

Level 25, 32 Turbot Street
Brisbane Qld 4000
GPO Box 3131
Canberra ACT 2601
tel: (07) 3835 4666
www.aer.gov.au

Our Ref: 16001939
Your Ref: ERC0362
Contact Officer: Sophia van der Zant
Contact Phone: [REDACTED]

7 December 2023

Ms Anna Collyer
Chair
Australian Energy Market Commission
GPO BOX 2603
SYDNEY, NSW, 2001

Dear Ms Collyer

Re: Harmonising the national energy rules with the updated national energy objectives

The Australian Energy Regulator (AER) welcomes the opportunity to comment on the recent draft rules and determination released by the Australian Energy Market Commission (AEMC) regarding harmonising the rules framework with the updated energy objectives.

The AER is broadly supportive of the draft determination and the more preferable draft rules to incorporate emissions reduction into the energy regulatory framework. We would like to thank the AEMC for considering our feedback to the consultation paper in formulating the draft rules.

Regulatory Investment Tests

The AER supports the draft rule including transitional arrangements for Regulatory Investment Tests for Transmission and Distribution (RIT-T and RIT-D, respectively) projects underway. We consider that this approach will align the RIT rules with the updated national energy objectives and clearly signal to proponents whether they need to apply the new objectives depending on how advanced their RIT processes are. This will provide regulatory certainty for both network service providers and the AER in assessing the draft reports in the coming months.

Regulatory determinations

The AER supports the AEMC's policy position that the amended energy objectives should apply to revenue proposals underway. We generally do not see a need for transitional provisions in this regard as the AER is required to consider or apply the amended energy

objectives when exercising our economic regulatory decision making functions and powers¹. The exception is in relation to capital expenditure and operating expenditure where we consider transitional provisions could make it clear that the procedural requirements of the current rules do not prevent the AER from accepting forecasts based on the new rules. This would clarify for businesses that we are able to accept a proposal that includes expenditure that contributes to achieving emissions reduction targets through the supply of standard control services or prescribed transmission services. Network businesses will still need to undertake relevant analysis and consultation required to support the inclusion of said expenditure.

Operating expenditure and Capital expenditure objectives

The AEMC has limited the operating expenditure and capital expenditure objectives to expenditure the network service provider considers would “contribute to achieving emissions reduction targets through the supply of standard control services and prescribed transmission services”. The AER supports the updated draft NER clauses 6.5.6(a)(3), 6.5.7(a)(3), 6A.6.6(a)(3), 6A.6.7(a)(3). They provide the AER with a clear nexus to consider proposals that are made on a justification that they contribute to achieving emissions reduction targets. The AER agrees with the AEMC’s position that the application of the revised operating and capital expenditure objectives is best addressed by the AER through its guideline updates.

The proposed amended rule 69 of the National Gas Rules is drafted such that the proposed amended definition of operating expenditure could be read as including any expenditure that contributes to meeting the targets, regardless of whether that expenditure is incurred in providing pipeline services. For clarity, the AER recommends that the proposed rule 69(b) be amended as follows: “expenditure, in providing pipeline services, that contributes to meeting emissions reduction targets”.

Definition of “emissions reduction targets”

The AEMC has included a definition of “emissions reduction targets” in the draft rules that covers targets including, but not limited to, the targets set out in the targets statement that the AEMC is required to produce under the amended NEL and NGL. The draft rules include proposed amendments to the operating expenditure and capital expenditure objectives that potentially have the effect of requiring the AER, when applying those objectives, to consider all emissions reduction targets.

Rather than being required to consider all targets, the AER would prefer that it have the discretion to determine whether to take additional targets, beyond those set out in the AEMC targets statement, into account. This is consistent with the requirement in the amended energy laws that, in applying the amended objectives, a person or body must consider, at a minimum, the targets set out in the AEMC target statement. It is also consistent with the approach taken in clause 5.22.3(b) of the draft rules.

AER guideline updates

The draft determination outlines that the AER may use an omnibus process to conduct streamlined consultation on minor updates to relevant Guidelines due to the change in the energy objectives and would apply the distribution consultation procedures. The AER would like to emphasise that our use of the omnibus process would be limited to changes that are

¹ Clause 39(1) of Schedule 3 of the NEL

not anticipated to have a significant effect on stakeholders and would usually be limited to changes of a minor or administrative nature.

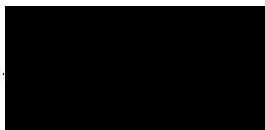
We intend on publishing a draft decision that lists all the proposed minor updates to each AER Guideline for stakeholders to comment. If issues are identified as part of this consultation process as materially complex or difficult (through either stakeholder feedback, material changes in circumstances or an issue identified by the AER), then we can open a review for the specific Guideline or the AER can extend the consultation periods to address those matters.² If the issue is materially complex or difficult and relates to a Guideline that does not follow the distribution consultation procedures, then the AER will be required to open a review for that guideline using the consultation process specified in the Rules. Therefore, this discretion balances the need for a streamlined yet flexible approach to update over 50 AER Guidelines with the need for meaningful stakeholder engagement in relation to any material issues that are raised.³

The draft determination outlines that transitional provision 11.XXX.4(c) enables the AER to commence consultation on updates to the Cost Benefit Analysis, RIT-T and RIT-D Guidelines and Instruments before the Rule Change Final Determination is published. The AER is supportive of this transitional provision as it will assist in completing these updates in the required time.

The draft determination indicates that the rules governing the AER's cost benefit analysis guidelines require no additional changes. The AER considers that, in respect of emissions reduction, clauses 5.22.5(g) and (h) of the NER should not apply to the current ISP process or to current applications of the RIT-T for actionable ISP projects (current, in each case, meaning current at the time of the guideline amendments). This would ensure that the cost benefit analysis guideline updates can apply appropriately to ISP development processes and actionable RIT-T assessment processes underway at that date. For example, this would ensure that any amendments to the CBA guideline would apply to the 2026 ISP cycle, which may have commenced at that time. Further, disapplying clauses 5.22.5(g) and (h) to the extent outlined above, while leaving the current rules otherwise intact allows for updates to any value of emissions reduction to be addressed via the guidelines rather than through the AEMC's rule change process. Otherwise, the AER agrees that no additional changes are required to the rules governing the AER's cost benefit analysis guidelines

We thank the Commission for the opportunity to provide input to this consultation. Should you have any questions about our submission, please contact Sophia van der Zant on [REDACTED].

Yours sincerely



Stephanie Jolly
Executive General Manager
Consumers, Policy and Markets

Sent by email on: 07.12.2023

² As per Clause 6.16(g) of the NER

³ The AEMC provides supportive analysis of this approach on page 40 of the draft determination.