

21 June 2012

Australian Energy Market Commission
PO Box A2449
Sydney South
New South Wales 1235



positive energy

Reference: ERC0137: National Electricity Amendment (Cost Pass Through Arrangements for Network Service Providers) Rule 2012

Dear Sir/Madam

Energex welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) draft determination on the National Electricity Amendment (cost pass through arrangements for network service providers) Rule 2012.

Energex understands the position that cost pass through arrangements should be the last option available to network businesses with respect to risk management. However, contrary to the AEMC's view, Energex does not consider the cost pass through arrangements necessarily weaken the regulatory incentive regime given the extremely robust process involved in making and assessing a cost pass through application.

Under the National Electricity Rules (NER) the Australian Energy Regulator (AER) is required to consider relevant factors including the efficiency of the network businesses' decisions and actions in relation to the risk of the event including whether the network business failed to take action, or as a result of action taken, increased the magnitude of the eligible pass through amount. To the extent that the AER does not consider costs already incurred to be prudent and efficient, the network business may be adversely financially impacted. There are examples of pass through applications by network businesses where costs incurred were not approved for pass through. Recent AER pass through decisions such as Powercor's application following the Victorian Bushfire Royal Commission demonstrate the ability and willingness of the AER to approve only costs they consider to be prudent and efficient. Energex re-iterates that this is a strong driver for network businesses to establish and maintain effective risk management strategies to prevent, mitigate and respond to low probability, high impact events.

Energex supports the AEMC's draft decision to align the cost pass through arrangements for Transmission Network Service Providers (TNSPs) with Distribution Network Service Providers (DNSPs), thereby allowing TNSPs to nominate additional pass through events as part of their regulatory proposal. The draft decision to address the dead zone issue for events that impact network service providers beyond the regulatory control period in which the

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event occurs, is a welcomed and significant improvement to the cost pass through arrangements. Addressing the dead zone issue ensures that the network provider has a reasonable opportunity to recover efficient costs incurred in providing direct control services.

Energex maintains that the inclusion of natural disaster and insurance cap events in prescribed pass through events in the NER would provide greater certainty for future determinations by codifying these events as pass through events. To not do so would be of particular concern if Energex does not have a general nominated pass through event available to it in the future.

Energex does not accept the AEMC's reasoning for the removal of terrorism events from the prescribed pass through events under the NER on the grounds that its inclusion adds unnecessary prescription and does not allow for differences between network businesses, or, for the definition to be refined over time. It is unlikely that the more specific and meaningful definition for a terrorism event can be drafted. Energex finds it difficult to understand how a risk of a terrorist event can be differentiated between network businesses and hence, considers there is no scope for any business to leverage from its inclusion under the NER.

The codification of nominated pass through event considerations appears overly prescriptive as the AER is well practiced and best placed to determine the relevant factors and their respective weighting at the time of making a regulatory determination. Energex would highlight that the proposed current drafting of nominated pass through considerations may not permit natural disaster or terrorism events to be classified as a nominated event, given that the nature or type of event may not be any more clearly identified at that time than they currently are (ie they are broadly defined).

Finally in terms of the draft amendment rules to address the dead zone issue, these could benefit from re-drafting to provide greater clarity. Energex understands that the draft amendment rules seek to allow for the recovery of increased costs which span regulatory control periods. However, the drafting (proposed clauses 6.6.1(f)(3), 6.6.1(j)(2) 6.6.1(j)(2A) 2A, 6A7.3(3), 6A7.3(j)(2), 6A7.3(j)(2A) and eligible pass through amount definition) appears to imply that the costs that are incurred in the current regulatory control period and the following regulatory control period may be mutually exclusive. Furthermore, in terms of the draft amendment rule clause 6.6.1(j)(4) and 6A7.3.(j)(4), Energex considers that these clauses should be extended to also incorporate the Weighted Average Cost of Capital (WACC) for the following regulatory control period, if the pass through associated with the positive/negative change event occurs across control periods (providing that the determination does not make allowance for the change in costs in the following regulatory control period). That is, the WACC relative to each regulatory control period should apply to the respective periods.

If any further information is required, please contact Louise Dwyer, Group Manager Regulatory Affairs on (07) 3664 4047.

Yours sincerely



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