this occur only when there is a major change in the scope of the RIT-D project?

¹⁶ Ibid 2, p14.

¹⁷ Draft clauses 5.17.1(a) and 5.17.2(a).

¹⁸ Ibid 1, p18.



4. TABLE OF DETAILED COMMENTS ON THE DRAFT RULE

Clause	Provision	Ergon Energy Response
[12] Rule 5.5A	Omit Rule 5.6, including the heading, and substitute “[Deleted]”.	Ergon Energy suggests that this should be “Omit Rule 5.5A”, as Rule 5.6 relates to “Planning and Development of Network”, not “Scale Efficient Network Extensions”.
[17] Various references to clause 5.6.6	In clause 6A.6.6(e)(13) and 6A.7.6(e)(13), omit “clause 5.6.6” and substitute “5.17.4”.	Ergon Energy questions whether these clauses should be substituted with “5.16.4”. Clause 5.17.4 refers to the RIT-D Procedures, while the existing clause 5.6.6 refers to the RIT-T Procedures which are now outlined under clause 5.16.4 of the draft rule.
5.10.2	non-network provider ... non-network options report ...	These definitions are not in alphabetical order.
5.10.2	project specification consultation ... project assessment draft report ...	These definitions are not in alphabetical order.
5.10.2	regulatory investment test for distribution application guidelines ...	Ergon Energy questions why the definition for the RIT-T Application Guidelines is captured in Chapter 10, yet the definition for the RIT-D Application Guidelines is included in draft rule 5.10.2.
5.10.2	RIT-D proponent means... (a) if the identified need is identified during joint planning under clause 5.14.1(e)(3), a <i>Distribution Network Service Provider</i> or a <i>Transmission Network Service Provider</i> , or ... RIT-T proponent means... (a) if the identified need is identified during joint planning under clause 5.14.1(e)(3), a <i>Distribution Network Service Provider</i> or a <i>Transmission Network Service Provider</i> , or ...	The draft rule does not have a “clause 5.14.1(e)(3)”. Ergon Energy suggests that these definitions should reference “clause 5.14.1(e)”.
5.10.2	RIT-T project means:	The additional “to address” should be removed from this definition.



	<p>...</p> <p>(b) a joint planning project if:</p> <p>(i) at least one potential credible option to address to address the identified need includes...</p>	
5.10.2	<p>transmission asset means the apparatus, equipment and <i>plant</i>, including <i>transmission lines</i> and <i>substations</i> a of a <i>transmission system</i>.</p>	The “a” preceding “of a” should be removed from this definition.
5.10.2	<p>zone substation means a <i>substation</i> for the purpose of connecting a <i>distribution network</i> to sub-transmission <i>network</i>.</p>	Ergon Energy suggests inserting “a” before “sub-transmission <i>network</i> ”.
5.12.2(7)	[Entire clause]	Ergon Energy notes that “replacement transmission network asset” has been inconsistently italicised throughout this clause. As this term is no longer contained in Chapter 10 of the Rules, we suggest removing the italics from each reference.
5.13.1(b)	The minimum <i>forward planning period</i> for the purposes of the <i>distribution</i> annual planning review is 5 years.	Ergon Energy notes the definition of “forward planning period” is not contained in Chapter 10 of the Rules. Therefore, we suggest removing the italics from this reference.
5.15.3(b)	<p>For the purposes of clause paragraph (a), the cost thresholds for review are the following amounts:</p> <p>...</p>	Ergon Energy recommends deleting “clause”.
5.16.2(d)	The <i>AER</i> must ensure that there is a <i>regulatory investment test for transmission</i> and <i>regulatory investment test for transmission application guidelines</i> in force at all times after that date.	<p>Ergon Energy notes that this clause previously stated:</p> <p>The <i>AER</i> must develop and <i>publish</i> the first <i>regulatory investment test for transmission</i> and <i>regulatory investment test for transmission application guidelines</i> by 1 July 2010, and there must be a <i>regulatory investment test for transmission</i> and <i>regulatory investment test for transmission application guidelines</i> in force at all times after that date.</p> <p>We do not support the current drafting of the proposed changes as there is no reference to what “that date” might be (i.e. 1 July 2010).</p>
5.16.2(g)	For the purposes of paragraph (f), a “ current application”	Ergon Energy suggests deleting the space before “current”.



