

7 October 2008

Mr Chris Pattas  
General Manager  
Network Regulation South Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

Dear Chris,

**ENA Response to the AER Issues Paper on Electricity DNSPs Annual Information Reporting Requirements**

The Energy Networks Association (ENA) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) *Issues Paper on Electricity DNSPs Annual Information Reporting Requirements*.

ENA represents energy network businesses which deliver electricity and gas to over 13 million customer connections across Australia through approximately 800,000 kilometres of electricity distribution lines. There are also 76,000 kilometres of gas distribution pipelines. These distribution networks are valued at more than \$40 billion and each year energy network businesses undertake investment of more than \$5 billion in distribution network operation, reinforcement, expansions and greenfields extensions.

In this submission, ENA focuses on the AER's functions, the matters it must address in the performance or exercise of those functions, and the information required to address those matters.

Key points of the submission are that:

- The proposed Regulatory Information Order (RIO) and accompanying templates do not clearly reflect the functions and obligations that the information is meant to address.
- ENA would be pleased to engage with the AER in a round table format to assist in this review and provide feedback on the costs of providing the requested information.
- Once this review is complete, ENA recommends that a working group be formed, with representation of the AER, ENA and member businesses to develop a useful and deliverable reporting framework and associated templates.

Please do not hesitate to contact Vicki Brown, Director Energy Networks Policy; T 02 6272 1514; M 0400 670 737 [vbrown@ena.asn.au](mailto:vbrown@ena.asn.au) should there be any questions on the ENA submission.

Yours sincerely



Andrew Blyth  
**Chief Executive**



# Electricity DNSPs annual information reporting requirements

Response to AER Issues paper

7 October 2008

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## 1. Overview

### Key points

- The proposed Regulatory Information Order (RIO) and accompanying templates do not clearly reflect the functions and obligations the information is meant to address. As a foundational matter, the ENA submits that it is incumbent on the AER to:
  - conduct and articulate a review of its regulatory functions and obligations;
  - identify those functions and obligations related to a five-yearly price review process and those giving rise to a requirement for annual reporting;
  - identify and consult on the specific information it believes it requires to address those functions and obligations.
- The ENA and member businesses would be pleased to engage with the AER in a round table format to assist in this review and provide feedback on the costs of providing the requested information.
- Once this review is complete, the Energy Networks Association and member businesses recommend that a working group be formed, with representation of the AER, ENA and member businesses to develop a useful and deliverable reporting framework and associated templates.

## 2. Background

This submission responds to the AER's Issues Paper, Electricity distribution network service providers annual information reporting requirements, August 2008.

The Energy Networks Association (ENA) is the peak national body for Australia's energy networks which provide the vital link between gas and electricity producers and consumers. ENA represents gas distribution and electricity network businesses on economic, technical and safety regulation and national energy policy issues.

Energy network businesses deliver electricity and gas to over 13 million customer connections across Australia through approximately 800,000 kilometres of electricity distribution lines and 76,000 kilometres of gas distribution pipelines. These distribution networks are valued at more than \$40 billion and each year energy network businesses undertake investment of more than \$5 billion in distribution network operation, reinforcement, expansions and greenfields extensions. Electricity transmission network owners operate over 42,000 km of high voltage transmission lines, with a value of \$10 billion and undertake \$1.2 billion in investment each year.

## 3. Scope

As the peak policy body of the energy networks, the ENA will restrict its comments to matters relevant to the policy framework surrounding the energy distribution industry, and recommend a way forward for the AER and businesses.

The AER's Issues Paper was accompanied by a series of proposed reporting templates. Consistent with its role as an industry peak policy body, the ENA does not propose to comment on the detail of the templates - issues related to the templates will differ for each business based on the operating characteristics of each business and their respective ability to provide this level of detailed information.

In this submission, the ENA proposes to focus on the AER's functions, the matters it must address in the performance or exercise of those functions, and the information required to address those matters. The ENA believes this to be preferable to establishing a series of reporting templates and subsequently working out what functions are best served by the information provided in these templates.

