

Response to the AER Scoping Paper
Gas and Electricity Distribution
Regulatory Guidelines

May 2006



ActewAGL

ActewAGL


ActewAGL Distribution ABN 76 670 568 688

A partnership of ACTEW Distribution Ltd ABN 83 073 025 224 and
AGL Gas Company (ACT) Ltd ABN 24 008 552 663

Head Office: ActewAGL House, 221 London Circuit, CANBERRA ACT 2600

GPO Box 366, CANBERRA ACT 2601

<http://www.actewaql.com.au>



1. Introduction

ActewAGL welcomes the opportunity to respond to the Australian Energy Regulator's *Gas and Electricity Distribution Regulatory Guidelines Scoping Paper*.

The AER seeks comments on:

- Whether its proposed approach is appropriate;
- The scope of the proposed distribution review, as outlined in chapter 5 of the *Scoping Paper*, and,
- The proposed process and timeframes for the development of distribution regulatory guidelines.¹

ActewAGL's comments on each of these matters are provided in the following sections.

As the owner of a network scheduled for the first round of AER distribution reviews, ActewAGL is particularly keen for guidance on how the AER intends to administer the new regulatory framework (when it is developed) and what needs to be done in the transition to the new regime. We need certainty about what will be required under the new regime and how that differs from requirements in past reviews, well ahead of the scheduled start of the reviews in mid 2008.

ActewAGL appreciates that the need to prepare for pending reviews while the regulatory framework is still being developed poses a significant challenge for the AER. It also poses a significant challenge for the regulated businesses. Based on past experience, preparation for reviews needs to start at least a year ahead of the start of the formal review process – mid 2007 for the forthcoming reviews.

However, we do not believe that the AER's proposed approach of starting to develop a detailed set of guidelines is the best way to use the limited time before the next reviews. ActewAGL would prefer to see more emphasis on working closely with jurisdictional regulators, accessing their knowledge bases, and carrying forward their common regulatory processes where possible, rather than developing new guidelines. This will help to provide the necessary certainty and stability to the regulated businesses.

ActewAGL has serious concerns that the AER's proposed approach of starting to develop a set of guidelines, based on the draft proposals for transmission networks and other reports available at this time, and reconsidering if necessary when final policy decisions are made,² will actually create additional uncertainty for the regulated businesses. We firmly believe that development of guidelines should only proceed based on distribution network policies developed by the Ministerial Council on Energy (MCE) and Rules developed by the Australian

¹ AER 2006, *Gas and Electricity Distribution Regulatory Guidelines – Scoping Paper*, p. 30

² AER, p. 25.

Energy Market Commission (AEMC). It is not appropriate for the AER to start developing distribution guidelines relying on draft transmission rules for guidance, while the policy framework for distribution remains so uncertain.

2. Background

ActewAGL is a multi-utility company combining energy distribution and retail operations with interests in water services management and telecommunications. It operates as a unique public-private joint venture between the Australian Gas Light Company (AGL) and the ACT Government owned ACTEW Corporation. The ActewAGL Distribution partnership owns and operates the electricity distribution network in the ACT and the gas distribution networks in the ACT and Queanbeyan, and in Nowra. ActewAGL has almost 140 000 electricity customers and just over 96 000 natural gas customers, predominantly residential.

ActewAGL's ACT electricity network is among the first group of distribution networks scheduled for review by the AER, starting mid 2008. ActewAGL will also be part of the AER's first round of gas reviews, with our gas distribution network scheduled for review starting mid 2009.

ActewAGL is a member of the Energy Networks Association (ENA) and supports the thrust of the ENA's detailed response to the *Scoping Paper*. We would like to supplement this with our own perspectives in this submission.

3. The AER's proposed approach

ActewAGL welcomes the AER's stated intention to advise distribution businesses of how it intends to implement the regulatory framework, and to provide sufficient time for businesses to adequately prepare their applications.³ We appreciate that this poses a significant challenge for the AER, as the regulatory framework is still being established.

The AER has indicated in the *Scoping Paper* that its proposed approach is to immediately begin developing a set of guidelines, based on draft proposals for transmission and reports currently available, then reconsider if necessary when final policy decisions are made.⁴ The AER says further that its guidelines will be largely influenced by the AEMC Chapter 6 review, the Gilbert+Tobin/NERA options paper and the MCE Expert Panel Draft Report.⁵

ActewAGL rejects this proposed approach for several reasons. These are that:

- It is not appropriate for guidelines to be prepared largely influenced by the Gilbert+Tobin/NERA and MCE Expert Panel reports that have been prepared as inputs

³ AER, p. 1.

⁴ AER, p. 25.