	means any action or process initiated under the <i>Rules</i> ...	
5.16.4(b)	(4) if applicable, reference to any discussion on the description of the identified need or the credible options in respect of that identified need in the most recent <i>National Transmission Network Development Plan</i> ;	The reference to “ <i>National Transmission Network Development Plan</i> ” should be replaced with “ <i>NTNDP</i> ”.
5.16.4(n)	A RIT-T proponent that is a <i>Distribution Network Service Provider</i> may discharge its obligation under paragraph (j) to make the <i>project assessment draft report</i> available by including the project assessment draft report as part of its <i>Distribution Annual Planning Report</i> ...	Ergon Energy notes that “project assessment draft report” has been inconsistently italicised throughout this clause. As this term is no longer contained in Chapter 10 of the Rules, we suggest removing the italics from each reference.
5.16.4(v)	(2) a summary of, and the RIT-T proponents response to, submissions received, if any, from <i>interested parties</i> sought under paragraph (q).	Ergon Energy recommends adding an apostrophe to “proponents” (i.e. proponent’s).
5.22(i)	(1) one or more alternative projects which a directed party must consider when applying the <i>regulatory investment test for transmission to potential transmission projects</i> ;	Ergon Energy notes the definition of “potential transmission projects” is no longer contained in Chapter 10 of the Rules. Therefore, we suggest removing the italics from this reference.
Schedule 5.8	(g) for all committed investments to be carried out within the forward planning period with an estimated capital cost of \$2 million or more (as varied by a cost threshold determination) that are to address a refurbishment or replacement need, or an urgent and unforeseen network issue as described in clause 5.17.3(a)(i), provide: 	The draft rule does not have a “clause 5.17.3(a)(i)”. Therefore, we suggest amending this to “clause 5.17.3(a)”.
Schedule 5.9	For the purposes of clause 5.13.1(f), the following information must be included in a <i>Distribution Network Service Provider’s</i> demand side engagement document: ...	The reference to “clause 5.13.1(f)” should be replaced with “clause 5.13.1(h)”.
[3] Chapter 10 Substituted Definitions	interested party ... (d) In Chapter 2, a person including an end user or its who, in <i>AEMO’s</i> opinion, has or identified itself to <i>AEMO</i> as having an interest in relation to the structure of	Ergon Energy recommends inserting “representative” after “its”.



	<i>Participant Fees.</i>	
11.[xx].2	new network investment means has the meaning given to it in the <i>Rules</i> as in force immediately before the commencement date.	Ergon Energy suggests deleting “means”.
11.[xx].2	regulatory test project for a <i>Distribution Network Service Provider</i> means each project specified in the list provided by the <i>Distribution Network Service Provider</i> to the AER under clause 11.[xx].3(a), except any project the subject of a determination under clause 11.[xx].3(e).	Ergon Energy suggests that “clause 11.[xx].3(a)” and “clause 11.[xx].3(e)” should be replaced with “clause 11.[xx].5(c)” and “clause 11.[xx].5(e)”, respectively. The reference to the “AER” should also be italicised as it is a defined term under Chapter 10 of the Rules.
11.[xx].4	(c) For the purposes of paragraph (a)(1)(ii), the <i>Distribution Network Service Provider</i> must include...	The reference to “paragraph a(1)(ii)” should be replaced with “paragraph a(2)(ii)”.

