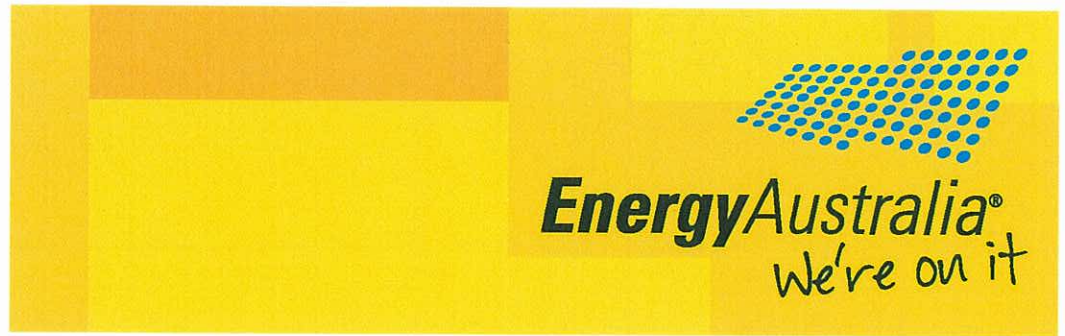


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8 August 2008

Mr Mike Buckley
General Manager
Network Regulation North Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

By email to: AERInquiry@aer.gov.au

Dear Mr Buckley,

Response to AER's request for submissions on AER proposed NCC and NDSC

EnergyAustralia welcomes the opportunity to respond to the AER's explanatory statement and issues paper, on the AER's proposed negotiable component criteria (NCC) for ACT and NSW DNSPs and proposed negotiated distribution service criteria (NDSC) for Energy Australia.

Our response covers the key areas identified by the AER in its invitation for submissions, namely:

- Issues raised in ACT and NSW DNSPs' regulatory proposals;
- Whether any components of direct control services should be negotiable components;
- The AER's proposed NCC and NDSC; and
- Other issues raised in the AER's explanatory statement and issues paper.

Issues relating to EnergyAustralia's proposal, including whether any components of direct control services should be negotiable components

A central proposition raised in EnergyAustralia's regulatory proposal is that while negotiations can occur with a broad spectrum of services, they are likely to apply to a small number of circumstances. Further, of those circumstances, only a small element of the total service is likely to be the negotiable component. For this reason the precise nature, timing or quantum of total services is uncertain and likely to vary. EnergyAustralia's proposed approach caters for this uncertainty by providing criteria for describing negotiating services.

EnergyAustralia, and we believe other network service providers, are experiencing real challenges in preparing for the application in practice of what we see as largely theoretical concepts such as criteria

for negotiated services and negotiable components of a direct control service. However, we believe the difficulty stems not from the criteria themselves but from the difficulty in understanding the nature of the service provided.

In trying to apply the negotiated services regime to its transmission business, EnergyAustralia believes the Rules relating to negotiated transmission criteria were written for a service that largely does not exist – at least in a discernable way from the standard (prescribed) service provision. We accept that different pricing arrangements are necessary where part of the service is dedicated to one customer. However, we do not believe this requires the establishment of a new service and a fundamentally different regulatory framework.

The concept of extracting dedicated arrangements from the shared network and establishing these arrangements under a different regime into perpetuity is unnecessary, problematic and we believe unworkable.

In distribution, EnergyAustralia advocated strongly for transitional rules to allow for a negotiating framework within the standard control service, rather than the unnecessary creation of a separate service provided by assets outside the regulated asset base to invoke a negotiated outcome.

EnergyAustralia believes this is the only workable approach to negotiation around what are effectively standard services and will continue to advocate for this framework to be a permanent feature of Chapter 6 of the Rules. These arrangements acknowledge that while aspects of service provision can involve negotiation between customer and network service provider, these aspects sit on the periphery of the core service. In practice, negotiation occurs in relation to a small part of the service and only occurs on a small number of occasions. As pricing arrangements are largely codified in Parts I and K of the Transitional Rules, negotiating frameworks will most often be used in respect of terms and conditions of connection arrangements.