## 4. Development of the RIO

In its Issues Paper, the AER has repeatedly referred to its requirements for information "to carry out its functions under the NEL and NER" in a very formless way. There is no clear articulation of the nature of the functions that necessitate annual reporting or any clear mapping of functions to the information reasonably necessary for the performance of those functions.

The ENA considers that this articulation of functions and identification of information needs is a key element of section 28F(2) of the NEL:

28F—Service and making of regulatory information instrument

(2) In considering whether it is reasonably necessary to serve a regulatory information notice, or make a general regulatory information order, the AER must have regard to—

(a) the matter to be addressed by—

(i) the service of the regulatory information notice; or

(ii) the making of the general regulatory information order; and

(b) the likely costs that may be incurred by an efficient network service provider or efficient related provider in complying with the notice or order.

The ENA considers that, as a foundational matter, the AER is obliged, under section 28F(2) of the NEL, to conduct and articulate a review of the functions it must perform and the matters to be addressed by the proposed regulatory information order, both on an annual and five-yearly basis, and determine the information required that is “reasonably necessary to perform its functions”.

Such an approach is consistent with the framework developed by the Australian Government Department of Finance and Deregulation, in its Management Advisory Committee Report No.7, *Reducing Red Tape in the Australian Public Service* (the MAC report).<sup>1</sup> This report established a framework to promote an ongoing reduction in existing red tape, and to minimise the creation of new red tape within the Australian Government.

The framework set out in the MAC report applies to administrative and regulatory requirements that affect the Australian Government. It includes principles that are designed to lead to efficient and effective requirements, as well as a systematic approach to their design and review. As outlined in the MAC report (p5):

The framework for the design and review of regulatory and administrative requirements is based on three high-level principles. Requirements should:

- effectively address the issue of concern
- be the most efficient option
- have benefits that substantially exceed their costs.

These principles reinforce and build upon good policy development practices. It is a responsibility of agencies to consider these principles when assessing alternatives. It is best to apply the principles at the development stage, rather than after requirements have been developed.

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<sup>1</sup> Australian Government Department of Finance and Deregulation, Management Advisory Committee Report No.7, *Reducing Red Tape in the Australian Public Service*.

The MAC report identifies four clear stages for development of a regulatory obligation (p6):

1: Design and analysis	Use a systematic and transparent process to define the issue of concern, to identify options for addressing it, and to assess the costs and benefits of the preferred option.
2: Stakeholder consultation	Consult stakeholders to obtain constructive feedback on the preferred option before any decision is made to implement it.
3: Independent advice	Obtain independent, objective feedback on whether options have been adequately considered and whether the recommended requirement meets the three principles.
4: Decision-making	The decision maker considers all relevant information to determine whether the recommended requirement should be implemented.

It is not clear from the AER's Issues Paper that such a robust development process has been undertaken. The ENA considers that, given the significance of the requirements, it is incumbent on the AER to demonstrate adherence to such a development process.

The MAC report also clearly identifies an expectation that the agency will seek independent advice on the establishment of the regulatory obligation (p15):

#### THE ROLE OF THE INDEPENDENT ADVISER

The independent adviser should be provided with a summary of all viable options (identified via the Design and Analysis stage), together with the outcomes of the assessment substantiating the preferred option.

The independent adviser should examine this information and the outcomes of stakeholder consultation to:

- assess whether the preferred option meets the three underlying principles of the framework
- consider whether all potentially viable options have been explored
- consider whether consultation has been adequate
- assess whether the conclusions reached by the responsible area are reasonable
- provide advice on these and any other relevant matters.

Similarly, it is not clear that the AER has sought independent advice in the development of the proposed RIO, from the identification of its functions and obligations under the NEL and NER, to the development of the associated reporting templates. This is a key aspect of developing a robust regulatory reporting framework, and should not be overlooked.

