

Our Ref: 48344
Your Ref: ERC0137
Contact Officer: Blair Burkitt
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28 June 2012

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

Dear Mr Pierce

Draft determination on cost pass through arrangements for network service providers

Thankyou for the opportunity to comment on the draft rule determination regarding amendments to the National Electricity Rules (Electricity Rules) on the cost pass through provisions applying to network service providers.

The AER considers the draft rule's cost pass through provisions provide greater consistency between chapter 6 and 6A in the Electricity Rules. The AER's comments are made in relation to the nominated pass through event considerations and transitional arrangements.

Nominated pass through event considerations

The draft rule introduces *nominated pass through event considerations* that the AER must consider when deciding whether to accept the network businesses' proposal and reflects the AEMC's view that:

...in order to provide network businesses, the AER and consumers with additional certainty the draft rule will introduce a set of factors that the AER must consider when deciding whether to accept the network businesses' proposals.¹

The AER is firmly of the view that further prescription regarding the assessment of proposed nominated pass through events in the Electricity Rules is unnecessary and not appropriate on the basis that:

¹ AEMC, Draft Rule Determination, National Electricity Amendment (Cost pass through arrangements for network service providers) Rule 2012, 10 May 2012, p.14.

- having regard to the issues raised in the rule change proposal, it is not evident, on the face of the material provided in the draft determination, that there is an existing problem as regards the need for certainty such as would necessitate the AEMC's preferred approach
- the AEMC's preferred rule does not provide an appropriate balance between regulatory certainty and flexibility for the AER to respond to changes in regulatory circumstances.

The AER notes that a critical element of the AEMC's assessment of rule change proposals centres on the need for a rule change proponent to provide a statement of issue, which includes the identification of problems or issues that the rule change seeks to address.² However, the AEMC's draft rule seeks to address an aspect of the pass through provisions that has not been identified by stakeholders as an issue. In particular, stakeholders did not raise issues regarding uncertainty in regard to the AER's approach to undertaking an assessment of proposed nominated pass through events in the submissions to the consultation paper, nor have stakeholders raised this as an issue as part of AER distribution determinations. The AER considers that there is no justification, in terms of addressing uncertainty, for the AEMC's preference for further prescription in the Electricity Rules given there is no evidence that there is an issue to be addressed.

As previously discussed and recognised by the AEMC, the AER has developed a number of criteria to assess proposed pass through events by distribution businesses in its Victorian determination and its recent Aurora determination. These criteria are now relatively settled, having been developed over successive determinations and provide a high degree of certainty of the AER's approach in assessing proposed pass through events. Accordingly, the AER considers that it is now appropriate that these criteria (subject to consultation) be considered as part of an AER guideline on cost pass through provisions in the Electricity Rules.

The AER is also concerned that the draft rule's codification of the *nominated pass through event considerations* in the Electricity Rules would not allow the AER to respond to any changes in the regulatory environment in a flexible and adaptive way. The AER maintains that a guideline will better promote the National Electricity Objective, because it will provide stakeholders with sufficient certainty as to the AER's approach to its assessment of proposed pass through events, while also providing the AER with the capacity to amend its approach over time (as appropriate). This approach is also consistent with the AEMC's view that there is a need to consider balancing regulatory certainty and providing the regulator with sufficient discretion in applying the Electricity Rules.³ Accordingly, the AER is strongly of the view that including the AER's approach to assessing nominated pass through events in a guideline is more consistent with promoting the National Electricity Objective than the codification of the *nominated pass through event considerations* in the draft rule.

In addition, the AEMC's draft rule specifies that a network service provider (NSP) must propose a nominated pass through event(s). The AER does not consider that it is appropriate to mandate that a NSP submit a nominated pass through event as part of a regulatory proposal. In particular, the prescribed pass through events in the Electricity Rules already apply to NSP and the distribution rules allow a DNSP to nominate additional pass through events if necessary, rather than mandating a requirement to propose additional events.

² AEMC, National Electricity Rules Guidelines, Guidelines for proponents, preparing a rule change proposal, January 2012

³ AEMC, Consultation Paper, National Electricity Amendment (Economic Regulation of Network service providers) Rule 2011, October 2011, p.5.

Transitional arrangements

In relation to the transitional arrangements for Powerlink in the draft rule, the AER notes that the current drafting only allows the AER to either accept or reject Powerlink's nominated pass through event and not to amend the proposal. The AER proposes that the draft rule be amended to allow the AER to amend a nominated pass through proposal. The AER also proposes that 90 business days would provide sufficient time for the AER to assess any nominated pass through events by Powerlink. Proposed drafting amendments are included in the attachment to this submission.

In addition, the AER considers the AEMC should also specify when the final rule will come into effect, as the AER will be in the process of making its revenue determination for ElectraNet and Murraylink. The AER expects to make its draft decision on these determinations in November 2012, and a final decision in April 2013.

If you would like to discuss any aspect of this submission please contact Blair Burkitt on (03) 9290 1442.

Yours sincerely



for

Chris Pattas
General Manager
Network Operations and Development

ATTACHMENT 1:

Amendment number	Rule(s)/Clause(s)	AER Comment(s) on amendment(s)
		Schedule 2
[1]	11.[xx].3	In the event the AER does not accept Powerlink’s nominated pass through event, the AER seeks the ability to modify the nominated pass through event for inclusion in Powerlink’s transmission determination
	11.[xx].3(b)	AER considers 90 business days would be an appropriate amount of time to determine whether the pass through events nominated by Powerlink should be included in its transmission determination
	11.[xx].3(c)	the reference to paragraph (c) should be replaced with paragraph (b)
	11.[xx].3(d)	AER considers 90 business days would be an appropriate amount of time to determine whether the pass through events nominated by Powerlink should be included in its transmission determination