After further consideration of the practicalities associated with this issue, the negotiable component criteria should reflect the integrated nature of the negotiated component and the provision of the standard control service.

The AER's proposed NCC and NDSC

Clauses 6.7A.5 and 6.7.4(b) of the Rules require the negotiable component criteria and the negotiated distribution service criteria to give effect to and be consistent with the principles set out in clause 6.7A.1 and 6.7.1 respectively. We have a number of comments, directed at ensuring that the criteria give effect to, and are consistent with, those principles, and are consistent with the capital contributions rules which apply to EnergyAustralia. Our comments are set out below:

National Electricity Market Objective (NCC 1 and NDSC 1)

EnergyAustralia does not understand how it would be able to reflect criterion 1 beyond that which is already reflected in the other criteria. The promotion of the National Electricity Objective (or its predecessor) was a fundamental consideration for both the AEMC, in developing the principles for establishing the criteria, and the AER, in establishing the criteria. Including this higher order objective within criteria that are already designed to contribute to the achievement of the objective is unnecessary and creates ambiguity in its application.

EnergyAustralia therefore submits that criterion 1 is unnecessary and should be deleted. Should the AER proceed include proposed criterion 1, EnergyAustralia submits that the obligation should be to contribute to the achievement of the objective rather than promote the achievement of the objective. This language is consistent with that used in the NEL in relation to the AEMC's and AER's functions. It would not be appropriate to introduce a different level of obligation in relation to the application of the criteria. This is demonstrated in the following example:

If the AER were arbitrating a matter, it would be in the position of having two obligations when carrying out that function, ie to arbitrate in a manner that will or is likely to contribute to the achievement of the objective and also to ensure that the terms and conditions of access promoted the same objective. If no additional obligation is intended EnergyAustralia believes the same language should be adopted. EnergyAustralia also notes a small drafting error in relation to the heading of the criteria, which refers to the "National Electricity Market Objective", the reference should be to the "National Electricity Objective".

Full inclusion of 6.7.1(9) and 6.7A.1(10) in the criteria

EnergyAustralia believes that for the criteria to give effect to and be consistent with the relevant principles, it must include the provision in the above principles (effectively a second limb) that states that a price for a negotiated service or negotiable component is to be treated as fair and reasonable if the price complies with the pricing principles (1) to (8) in the case of negotiable components and (1) to (7) in the case of negotiated distribution services. This second limb has not been included in the criteria proposed by the AER. The AER did not refer to or explain this omission in its explanatory statement or issues paper so its omission may have been inadvertent. However if it was not inadvertent EnergyAustralia submits that the second limb of principle (9) and (10) in each of clauses 6.7.1 and 6.7A.1 must be included in each of the NCC and NDSC to ensure that the criteria comply with the requirements of the Rules.

Inclusion of Capital Contributions Requirements

In the NCC, criterion 5 should be expanded to include the capital contributions requirements applied by Part K of the Transitional Rules (clause 6.21.4). The capital contributions rules are an important aspect of pricing, particularly in the context of connections and its specific inclusion would ensure that the capital contributions framework applies to the pricing of the negotiable aspects of services. EnergyAustralia believes that the majority of negotiable components will be in respect of the connection and therefore price will be largely subject to that framework.

Other Issues Raised by the AER

EnergyAustralia notes the matters raised in the AER's Issues Paper with respect to Negotiable Components and Negotiated Distribution Services. The AER states in its paper that DNSPs other than EnergyAustralia have not identified any new negotiated distribution services as part of their proposals

It should be noted that under the transitional rules, the term "Negotiated Distribution Services" only has relevance to EnergyAustralia as it is the term given to what would otherwise be Energy Australia's Negotiated Transmission Services. The transitional rules do not provide for the other NSW DNSPs or ActewAGL to have Negotiated Distribution Services as that term is used and applied in the main Chapter 6 rules.

Should you have any questions in relation to this submission please contact Ms Catherine O'Neill on (02) 9269 4171.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Geoff Lilliss', written in a cursive style.

Geoff Lilliss

Executive General Manager - Network

EnergyAustralia