Ergon Energy Corporation Limited

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1. INTRODUCTION

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Ergon Energy appreciates the AEMC's consideration of issues raised in our previous submission¹ and welcomes the AEMC's draft decision to remove the following obligations:

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However, Ergon Energy believes the AEMC should give further consideration to a number of our earlier positions relating to:

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- Responsibility for carrying out the Regulatory Investment Test for Transmission (RIT-T).

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2. KEY ISSUES

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2.1. RIT-D principles

The RIT-D process has been designed to focus on facilitating stakeholder engagement and enhancing the consideration of alternative investment options. It *"...is not intended to test the efficiency of a particular proposed investment per se, nor does it require that a particular investment that satisfies the RIT-D be undertaken"*.² Ergon Energy believes this is a fundamental concept. As such, it should be recognised in the RIT-D principles set out in clause 5.17.1 of the draft rule.

2.2. Most expensive potential credible option

In our previous submission,³ Ergon Energy strongly disagreed with the criteria that the Regulatory Investment Test for Distribution (RIT-D) be carried out where the most expensive option which is technically and economically feasible is more than \$5 million. We argued that this will potentially lead to almost every distribution investment being subject to the RIT-D and would result in an increased regulatory burden on DNSPs. To address this issue, the AEMC has amended the terminology used to describe the approach applying to the RIT-D cost threshold. Specifically, the term 'most expensive option which is technically and economically feasible' has been replaced with the 'most expensive potential credible option'.⁴

Ergon Energy has two issues with this approach. Firstly, a DNSP will still be required to undertake a 'mini regulatory investment test' prior to the non-network options stage. This is because the AEMC expects a RIT-D proponent to form *"at least an initial view on the possibility of potential options being both technically and commercially feasible, and likely to be implemented in a timely manner"*.⁵ To form this initial view, the AEMC suggests that the RIT-D proponent would undertake a desktop exercise, supported by credible evidence.⁶ In practice, Ergon Energy believes this would involve a net present value (NPV) analysis to determine whether an option is 'commercially feasible'.

This appears contradictory to another statement made by the AEMC that indicates the term 'potential' has been introduced *"to recognise that... a RIT-D proponent is not expected to have carried out the necessary analysis to enable it to have fully formed a view on which options are credible options..."*.⁷ Ergon Energy strongly supports this statement and believes that DNSPs should not be required to carry out a 'mini regulatory investment test' in applying the cost threshold. The AEMC should also recognise that, at this stage, some information will not be available to DNSPs.

Secondly, a DNSP is unlikely to build the 'most expensive' option. Therefore, Ergon Energy is uncertain of the reasoning behind adopting this term to apply the RIT-D cost threshold. We believe the AEMC should re-consider using the term 'least expensive' option.

2.3. Non-network options report

Ergon Energy does not support a four month consultation period for non-network options. This is disproportionate to other consultation periods specified in the National Electricity Rules (the Rules). Further, Ergon Energy suggests that the Rules should be amended to allow RIT-D proponents to adopt a staged consultation approach to the non-network options report (if desired). In our experience, non-

² AEMC (2012), *Draft Rule Determination, National Electricity Amendment (Distribution Network Planning and Expansion Framework) Rule 2012*, 14 June 2012, p174.

³ Ibid 1, p4.

⁴ Ibid 2, pp93-95.

⁵ Ibid 2, p95.

⁶ Ibid 2, p93.

⁷ Ibid 2, p95.





network providers prefer a staged approach as it enables them to manage their risk by minimising the information they are required to prepare in the first instance. Under the current regulatory test, Ergon Energy publishes an initial Request for Information and seeks submissions from proponents outlining their proposed option at a high level. Following this, Ergon Energy reviews and analyses the information, potentially with a shortlist of preferred candidates. This is likely to involve further consultation with proponents and additional data may be requested on the options that are better placed to address the identified need. The Consultation Paper and Draft Recommendation (similar to the draft project assessment report) are then published. Ergon Energy believes the AEMC should consider this approach and provide sufficient flexibility in the Rules for its adoption.