The ENA and its member businesses would be pleased to engage with the AER to conduct this review and develop a set of information requirements that are targeted at the AER's needs to carry out its functions. The ENA and its member businesses recognise that the AER requires information to carry out its functions, and are keen to ensure that the AER is provided with relevant information.

Such an approach would be entirely consistent with the AER's corporate goal to ensure businesses and users clearly understand the operation of the legal framework and how the AER will undertake its roles. We note in particular that the AER

...will develop guidelines that set out how we will operate, perform and exercise our duties, functions and powers. These guidelines will be developed in consultation with stakeholders. We will set out the process that we will follow when undertaking regulatory tasks, including setting out the timelines and explaining how we will engage with stakeholders.<sup>2</sup>

However, a preliminary review suggests that the AER has taken a "shortcut" approach, basing the templates extensively on those in place in Victoria, with little regard afforded to reporting frameworks in place in other jurisdictions. A review of the templates also indicates that irrelevant information had been requested, for example network support pass through which is only relevant for a TNSP. The ENA also understands that there were a number of changes agreed between the AER and the NSW/ACT businesses in developing the 2009-14 Regulatory Information Notice (RIN) templates that have not been reflected in the proposed Regulatory Information Order (RIO) templates.

The ENA and member businesses are also concerned that this proposed RIO is not the full suite of information required by the AER. The AER states that there will be additional information required under another Regulatory Information Instrument (RII) that will be further to this proposed RIO. The ENA has significant concerns regarding the intrusive nature of this detailed level of information requirements, as well as the uncertainty surrounding future information requirements. It is difficult to comment on the information requirements currently proposed without knowledge of information likely to be required as part of the regulatory review process.

**Recommendation:** The Energy Networks Association and member businesses recommend that an industry/regulatory working group be formed, with representation of the AER, ENA and member businesses to:

1. review the function(s) the AER must perform on an annual and five-yearly basis that give rise to a need for information;
2. identify the information that is reasonably necessary for the performance of those functions; and
3. agree the appropriate form of information collection.

The ENA considers that this approach is likely to deliver the lowest overall costs of compliance and ensure that businesses can meet the relevant information collection obligations.

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<sup>2</sup> AER Strategic Plan, 2006-08

## 5. Key points

### *Information needed to carry out regulatory functions*

The AER frequently relies on a need for information to “carry out its regulatory functions”, but does not align specific information requirements with specific regulatory functions. Indeed the extensive list in Section 2.1, outlining the purpose of the RIO, is not addressed in the Issues Paper. As a result, the AER’s information requirements appear arbitrary.

Section 1.2 of the Issues Paper states that “The specific types of information proposed and the rationale for collecting this information are discussed below.” This suggests that AER has first decided what information it wants and then attempted to “backsolve” the information requirements to functions. No clear rationale has been given for specific information collection beyond vague references to broad regulatory functions. It is clear from the discussion in the Issues Paper that this attempt at alignment has occurred after the information requirements were developed, and then in only the most cursory fashion.

The ENA considers that any mandatory requirement to provide information must be firmly grounded on the foundation of the requirements of the National Electricity Law and National Electricity Rules.

Additionally, the proposed RIO is intended to require “ad hoc information”. The ENA submits that such a requirement is improper as there is no legal basis for a RIO to have a “catch all” requirement to capture any other information that had not been specifically requested by the RIO. The ENA notes that the AER can make another RIO or serve another RIN should it require other information.

Given that the NEL and NER are the source of the information gathering powers under which the RIO is to be issued, it is incumbent on the AER to first clearly identify the functions it must carry out under the NEL and NER, and then determine the information required to complete those functions.

The ENA considers that this is a threshold matter that must be completed before a meaningful set of information requirements can be developed.

A key determinant in considering the necessity of the service of the RIO is an identification of the matters that require annual reporting, in contrast to those that are to be carried out in the context of a five-yearly review of a regulatory proposal. As discussed more fully below, the ENA finds that a large quantity of the information requested in this proposed RIO is not required for annual reporting purposes.

