13 February 2015

Ms Paula Conboy
Chair
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Dear Ms Conboy

ActewAGL Distribution submission on the AER's Draft Decision ActewAGL distribution determination 2015-16 to 2018-19

Pursuant to clauses 6.10.2(c) and 6.10.3(e) of the National Electricity Rules ActewAGL Distribution is pleased to respond to the AER's Draft Decision. The attached submission provides further materials and various expert reports in support of ActewAGL Distribution's Revised Regulatory Proposal.

Notably this submission provides legal opinion from Mr Neil Young QC and Mr Andrew McClelland concerning the AER's draft decision on forecast operating expenditure and its discretion to establish a glide path. Mr Neil Young QC and Mr Andrew McClelland conclude:

- that the methodology the AER deployed to make its draft decision is inconsistent with the Rules in that it involves adopting the AER's own benchmarking reports as the primary reference point for making those decisions and gives little or no weight to ActewAGL Distribution's forecast operating expenditure. This approach constitutes a reviewable error under the law;
- that the AER in a manner specified in section 71C of the NEL has erred in confining itself to the question of whether ActewAGL Distribution's forecast operating expenditure reasonably reflect the efficient costs of an objectively prudent provider, having regard only to exogenous considerations; and
- the AER has discretion under the Rules to establish a glide path. However in the present circumstances such a glide path would generally not be required by the NEO if the AER's decision is correctly made.

As outlined in the Revised Regulatory Proposal, the AER's Draft Decision does not provide ActewAGL Distribution a reasonable opportunity to recover at least efficient and prudent costs that are based on realistic expectation of cost inputs. For instance, as the AER's operating expenditure adjustment is retrospective and does not factor in necessary costs to restructure the business, ActewAGL Distribution must spend significantly less than the AER's estimate of the efficient level of operating expenditure in the subsequent regulatory period.

The safety and reliability impacts of such cuts are further emphasised by additional material attached to this submission. The quantum of the cuts proposed by the AER require a business model that provides

ActewAGL House 40 Bunda Street Canberra ACT 2600 I GPO Box 366 Canberra ACT 2601
t 13 14 93 I **f** 02 6249 7237 I actewagl.com.au

ActewAGL Distribution ABN 76 670 568 688 a partnership of ACTEW Distribution Limited ABN 83 073 025 224 and Jemena Networks (ACT) Pty Ltd ABN 24 008 552 663.

electricity services, by adopting an unsustainable "care and maintenance model", that costs more in the long-term. Our consumers expect more.

The AER's draft decision denies investors in ActewAGL Distribution the opportunity to earn a return commensurate with the regulatory and commercial risks which is required by law, and thus removes the incentive for efficient investment to achieve the NEO, the very purpose of the regulatory regime.

Finally, the submission adduces, as further support of its revised regulatory proposal, evidence from HoustonKemp Economists that the AER has not satisfied the requirements to make the NEO preferable decision, and that ActewAGL Distribution's revised regulatory proposal is materially preferable.

Please contact Mr David Graham, Director Regulatory Affairs and Pricing, on (02) 6248 3605 to discuss any aspect of this submission.

Yours sincerely

Michael Costello
Chief Executive Officer