2.4. Dispute resolution process

2.4.1 Reapplication of the RIT-D

The draft rule indicates that parties may raise a dispute in relation to the RIT-D on the grounds that the RIT-D proponent has not applied the RIT-D (i.e. the test developed and published by the AER) in accordance with the Rules or in cases where there was a manifest error in the calculations performed by the RIT-D proponent in applying the RIT-D.⁸

Ergon Energy questions whether a DNSP's decision to reapply / not reapply the RIT-D is subject to the dispute resolution process. We believe the Rules already provide the AER with sufficient power to independently review a DNSP's reapplication assessment (i.e. via their monitoring and enforcement role). Accordingly, a DNSP's decision should not be subject to dispute.

2.4.2 Quantification of market benefits

Under the draft rule, a RIT-D proponent is required to consider, but not quantify market benefits for each credible option.⁹ A RIT-D proponent may quantify each class of market benefit where they consider that:

- Any applicable market benefits may be material; or
- The quantification of market benefits may alter the selection of the preferred option.

The AEMC has adopted this policy position because, in many cases, RIT-D projects will tend to have limited market benefits. Ergon Energy supports this position. However, we are concerned by the AEMC's statement relating to the dispute resolution process. That is, it will "*provide discipline on relevant NSPs to consider and quantify any applicable market benefits where these are material or where they may alter the outcome of the RIT-D assessment*".¹⁰ Ergon Energy understands this to mean that a DNSP's decision not to quantify market benefits will be subject to dispute. We disagree with this position since the quantification of market benefits is optional. The Final Determination should clearly state that a DNSP's decision in this regard is not subject to dispute.

2.5. Responsibility for carrying out the RIT-T

As highlighted in our earlier submission,¹¹ Ergon Energy does not believe that DNSPs should be responsible for carrying out the RIT-T. The RIT-T and RIT-D differ on a number of aspects, and DNSPs are not equipped nor have sufficient resources to undertake both these tests. If this approach is adopted, DNSPs will be required to develop new processes and systems, and undertake training on the RIT-T. For joint planning, Ergon Energy believes the TNSP should be deemed the lead party, unless otherwise agreed between parties.

2.6. Forward planning period

Ergon Energy does not support the forward planning period for the DAPR beginning on the date one day after the DAPR date.¹² This means, for example, that if a DAPR date under jurisdictional legislation is

⁸ Draft clause 5.17.5(a).

⁹ Draft clauses 5.17.1(c)(4) and 5.17.1(d)

¹⁰ Ibid 2, p92, footnote 350.

¹¹ Ibid 1, p4.

¹² Draft clause 5.13.2(b).





30 September, the DAPR must report on the forward planning period of 1 October to 30 September. Ergon Energy believes that, in line with the DAPR date, jurisdictions should be able to prescribe the start date of the forward planning period. If no such date is specified in jurisdictional electricity legislation, Ergon Energy suggests the default date should be the beginning of the financial year, 1 July.

Ergon Energy supports financial year reporting for the following reasons:

- It aligns with Ergon Energy's expenditure, Statement of Corporate Intent and regulatory control period, which are all based on financial year periods;
- It aligns with our capital planning, budgeting and other reporting processes; and
- Continuing to report on a financial year basis will enable greater comparison to our previous planning report, the Network Management Plan, which details how Ergon Energy will manage and develop its supply network over the following five financial years.¹³

Further, we suggest that any intervening period arising between the end of a planning period and the publication of a new DAPR should be dealt with in a similar manner as Distribution Determinations (refer to clause 6.11.3 of the Rules).

To enact this proposal, we suggest the AEMC makes the following amendments to draft clause 5.13.2:

(a) For the purposes of this clause 5.13.2:

DAPR date means for a *Distribution Network Service Provider*:

- (1) the date by which it is required to *publish a Distribution Annual Planning Report under jurisdictional electricity legislation*; or
- (2) if no such date is specified in *jurisdictional electricity legislation*, 31 December.