The AER has also stated in its Issues Paper that information requirements (the RIN) for the next five-yearly review are yet to be determined. The ENA considers that a review of the information required for the conduct of a five-yearly price review should be conducted on the same principles as described above: first identify the functions to be performed under the NEL and NER and then determine the information required to fulfil those functions.

The proposed RIO includes requests for information which appear to be targeted at both annual and five-yearly price review functions. However the AER also alludes to the preparation of further RIs which will be specific to the five-year review. This creates a real risk for duplicative, onerous compliance burdens on businesses.

The ENA recommends that, following a review of the functions the AER is required to perform in these intervals, these two RIs should be developed in harmony and issued separately, each responding to their relevant functions.

The ENA would be pleased to engage with the AER to discuss the higher level function and information requirements issues.

### *Information required to monitor compliance with decisions*

Page 2 of the Issues Paper indicates that

Through the RIO, the AER will be seeking to: ...

- o monitor, report on and enforce DNSPs' compliance with the AER's regulatory decisions, including annual regulatory processes arising from these decisions

The AER also identifies its obligation to monitor compliance with its determinations under NEL 15(1)(a)(ii).

Under the NEL, the AER's distribution network revenue or pricing determination is made up of several distinct determinations:

- The Building Block Determination (6.3.2), encompassing six determinations:
  1. annual revenue requirement for each year - 6.3.2(a)(1)
  2. appropriate methods for the indexation of the regulatory asset base – 6.3.2(a)(2)
  3. how any applicable efficiency benefit sharing scheme, service target performance incentive scheme, or demand management incentive scheme are to apply – 6.3.2(a)(3)
  4. the commencement and length of the regulatory control period – 6.3.2(a)(4)
  5. any other amounts, values or inputs on which the building block determination is based – 6.3.2(a)(5)
  6. the X Factor for each control mechanism for each regulatory year of the regulatory control period – 6.5.9
- A determination to impose controls on direct control services - 6.2.5;<sup>3</sup>
- A determination on the provisions of a distribution determination governing the assignment of customers to tariff classes or the re-assignment of customers from one tariff class to another - 6.18.4;

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<sup>3</sup> The framework and approach paper must state the form (or forms) of the control mechanisms to be applied by the distribution determination – 6.8.1(c).



- A determination to vary the deemed classification of transmission and distribution services – 6.2.2(d);
- A determination to impose controls on alternate control services – 6.2.5(d);
- A determination on the requirements of the negotiating framework – 6.7.3.

There are also a small number of determinations that must be made under relevant transitional provisions.

The AER's Framework and Approach Paper developed under 6.8.1 of the Rules also makes key decisions on the classification of services and the application of various incentive schemes.

It is difficult to see how the detail of information required in the proposed RIO aligns with the AER's requirements to monitor compliance with any of these determinations, or indeed whether some of these determinations require compliance to be monitored. For example, it is difficult to monitor compliance with a determination to impose controls on direct control services, or on the commencement and length of the regulatory control period.

Arguably the only determinations that require annual reporting are the compliance with the X Factor determination under 6.5.9 and the negotiating framework under 6.7.3. This compliance is demonstrated through the annual pricing proposal<sup>4</sup> as required under 6.18.2 of the Rules.

The ENA submits that there is no clear need for the level of detail requested in the AER's proposed templates for the purposes of monitoring compliance with the AER's decisions.

As discussed above, the ENA recommends that the AER conduct a thorough review of the functions it must perform under the NEL and NER, and determine the level of detailed information necessary to perform those functions.

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<sup>4</sup> Or in Queensland, the Demonstration Document that shows how quoted services formulae are applied.

### *Annual requirements vs five yearly requirements*

The ENA has identified a conflict between the information required to be reported annually under the proposed RIO and the information required to conduct a five-yearly review. In particular, the AER's proposed RIO seeks a considerable level of detailed information that is clearly not required for annual compliance reporting purposes, but could have some relevance in assisting the AER in its assessment of a regulatory proposal.

