

Paula Conboy
Chair
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

30 November 2017

Dear Ms Conboy

October 2017 Issues Paper – Remitted decisions for NSW/ACT 2014-19 electricity distribution determinations Operating Expenditure

ActewAGL Distribution (AAD) welcomes the opportunity to respond to the AER's Issues Paper on the remitted decisions for NSW/ACT 2014-19 electricity distribution determinations operating expenditure (opex).

AAD remains committed to identifying an expeditious resolution of this matter that minimises price shocks for consumers related to network price increases and is consumer focused, and provides certainty and clarity for all stakeholders. AAD looks forward to progressing constructive discussions with the AER and consumer representatives on such a resolution in the near future.

In the interim, AAD observes that it has a number of concerns with the approach to the remaking of the remitted decisions that is outlined in the AER's Issues Paper. AAD's concerns include how the proposed approach can be reconciled with the Federal Court's and Australian Competition Tribunal's orders, the deferral of consideration of debt transition, the omission of a number of issues that were subject to appeal, the suggestion that AAD has not reported any adverse effects as a result of large reductions in opex and the characterisation of the roundtable discussions. Each of these concerns is discussed in turn below.

First, it is unclear to AAD how the approach described in the Issues Paper can be reconciled with the Federal Court and Tribunal orders for remaking the opex decision.

The Tribunal decision of February 2016 identified a number of deficiencies in the AER's approach to assessing AAD's opex, including inadequacies in the data set used, shortcomings in the underlying modelling assumptions and the heavy reliance on the output of this analysis for making the determinations and directed the AER to remake the opex component of its decision by "using a broader range of modelling, and benchmarking against Australian businesses, and including a 'bottom-up' review of

ActewAGL's forecast operating expenditure".¹ In May 2017, the Federal Court affirmed the Tribunal's decision and direction.²

Despite these orders, the Issues Paper states that the AER has a preference to use revealed (past actual) costs for assessing and determining efficient forecasts and that it is impractical to revise the benchmarking analysis to apply to remaking the opex decisions³. The AER indicates that some form of bottom-up analysis will be undertaken but may be minimal in scope and nature for firms that have revealed costs that are likely to be efficient and prudent in meeting the opex criteria.⁴

Second, it is AAD's view that the reconsideration of all issues which were subject to appeal should be progressed in a timely manner and without further delay. The piecemeal approach taken by the AER in progressing its consideration of opex in isolation and deferring the consideration of the return on debt is inefficient and unnecessary. The AER is obliged to remake its decision on debt in accordance with the Tribunal (2016) and Federal Court (2017) reasons and in a timely manner. Those reasons, properly applied, leave little scope for regard to decisions relating to the review of other AER decisions such as the ACT Gas/Victorian Electricity Tribunal decision and the SA Power Networks Federal Court decision. In AAD's view, there is no reason to further delay the remittal process on debt, particularly given that six months has already elapsed since the Federal Court decision. Further, it is unclear from the Issues Paper, how the AER would incorporate its consideration of the cost of debt into the remittal process at a later stage, particularly in relation to the consultation process. AAD encourages the AER to take a holistic and timely approach to remaking the 2014-19 decision.

Third, the AER's Issues Paper does not discuss the Service Target Performance Incentive Scheme (STPIS) or metering opex, both of which were subject to appeal and must form part of the remade decision. The Tribunal set aside the STPIS element of the AER's determination for AAD and directed that the STPIS decision be remade.⁵ In so doing, it contemplated that reconsideration of the STPIS decision would occur 'at the same time as the AER reconsiders and potentially resets the opex allowance for ActewAGL'.⁶ It also expected that the AER's decision on metering opex would be reconsidered on remittal.⁷

Fourth, the AER states that there is no information or evidence before it that suggests AAD's network has been adversely affected during the 2014-19 regulatory control period, including from a safety and reliability perspective. AAD observes, however, that data on network performance, which is provided to the AER via the annual RIN reporting process,

¹ Australian Competition Tribunal (26 Feb 2016) File No ACT 5 of 2015 p.1

² Federal Court of Australia (4 July 2017) No. NSD419/2016 p.1

³ AER October 2017 Issues Paper pp. 19-20

⁴ AER October 2017 Issues Paper pp.21-22

⁵ Australian Competition Tribunal (26 Feb 2016) File No ACT 5 of 2015 pp.1 and 12

⁶ Australian Competition Tribunal (26 Feb 2016) File No ACT 5 of 2015 p.12

⁷ Australian Competition Tribunal (26 Feb 2016) File No ACT 5 of 2015 p.15

shows that network reliability has declined since the reductions to opex were made. For both 2015/16 and 2016/17, AAD's reliability performance against unplanned SAIDI and SAIFI (excluding Major Event Days) has deteriorated, such that AAD has exceeded its reliability targets.

Finally, AAD is concerned that the Issues Paper does not accurately reflect the roundtable discussion in stating in relation to that discussion that "a level of consensus was achieved on the key issues and external drivers to remaking the opex decisions."⁸ Rather, as noted in the AER's summary of the roundtable discussion, some participants stated in that discussion that there should be a holistic approach to the remittal with return on debt progressed now. A number of participants also saw a significant role for benchmarking (although if there was a preferable expedited process by March 2018, this was not considered possible) and that the use of revealed costs may not be reflective of an efficient and sustainable level of opex in all circumstances.

If you wish to discuss any aspect of our response, please do not hesitate to contact David Graham, Director Regulatory Affairs and Pricing on 02 6248 3605 or david.graham@actewagl.com.au.

In the alternative, I look forward to engaging with you shortly with a view to identifying a way forward that expeditiously resolve this matter for the benefit of all stakeholders including in particular AAD's customers.

Yours sincerely



Michael Costello

Chief Executive Officer

⁸ AER Issues Paper p.4