(b) For the purposes of this clause 5.13.2:

Forward planning date means for a *Distribution Network Service Provider*:

- (1) the commencement date of the forward planning period under *jurisdictional electricity legislation*; or
- (2) if no such date is specified in *jurisdictional electricity legislation*, 1 July.

(c) By the DAPR date each year, a *Distribution Network Service Provider* must *publish the Distribution Annual Planning Report* setting out the results of the *distribution annual planning review* for the forward planning period beginning on the forward planning date.

Note

Under clause 5.12.2(a1), if a person is a *Transmission Network Service Provider* only because it owns, operates or controls *dual function assets* then it may *publish its Transmission Annual Planning Report* in the same document and at the same time as its *Distribution Annual Planning Report* under this clause 5.13.2.

(d) If a period intervenes between the end of one forward planning period and the *publication of a new Distribution Annual Planning Report* providing for the next forward planning period, the previous *Distribution Annual Planning Report* continues in force during the intervening period.

(e) ... [As per draft clause (c)].

2.7. Exemptions or variations to the DAPR requirements

Ergon Energy believes the AEMC should re-consider its position on the ability for DNSPs to apply for exemptions or variations to the annual reporting requirements. As highlighted in our earlier submission,¹⁴ complying with the proposed DAPR requirements will necessitate changes to our current processes and

¹³ Clause 2.3.1(b) of the Electricity Industry Code.

¹⁴ Ibid 1, p8.





require additional resources. It may also require significant and costly modifications to our IT system (see Section 2.8 below).

We consider that a DNSP would apply for an exemption or variation only in circumstances where the DNSP cannot meet the specific requirement or the costs of providing the information outweigh the benefits. Further, the AER would only grant an exemption or variation where the DNSP has sufficiently justified their position.

2.8. Contents of the DAPR

In its Draft Determination, the AEMC has sought feedback from stakeholders on whether any of the reporting requirements set out in draft Schedule 5.8 are likely to be particularly problematic, and reasons why.¹⁵ In response to this request, Ergon Energy provides the following comments:

- S5.8(b)(2)(ii) – Ergon Energy does not currently produce information on sub-transmission lines. This provision will require Ergon Energy to implement new systems, which are both time-consuming and costly. We presently provide an exceedance report for sub-transmission line segments;
- S5.8(b)(2)(v) – Ergon Energy does not presently differentiate between summer and winter firm capacity. For practical purposes, the difference between summer and winter firm capacities is negligible;
- S5.8(b)(2)(vi) – Ergon Energy is able to provide summer and winter peak loads, but it is not possible to provide the number of hours per year that 95 per cent of peak load is expected to be reached with our present systems. As noted above, implementing new systems will be time-consuming and costly;
- S5.8(b)(2)(vii) – Ergon Energy does not currently report this in its Network Management Plan. We would only be able to provide this information for zone and bulk supply substations;
- S5.8(b)(2)(ix) – Data on the generation capacity of embedded generating units is not separately reported at present. However, it is taken into account in the demand forecasts. Ergon Energy would need to implement a new system to ensure data can be reported as required;
- S5.8(b)(5)(iv) – To provide forecasts of factors affecting ageing and potentially unreliable assets, Ergon Energy will need to implement, at least, a two-stage program. Firstly, we would need to create an interface between network load forecasts and correlate it with ageing and unreliable assets. We would then need to transfer adjusted (or corrected) load forecasts into the capital augmentation programs;
- S5.8(c)(1) – Ergon Energy can not provide timing by month and year. This is currently provided by season (e.g. summer period) to reflect the nature of our network. We suggest deleting the reference to “month and year” from this clause;
- S5.8(c)(5) – Deferrals of system limitations by 12 months, based on an estimated reduction in forecast load, requires a sophisticated data management and forecasting system. In addition, depending on the level and type of constraints, deferral of a major project by 12 months based on an estimated load reduction (which may after 12 months, fail) will put at risk our network and supply to customers;
- S5.8(d)(1) – Ergon Energy suggests inserting “based on 4/3 planning criteria (75 per cent utilisation of feeder normal cyclic rating)” at the end of this clause;
- S5.8(d)(2) – It is normal planning practice to load distribution feeders up to a utilisation factor that accommodates one feeder out of service. Therefore, the number will not be 100 per cent. We suggest “100% of its normal cyclic rating” should be replaced with “75% of its normal cyclic rating”;
- S5.8(d)(6) – Ergon Energy does not currently report on this information in its jurisdictional Network Management Plan. To meet this requirement, Ergon Energy will need to implement system changes that are costly and time-consuming; and

