

30 June 2023

Warwick Anderson
General Manager, Network Pricing
Australian Energy Regulator

Sent via email

2022 AER Rate of Return Instrument Amendment – Response to Consultation Paper

Dear Mr Anderson,

Energy Networks Australia (**ENA**) appreciates the opportunity to respond to the Australia Energy Regulator's (**AER**) Consultation Paper on proposed amendments to the 2022 Rate of Return Instrument relating to data sources for the estimation of the risk-free rate of return.

ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

ENA welcomes the commitment on the part of the AER to consult on proposed amendments to the 2022 Rate of Return Instrument to recognise the withdrawal of the Reserve Bank of Australia's previously published F16 data series on Commonwealth Government Securities yields.

Clarity around the AER's proposed approach and the robustness of the Instrument to further potential changes in the availability of yield data is critical, given the key requirement of the policy framework for the Instrument to operate automatically, without the exercise of discretion in individual determinations.

Since identifying the emergence of this issue, we have appreciated the opportunity to discuss the issue and potential courses of action to resolve it with AER staff. We would welcome further such discussions as the AER moves toward finalisation of its proposed Instrument amendments, particularly around the issues discussed further below.

Factors in assessing alternative data series

The Consultation Paper sets out several factors the AER has considered in assessing the alternative data sources that it may be possible to use. Network businesses agree that consistency with the determined 2022 Instrument data source should be a primary factor in determining the preferred alternative series to be used. Significant weight should also be placed on the public availability of the data.

The AER may also wish to consider the application of its formal assessment criteria applied in the original 2022 Instrument as it comes to make its final decisions on amendments. For example, criteria 5 highlights the goal that:

Where market data and other information is used, this information is

(a) credible and verifiable

(b) comparable and timely

(c) clearly sourced.

Continuity in the application of decision-making factors between the original Instrument decision and amendments will assist in both promoting and demonstrating clear, predictable decision-making and stability in approach over time.

Proposed contingency options and alternative data series

ENA supports the proposed approach of amending the Instrument to provide multiple contingencies covering potential developments in the availability of CGS yield data.

The continuing use of the F16 data - or any re-introduced precise equivalent - should be the first preference, as best reflecting the original decisions made in the 2022 Instrument and providing for stability and predictability in arrangements for estimates.

Network businesses agree that in the alternative, the RBA's 'F2' data series is the best source for equivalent data, noting the minor variations from the F16 data source discussed in the Consultation Paper.

The use of Yieldbroker data as a final alternative is also supported, however, this would not be a preferred outcome as it is not a transparent or freely publicly available data source. The approximate applicable current allowed rate of return flowing from the application of the Instrument methodologies should be able, as a matter of transparency for consumers and actual and potential investors, to be calculated on the basis of publicly available data.

The Consultation Paper proposes not adopting an additional contingency of the Bloomberg Capital Markets Package, on the basis of variations observed from the quoted F16 yields.

While for the purposes of this proposed amendment, this outcome is supported, a fuller assessment of the likely relative performance of each available data series in identifying the yield of the risk-free proxy should be made ahead of the next Instrument review scheduled for 2026. Provided it is done on a consistent basis, analysis showing magnitudes of variations from past series in specific sample periods may be informative of this analysis, but cannot of itself be determinative of the best available proxy.

Process for amendment of the Instrument

The Consultation Paper usefully highlights the legal basis on which the AER proposes to amend the Instrument, noting that by policy design, the Instrument is intended to operate automatically with no re-opening across the four-year period.

The conditions giving rise to this amendment are unique, and the decision to amend the Instrument is supported by network businesses, as avoiding circumstances in which the operation of the Instrument is rendered unworkable in practice by the unforeseen withdrawal of a data series.

ENA considers these unique conditions should invite consideration of the development by the AER of clear guiding principles around any future exercise of its powers under Section 20 of Schedule 2 of the National Electricity Law (and the equivalent National Gas Law schedule).¹

Guidance around the principles which the AER will adopt in considering any future unforeseen amendments to the Instrument, outside a formal Instrument review cycle, will underpin continuing regulatory predictability and stability, thereby minimising undue regulatory risk. Minimisation of unanticipated re-openings will support regulatory certainty supporting continued access to stable low-cost sources of equity and debt financing, promoting the long-term interests of consumers.

If you wish to discuss any of the matters raised in this letter further, feel free to please contact me.

Yours sincerely,



Garth Crawford
General Manager, Economic Regulation

¹ This is particularly desirable given Section 20(b) of the *National Electricity Law* (and its *National Gas Law* equivalent) appear to indicate that the legislative intent in any decision to amend the Instrument is that the AER should exercise this power *'in the same way, and subject to the same conditions'* as the original power exercised in making the Instrument. Prima facie, this would appear to suggest that any decision to amend the Instrument should follow each of the substantive and procedural steps set out in Section 18K- 18Q of the NEL (and its NGL equivalent).