The ENA understands that annual information may reasonably be required to establish a time series of data in order to demonstrate a trend in costs that would be relevant to a five-yearly price review, consistent with the operating expenditure factors under NER 6.5.6(e)(5) and the capital expenditure factors under NER 6.5.7(e)(5).

However, this is clearly information required in the context of the AER's assessment of a building block proposal. There is no clear requirement for the AER to require this information to be provided annually.

### *Information requirements inconsistent with ex ante framework*

The ENA and member businesses are concerned that the proposed RIO and accompanying templates are not conceptually consistent with an ex ante capex and opex framework.

The AER has consistently stated (see, for example, the ACCC/AER submission to ERIG, August 2006) that the ex ante allowance does not relate to a specific suite of projects or opex categories. The ENA considers that it is conceptually inconsistent to demand annual reporting against a specific suite of capex projects or opex categories at any level of detail outside the 5-yearly price review process.

The detailed reporting for major projects and programs is particularly inappropriate in this sense. Major projects and programs are more likely to span two or more years within a particular regulatory period (or indeed may span two regulatory periods), rendering the annual expenditure information largely irrelevant for regulatory reporting purposes.

For major projects and programs in particular, the ENA suggests that the total cost of the project or program is more relevant to the ongoing assessment of the reasonableness of capex forecasts than an annual expenditure amount. To this end, the requirement for annual reporting provides no useful information to assist the AER carry out its regulatory functions, and should be removed from the proposed RIO.

### *Back-casting information*

In section 4.2 of its Issues Paper, the AER relies on Schedules 6.1.1(6) and 6.1.2(7) of the NER in requiring the DNSPs to provide extensive historical information for the current and previous regulatory periods, re-cast into the categories of the proposed RIO reporting templates.

Schedules 6.1.1(6) and 6.1.2(7) of the NER clearly state that historical information is required as part of a building block proposal - it is not required to be filed annually. The ENA is concerned that the proposed RIO goes beyond what is reasonably required under the Rules.

As discussed above, the ENA understands the needs of the AER in analysing a time series of data as part of its assessment of the future capex and opex requirements in the DNSP regulatory proposal. However, there is no clear need for back-casting information to be provided (and presumably repeated) annually. The ENA submits that this information should not be required as part of an annual reporting requirement.

As a preliminary matter, the ENA and its member businesses are concerned about the nature of back-casting as a judgemental cost re-allocation process. Given that the historical source information was never captured in this particular fashion, it will be necessary for each business to make judgements about the allocation of costs between categories in translating previous reports into the new proposed RIO template categories.

This is a largely manual process, which is subject to computational errors and diverse application of judgement. The ENA therefore recommends that the proposed RIO allow scope to re-state historical information to align with information gathered under a new set of business reporting rules that must be prepared in response to the proposed RIO. This will allow a more relevant time series of data to be prepared to assist the AER's assessment of a DNSPs' future regulatory proposals.

#### *Audit assurance*

The ENA acknowledges that clause 28M(e) allows the AER to specify that the information provided in a RIO be audited. However, the ENA considers that the AER's proposed requirements for positive audit assurance is an inappropriate requirement for regulatory accounts. There are a number of reasons for this view:

- The indirect relationship between the statutory accounts and the regulatory accounts. It should be noted that the statutory accounts and the regulatory accounts report on a different asset base – a book value for statutory reporting, and a Regulatory Asset Base (RAB) for regulatory reporting. It is unlikely that these two amounts would ever be the same. Therefore the first step in “reconciling” the audited statutory accounts to the regulatory accounts is to delete any statutory account asset and depreciation values, and replace them with regulatory asset and depreciation values. It is therefore not possible to extend any positive audit assurance expressed on the statutory accounts to the regulatory accounts.
- There is considerable scope for duplication of effort and increased costs. In particular, the audit of the statutory accounts of the NSW DNSPs is undertaken by the NSW Audit Office. The NSW Audit Office has been unwilling to grant access to its working papers to independent audit firms; the AER's requirements would entail a complete duplication of the audit of the NSW DNSP statutory accounts by an independent firm. This clearly imposes costs on the businesses, for no discernible benefit.