¹⁵ Ibid 2, p43, footnote 135.





- S5.8(d)(7) – It is difficult to forecast overloads at the primary distribution feeder level. To report 12 months' potential variations in forecasting at this level, Ergon Energy will need to develop a sophisticated data management and forecasting system and will require additional resources.

Finally, many of the requirements relating to the RIT-D duplicate information already available under the RIT-D process (e.g. S5.8(e)). For information that is available elsewhere, Ergon Energy considers that a specific reference to that source is sufficient.





3. SPECIFIC COMMENTS

This section outlines Ergon Energy's specific comments on various other aspects of the Draft Determination and draft rule.

3.1. Civil penalty provisions

3.1.1 RIT-T and RIT-D

In its Draft Determination,¹⁶ the AEMC indicated it will not be proposing to recommend to the Standing Committee on Energy and Resources (SCER) that any provisions related to the RIT-T or the RIT-D be classified as civil penalty provisions. The AEMC does not consider a breach of the Rules would pose a direct risk to the secure operation of the National Electricity Market. Ergon Energy supports the AEMC's position on this matter.

3.1.2 Proposed Civil Penalty Provisions

Table 3.3 in the Draft Determination indicates that the AEMC will recommend to the SCER that draft clauses 5.13.2(a) and 5.13.2(e) should be civil penalty provisions. Ergon Energy notes the reason for these recommendations does not align to the draft clause references provided. For example, draft clause 5.13.2(a) relates to the DAPR start date while the description in the table refers to the obligation on DNSPs to analyse expected future operation of the network. Ergon Energy believes the correct references should be draft clause 5.13.1(a)(2) and draft clause 5.13.1(d).

3.2. Distribution consultation procedures

Ergon Energy notes that the AER must develop and publish the RIT-D and RIT-D Application Guidelines in accordance with the "distribution consultation procedure".¹⁷ Ergon Energy understands this to mean the procedures outlined under Part G of Chapter 6 of the Rules. Accordingly, the draft clauses should reference the "distribution consultation procedures" (i.e. the defined term in Chapter 10 of the Rules).

3.3. Annual deferred augmentation charge

The AEMC states that the 'annual deferred augmentation charge' is the value of any deferral in a network solution from the implementation of a non-network solution. Ergon Energy believes the AER's RIT-D Application Guidelines should address how this charge will be calculated.

3.4. Urgent and unforeseen network issue

Ergon Energy does not believe the AEMC has adequately considered our issue in relation to amending the wording in the draft rule from 'required to be operational' to 'required to be commenced'. As highlighted in our earlier submission, the requirement for the investment to be 'operational' is not workable in practice (given the majority of investments will take longer than 6 months to be operational) and would not capture those projects that would need to commence earlier than the time taken to complete the RIT-D process (even if not operational) to ensure reliability and system criteria are met.¹⁸ Ergon Energy would like the AEMC to re-examine this issue.