⁵ AER, p. 25.

into the MCE's policy development process. The MCE has clearly indicated in bulletins released with these reports that they do not represent the MCE's policy position.⁶

- The AEMC processes for developing transmission rules are still at an early stage. It is therefore unreasonable to proceed with developing distribution guidelines based on preliminary transmission rules which remain subject to change through continuing consultation.
- It is not reasonable to presume that future AEMC rule-making for distribution regulation will closely follow that developed for transmission. The AER's proposal to release distribution guidelines is based on the assumption that the *proposed* AEMC Rule empowering the AER to release transmission guidelines will eventually be mirrored in the anticipated distribution rules. Indeed the nature of distribution networks is sufficiently different from that of transmission networks to conclude that this should not be the case.
- Starting to develop guidelines when the policy development is still in the early stages, then continually updating, and possibly even revoking them, as policy decisions are made would create an unacceptable level of additional uncertainty for the regulated businesses rather than reducing uncertainty as the AER intends.

ActewAGL firmly believes that any guidelines developed by the AER should devolve from distribution network policies developed by the Ministerial Council on Energy (MCE) and Rules developed by the Australian Energy Market Commission (AEMC). It is not appropriate for the AER to start developing distribution guidelines, relying on draft transmission proposals for guidance, while the policy framework for distribution is still so uncertain and while the requirement for distribution guidelines is uncertain.

ActewAGL therefore agrees with the ENA recommendation that the AER postpone commencement of guideline development for 6 months to allow time for further development of the energy distribution rules and therefore increased certainty regarding the future shape of energy distribution arrangements. ActewAGL recommends that the AER proceed instead with measures that will increase the certainty and confidence of the distribution utilities in the review process to be undertaken. ActewAGL agrees with the AER⁷ that such information should be available to us and other businesses involved in the first round of reviews at least 12 months before the submissions are due.

4. Proposed scope of guidelines

ActewAGL is concerned that, in presenting its proposed scope of guidelines, the AER simply lists the topics to be covered by guidelines. It does not provide an explanation of the role and status of guidelines. We note that the MCE's Expert Panel explains the hierarchy of policy instruments, the basis on which they are made and the general principles covering their scope. The Expert Panel says that a guideline is made with delegated authority of the AEMC

⁶ MCE, Energy Market Reform Bulletin, no. 50 and no. 59.

⁷ AER, p. 1.

under the Rules. The scope of guidelines is 'technical matters that rely substantially on operational information/knowledge and matters limited to industry segments or likely to be subject to exceptions'⁸. ActewAGL believes that it is appropriate, and helpful, for guidelines to focus on procedural and operational matters. The AER should explain whether its view of the scope of guidelines is consistent with that provided by the Expert Panel.

The AER's proposed list of matters to be covered in the regulatory guidelines is based on the list in the AEMC's draft rules proposal for transmission.⁹ As already mentioned, ActewAGL believes that action on developing guidelines should be delayed pending appropriate policy and rule development. ActewAGL is concerned in particular that the AER has added three items to the AEMC list (connection and capital contribution, tariff setting and ring fencing). The AER provides no explanation of the basis for including these items or what it intends to cover in the guidelines. We seek clarification on what aspects of connection and capital contributions the AER plans to cover in the guidelines and how they relate to the existing capital contribution codes, which vary widely across jurisdictions. It is not appropriate for the AER to simply release its own guidelines without some clear policy basis.

5. *Timing of release of guidelines*

The AER says it intends to provide distribution network service providers with all the elements of its regulatory regime 12 months before applications are due.¹⁰ However, the AER's own indicative timetable shows that some elements of its regulatory approach will not be available until early 2008,¹¹ less than 6 months before the first round of applications are due.

Based on experience in past reviews, ActewAGL believes that preparation needs to start at least 12 months before applications, so we agree with the AER that all elements of the framework should be in place by mid 2007. We are therefore concerned that the indicative timetable does not meet this target.

6. *Industry overview*

The AER notes in the *Scoping Paper* that any regulatory regime must be informed by the characteristics of the industry being regulated.¹² The industry overview provided in the *Scoping Paper* provides a useful starting point. However, ActewAGL believes that additional key characteristics must be recognised and taken into account in the process of transition to a nationally administered regulatory regime.

⁸ MCE Expert Panel Report 2006, p. 10.

⁹ AER, p. 28.

¹⁰ AER, p. 1.

¹¹ AER, p. 28.

¹² AER, p. 8.

The AER says in the *Scoping Paper* that it intends to accommodate differences across individual distribution businesses and across jurisdictional legal frameworks.¹³ ActewAGL believes that the key differences across businesses should be identified in the industry overview – for example, differences in network characteristics, market characteristics, customers' expectations. Once these types of key differences have been identified and documented, then the difficult issue of how to accommodate them can be addressed.

¹³ AER, p. 7.