The ENA considers that the key matters on which the AER reasonably requires independent assurance include:

- The roll forward of the Regulatory Asset Base;

- The application of the Cost Allocation Methodology;
- Adjustments from the application of a STPIS, EBSS, or DMIS; and
- The correct application of the X Factor in the determination of prices under the WAPC methodology or the operation of the Unders/Overs mechanism under a revenue cap approach.

These are matters that are not addressed in a normal audit of general purpose statutory financial statements. Rather, assurance on these matters is better obtained through a more targeted review process. To this end, the ENA supports the current “factual findings from Agreed Upon Procedures” approach as being more appropriate to the AER’s requirements.

### *Directors’ responsibility statement*

Section 2.1 of the Issues paper indicates that the proposed RIO is intended to “require information provided by a DNSP to be accompanied by a directors’ responsibility statement”.

The ENA submits that this requirement goes beyond the provisions of clause 28M(d) of the NEL, which provides that

...a regulatory information instrument may specify the information described in the instrument - ...

(d) be verified by way of statutory declaration by an officer of the regulated network service provider, or of a related provider, to whom the instrument applies;

The ENA considers that this requirement is more reasonable - it would be inappropriate to expect an independent Director to certify the level of detailed information reported in the proposed RIO templates.

The ENA recommends that the requirements for a Directors’ Responsibility Statement be replaced by the requirement for a Statutory Declaration by an officer of the DNSP.

As a threshold issue, the ENA questions the need for an officer’s statutory declaration when the AER will be provided with audit assurance in the form of an independent report on factual findings from Agreed Upon Procedures as discussed above.

### *Working papers*

Section 2.5 of the Issues Paper includes a requirement for the DNSPs to provide cost allocation and disaggregation working papers to support the regulatory financial statements. The ENA and network businesses submit that a requirement to provide these working papers does not assist the AER in performing any of its functions or meeting any of its obligations.

The reported figures are the end result of the application of the Cost Allocation Methodology (CAM). While working papers will allow the AER to test the arithmetic accuracy of any regulatory adjustments, they will not meet the AER's stated requirement to ensure that the CAM has been applied correctly.

Assurance on the correct application of the CAM requires a detailed examination of a significant number of cost recording business processes built in to the DNSPs' accounting systems, and also a review of any regulatory cost allocations that are performed manually. The ENA submits that the correct application of the CAM to effect the disaggregation of costs among services is more correctly included as part of the audit scope under the "factual findings from Agreed Upon Procedures".

The AER has very far-reaching information gathering powers under the NEL, which would enable it to request any working papers at any time. However, the ENA considers that this level of intrusion, as a matter of normal procedure and absent any suggestion of recalcitrance on the part of the DNSPs, goes beyond what is reasonably required by the AER to undertake its functions.

The ENA recommends that the requirement to provide cost allocation and disaggregation working papers be restricted to a specific request by the AER rather than be included in the proposed RIO as a starting expectation.

### *Network planning information*

Section 3.1 of the Issues Paper indicates that the AER expects the DNSPs to provide extensive demand, capacity and other engineering information on the network. The ENA has four key concerns regarding this requirement.

At the policy level, the ENA and network businesses are very concerned over the level of information required in relation to the technical operation of the business. System planning and engineering matters are not appropriate functions of an economic regulator, and are more appropriately dealt with by the technical regulator.

The second concern is the AER's expectation that "It is anticipated that a DNSP would publish this [capacity and demand] data on its website for the benefit of stakeholders." It should be noted that all DNSPs already publish this information as part of the consultation under the Regulatory Test required for material network augmentation. Some DNSPs also publish impending network constraint information annually to assist parties in proposing demand management options.