3.5. Reapplication of the RIT-D

Draft clause 5.17.4(t) states that a RIT-D proponent must reapply the RIT-D when there has been a 'material change in circumstances'. Ergon Energy seeks the AEMC's view on what may constitute a 'material change'. For example, would this occur only when there is a major change in the scope of the RIT-D project?

¹⁶ Ibid 2, p14.

¹⁷ Draft clauses 5.17.1(a) and 5.17.2(a).

¹⁸ Ibid 1, p18.



4. TABLE OF DETAILED COMMENTS ON THE DRAFT RULE

Clause	Provision	Ergon Energy Response
[12] Rule 5.5A	Omit Rule 5.6, including the heading, and substitute “[Deleted]”.	Ergon Energy suggests that this should be “Omit Rule 5.5A”, as Rule 5.6 relates to “Planning and Development of Network”, not “Scale Efficient Network Extensions”.
[17] Various references to clause 5.6.6	In clause 6A.6.6(e)(13) and 6A.7.6(e)(13), omit “clause 5.6.6” and substitute “5.17.4”.	Ergon Energy questions whether these clauses should be substituted with “5.16.4”. Clause 5.17.4 refers to the RIT-D Procedures, while the existing clause 5.6.6 refers to the RIT-T Procedures which are now outlined under clause 5.16.4 of the draft rule.
5.10.2	non-network provider ... non-network options report ...	These definitions are not in alphabetical order.
5.10.2	project specification consultation ... project assessment draft report ...	These definitions are not in alphabetical order.
5.10.2	regulatory investment test for distribution application guidelines ...	Ergon Energy questions why the definition for the RIT-T Application Guidelines is captured in Chapter 10, yet the definition for the RIT-D Application Guidelines is included in draft rule 5.10.2.
5.10.2	RIT-D proponent means... (a) if the identified need is identified during joint planning under clause 5.14.1(e)(3), a <i>Distribution Network Service Provider</i> or a <i>Transmission Network Service Provider</i> , or ... RIT-T proponent means... (a) if the identified need is identified during joint planning under clause 5.14.1(e)(3), a <i>Distribution Network Service Provider</i> or a <i>Transmission Network Service Provider</i> , or ...	The draft rule does not have a “clause 5.14.1(e)(3)”. Ergon Energy suggests that these definitions should reference “clause 5.14.1(e)”.
5.10.2	RIT-T project means:	The additional “to address” should be removed from this definition.



	<p>...</p> <p>(b) a joint planning project if:</p> <p>(i) at least one potential credible option to address to address the identified need includes...</p>	
5.10.2	transmission asset means the apparatus, equipment and <i>plant</i> , including <i>transmission lines</i> and <i>substations</i> a of a <i>transmission system</i> .	The “a” preceding “of a” should be removed from this definition.
5.10.2	zone substation means a <i>substation</i> for the purpose of connecting a <i>distribution network</i> to sub-transmission <i>network</i> .	Ergon Energy suggests inserting “a” before “sub-transmission <i>network</i> ”.
5.12.2(7)	[Entire clause]	Ergon Energy notes that “replacement transmission network asset” has been inconsistently italicised throughout this clause. As this term is no longer contained in Chapter 10 of the Rules, we suggest removing the italics from each reference.
5.13.1(b)	The minimum <i>forward planning period</i> for the purposes of the <i>distribution</i> annual planning review is 5 years.	Ergon Energy notes the definition of “forward planning period” is not contained in Chapter 10 of the Rules. Therefore, we suggest removing the italics from this reference.
5.15.3(b)	For the purposes of clause paragraph (a), the cost thresholds for review are the following amounts: ...	Ergon Energy recommends deleting “clause”.
5.16.2(d)	The <i>AER</i> must ensure that there is a <i>regulatory investment test for transmission</i> and <i>regulatory investment test for transmission application guidelines</i> in force at all times after that date.	<p>Ergon Energy notes that this clause previously stated:</p> <p>The <i>AER</i> must develop and <i>publish</i> the first <i>regulatory investment test for transmission</i> and <i>regulatory investment test for transmission application guidelines</i> by 1 July 2010, and there must be a <i>regulatory investment test for transmission</i> and <i>regulatory investment test for transmission application guidelines</i> in force at all times after that date.</p> <p>We do not support the current drafting of the proposed changes as there is no reference to what “that date” might be (i.e. 1 July 2010).</p>
5.16.2(g)	For the purposes of paragraph (f), a “ current application”	Ergon Energy suggests deleting the space before “current”.



	means any action or process initiated under the <i>Rules</i> ...	
5.16.4(b)	(4) if applicable, reference to any discussion on the description of the identified need or the credible options in respect of that identified need in the most recent <i>National Transmission Network Development Plan</i> ;	The reference to “ <i>National Transmission Network Development Plan</i> ” should be replaced with “ <i>NTNDP</i> ”.
5.16.4(n)	A RIT-T proponent that is a <i>Distribution Network Service Provider</i> may discharge its obligation under paragraph (j) to make the <i>project assessment draft report</i> available by including the project assessment draft report as part of its <i>Distribution Annual Planning Report</i> ...	Ergon Energy notes that “project assessment draft report” has been inconsistently italicised throughout this clause. As this term is no longer contained in Chapter 10 of the Rules, we suggest removing the italics from each reference.
5.16.4(v)	(2) a summary of, and the RIT-T proponents response to, submissions received, if any, from <i>interested parties</i> sought under paragraph (q).	Ergon Energy recommends adding an apostrophe to “proponents” (i.e. proponent’s).
5.22(i)	(1) one or more alternative projects which a directed party must consider when applying the <i>regulatory investment test for transmission to potential transmission projects</i> ;	Ergon Energy notes the definition of “potential transmission projects” is no longer contained in Chapter 10 of the Rules. Therefore, we suggest removing the italics from this reference.
Schedule 5.8	(g) for all committed investments to be carried out within the forward planning period with an estimated capital cost of \$2 million or more (as varied by a cost threshold determination) that are to address a refurbishment or replacement need, or an urgent and unforeseen network issue as described in clause 5.17.3(a)(i), provide: 	The draft rule does not have a “clause 5.17.3(a)(i)”. Therefore, we suggest amending this to “clause 5.17.3(a)”.
Schedule 5.9	For the purposes of clause 5.13.1(f), the following information must be included in a <i>Distribution Network Service Provider’s</i> demand side engagement document: ...	The reference to “clause 5.13.1(f)” should be replaced with “clause 5.13.1(h)”.
[3] Chapter 10 Substituted Definitions	interested party ... (d) In Chapter 2, a person including an end user or its who, in <i>AEMO’s</i> opinion, has or identified itself to <i>AEMO</i> as having an interest in relation to the structure of	Ergon Energy recommends inserting “representative” after “its”.



	<i>Participant Fees.</i>	
11.[xx].2	new network investment means has the meaning given to it in the <i>Rules</i> as in force immediately before the commencement date.	Ergon Energy suggests deleting “means”.
11.[xx].2	regulatory test project for a <i>Distribution Network Service Provider</i> means each project specified in the list provided by the <i>Distribution Network Service Provider</i> to the AER under clause 11.[xx].3(a), except any project the subject of a determination under clause 11.[xx].3(e).	Ergon Energy suggests that “clause 11.[xx].3(a)” and “clause 11.[xx].3(e)” should be replaced with “clause 11.[xx].5(c)” and “clause 11.[xx].5(e)”, respectively. The reference to the “AER” should also be italicised as it is a defined term under Chapter 10 of the Rules.
11.[xx].4	(c) For the purposes of paragraph (a)(1)(ii), the <i>Distribution Network Service Provider</i> must include...	The reference to “paragraph a(1)(ii)” should be replaced with “paragraph a(2)(ii)”.