In the particular instance, the ENA submits that it is not necessary to include a requirement to provide this information as part of the annual RIO requirements, as it is already publicly available; any requirement to publish this information should be deemed to be addressed by the information

already published. The ENA submits that a requirement for the DNSPs to re-cast this existing information into a new template for AER RIO purposes is entirely duplicative for no clear benefit.

As discussed below, the ENA is concerned about the widespread repetition of information required by different regulators, and urges that these requirements be harmonised and rationalised.

The third concern is that it is not clear that the AER can require that information be published by a DNSP beyond the specific requirements in the Rules. The ENA considers that any requirement to publish network planning information is surely an issue for the AEMC to consider, and more relevant to the requirements of the Chapter 5 planning requirements than Chapter 6 economic regulation requirements.

The fourth concern is the basis on which the AER has included this information in the proposed RIO. As discussed in section 3.1 of the Issues Paper:

The AER is required to assess proposed operating and capital expenditure having regard to a number of criteria. One of the issues which the AER must consider in making its determination is whether the proposed expenditure reasonably reflects 'a realistic expectation of the demand forecast and cost inputs required to achieve the operating/capital expenditure objectives.' Another of the factors for the AER to consider in assessing proposed expenditure against the criteria includes 'the extent the DNSP has considered, and made provision for, efficient non-network alternatives.'

The ENA accepts that the AER will require information on augmentation investment triggers in its assessment of proposed augmentation-driven capital expenditure. However, the AER, by its own admission, acknowledges that this information is required for regulatory proposal assessment purposes, and not to address any function or obligation that requires annual reporting of this information. Accordingly this information should be removed from the annual reporting requirements.

The ENA recommends that the current requirements to provide demand, capacity, and other system planning information as part of the proposed RIO, be removed.

### *Costs and benefits*

It is not clear that the AER has had sufficient regard to "the likely costs that may be incurred by an efficient network service provider or efficient related provider in complying with the notice or order" as required under NEL section 28F(2)(b).

In the short time available, member businesses have not had an opportunity to investigate the detailed costs of complying with the AER's proposed templates.<sup>5</sup> However, a preliminary assessment indicates that the costs of making changes to the business reporting systems, as well as the related data gathering and business process systems, will easily run into the tens of millions of dollars across the industry.

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<sup>5</sup> It should be noted that the consultation period for this Issues Paper overlapped squarely with the AER's WACC review. DNSPs do not have sufficient resources to address both matters simultaneously.

As discussed above, the AER's proposed RIO templates appear to draw heavily on the current Victorian reporting requirements. Adopting the Victorian templates will present system and accounting difficulties for businesses that currently do not report on this basis. A nationally consistent framework will require significant capex and opex investment to report this information.

The ENA and its member businesses are most concerned to ensure that the third of the MAC report principles, that the regulatory requirements "have benefits that substantially exceed their costs", is clearly addressed. The analysis of the information requirements for annual and five-yearly reporting conducted above suggests that the costs of several reporting requirements in the proposed templates outweigh the benefits, as they are unnecessarily intrusive when considering the compliance monitoring required by the AER, or are inappropriate for yearly assessment as they are relevant to five-yearly price reviews.

Under the National Electricity Rules, the power to require information is limited with reference to what is *reasonably necessary* for the AER to undertake its functions and powers. This is not equivalent to a right to require any information which "might contribute" to its undertaking its functions. The AER appears to have applied this second form when it justifies information requirements to "observe emerging constraints" with reference to network planning, or for the AER to "be in a better position to assess the DNSP's efficient costs under the NEL". In order for the information requirements to "have benefits that substantially exceed their costs", the information requested needs to be *more* than useful - it needs to be reasonably necessary, both in detail and frequency of reporting.

The ENA considers that the AER has not met this key cost/benefit requirement in formulating the proposed templates.

### *Harmonisation of diverse reporting requirements*

Member businesses are subject to reporting requirements from a myriad of agencies encompassing economic, licence, technical, network planning and safety regulators. In many cases, information required by one regulator for its purposes is also required by another regulator for its purposes. For example, in some jurisdictions, the substance of the system planning information requested by the AER in its proposed RIO is already reported to the technical regulator.

Invariably, however, the information is requested in a different format, or with information reported with a slightly different focus. This leads to extensive duplication of systems and considerable manual processing of information. There remain significant opportunities to harmonise these information requirements to ensure that all regulatory agencies are receiving complete and consistent information.

There is also a need for the AER to harmonise the proposed RIO with its own suite of reporting requirements. For example, the instruction boxes in Section 3.1 and 4.1 of the template require a working paper to identify "the amounts that have been allocated to each standard control distribution service". This requirement is inconsistent with the requirement in clause 6.15.3(c)(3) of the Rules to allocate each cost or revenue to each *category* of distribution service. The proposed RIO requirement is also inconsistent with the AER's final decision regarding Cost Allocation

Guidelines for electricity distribution service providers.<sup>6</sup> This decision only requires the allocation of costs between different categories of distribution services, i.e. standard control services, alternative control services, negotiated distribution services and non regulated services.<sup>7</sup>

One of the key goals of establishing the AER was to be able to develop a nationally consistent regulatory framework to reduce the amount of duplication and inconsistency across jurisdictions. There has been progress towards achieving this goal, but there remains considerable distance to travel.

The ENA considers that we have been presented with a golden opportunity to cooperatively harmonise the myriad regulatory reporting requirements across jurisdictions and agencies, to the benefit of the industry and its customers in the longer term.

### *Transitional arrangements*

The network businesses are currently subject to a wide variety of different regulatory reporting frameworks, both internal to the various businesses, and those unique to various jurisdictions. There are currently a wide variety of legacy internal reporting and regulatory reporting systems that will need to be aligned to a national framework. This is not an insubstantial task.

It may be necessary, following the robust regulatory reporting development process advocated above, that transitional reporting arrangements may need to be put into place in order for the businesses to be able to gather and prepare information that is based on the same foundations over time, and will ultimately be consistent across jurisdictions. These transitional arrangements could reasonably apply by jurisdiction, recognising that the businesses in a given jurisdiction are likely to need to make similar changes to their reporting systems to align to a national standard.

The ENA would be pleased to assist in a facilitating role.

### *Timing*

The AER's Issues paper indicates that the proposed RIO is intended to first come into force, for the NSW/ACT business, from 1 July 2009.

The final RIO is intended to be released by the AER in February 2009. A period of 4 months is clearly insufficient to enable a DNSP to amend its reporting process and IT systems to enable reporting of the required information.

The ENA considers that this time horizon is unachievable given the amount of work required to:

- Conduct a review of the AER's functions and obligations;

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<sup>6</sup> As published by the AER in June 2008.

<sup>7</sup> AER, Final decision - Electricity distribution network service providers Cost allocation guidelines, June 2008, pages 1 and 5.



- Assess the information needs to address those functions and obligations;
- Develop a revised RIO and related information templates; and
- Harmonise information requirements across jurisdictions and with other agencies.

The ENA recommends that the industry/regulatory working group identified above establish an achievable time frame to develop a reporting framework that meets the AER's needs and can be delivered by the DNSPs.

## 6. Conclusion

The ENA considers that the first task to be completed is a detailed review of the AER's functions and obligations under the National Electricity Law and National Electricity Rules. Once those functions and obligations are clearly identified and articulated, the AER, in conjunction with industry, will be in a position to identify the information requirements to perform those functions and meet those obligations.

Once that review is complete, we as an industry would be pleased to assist in preparing a set of reporting templates through a cooperative working group process.

The spirit of the network businesses in making this recommendation is that the network businesses are willing to provide the AER with the information it reasonably requires to carry out its functions and meet its obligations; however, the ENA and its member businesses want to make sure we can provide information that is fit for purpose without imposing undue administrative burden and costs on the businesses.