



Investigation Report

Compliance with the planning and network development provisions of the National Electricity Rules

TransGrid

September 2010

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Summary

This report completes the Australian Energy Regulator's (AER) investigation into the compliance of TransGrid with clause 5.6.6 of the National Electricity Rules (Electricity Rules) in regard to a proposed 330kV transmission line from Dumaresq to Lismore.

Clause 5.6.6 of the Electricity Rules requires an applicant who proposes to establish a "new large transmission asset" to comply with various planning and consultation procedures, including undertaking the regulatory test (at the time version 3 of the regulatory test was in place).

These processes aim to ensure that planning for new investment is transparent, that consultation to elicit alternative proposals is effective. In addition, these processes aim for non-network alternatives (such as generation and demand management) to be considered on a level playing field with network options and that market participants and users are confident decisions are made on grounds of economic efficiency.

The AER has found shortcomings in the process conducted by TransGrid in reaching its decision to build the line. Key areas of concern are that:

- the application notice did not contain an adequate analysis of all reasonable network and non-network options
- neither the application notice (April 2008) nor the final report (March 2009) adequately examined the potential for material inter-network impacts
- the final report did not summarise or respond to submissions on the application notice
- the decision to limit the Regulatory Test analysis to a single reasonable scenario was inadequately justified and did not meet the requirement to provide a detailed description on why TransGrid consider the asset passed the Regulatory Test.

However, further consultation has now been undertaken by TransGrid through the issue of a Request for Proposal (RFP) in May 2010.

Following consideration of the alleged Rule breaches and their potential impact and the further action by TransGrid, the AER has decided not to institute proceedings against TransGrid. However, given the importance of these issues, the AER has decided to issue this public report on the outcomes of this investigation.

Whilst TransGrid has not admitted any breach of the Electricity Rules, it has provided the AER with a series of commitments to improve future processes.

1 Introduction

1.1 Background to the investigation

TransGrid first raised the issue of emerging network limitations on the New South Wales far north coast in its *1999 Annual Planning Statement*, which noted that demand growth in the area was the highest in the state. The report concluded that the “preferred network option is the development of an additional 330 kV line to the area” and that the shortest and potentially least-cost option was a transmission line between Dumaresq and Lismore. TransGrid made similar statements in subsequent annual planning reports.

In August 2003, TransGrid published *Emerging Transmission Network Limitations on the New South Wales Far North Coast*, which outlined demand growth and the capabilities of the existing transmission system in the area. It called for options to address the emerging limitations, but did not elaborate on the options previously identified in the annual planning documents.

In April 2008 TransGrid published an application notice (under clause 5.6.6(c) of the Electricity Rules) outlining two “feasible network options” to address the network limitations.

- Option 1 (preferred) was a new transmission line between Dumaresq and Lismore, as first outlined in the 1999 planning statement
- Option 2 was a transmission line between Armidale and Lismore.

The notice outlined four other network augmentation options, but ruled them out from the further analysis.

In March 2009 TransGrid released its final report on the development of supply options to the NSW far north coast. Drawing heavily on text from the application notice, the report concluded that the option best satisfying the regulatory test was the construction of a 330 kV transmission line from Dumaresq to Lismore, at a cost of \$227 million (± 25 per cent).

In May 2010 TransGrid commenced a Request for Proposals (RFP) process seeking non-network alternatives which would reduce the loading on the network at critical times for a period of five years. This process is discussed in section 2.2.4.

1.2 Clause 5.6.6 of the Electricity Rules

Clause 5.6.6 as it appeared in version 29 of the Electricity Rules was the relevant provision at the time of TransGrid’s transmission investment assessment.¹ Since that time the Australian Energy Market Commission (AEMC) has approved rule changes which have amended clause 5.6.6.

Clause 5.6.6 establishes a consultation process in relation to new large transmission network assets. The consultation process includes publication of an application notice and final report, in relation to which there are detailed minimum information and analysis requirements (discussed below). The application notice and final report must also include a statement on why the proposal satisfies the regulatory test.

1.3 Regulatory test

The regulatory test is an analysis tool that network service providers must apply in relation to new large transmission network assets. The regulatory test assesses whether the investment is efficient. In 1999 the ACCC developed the first regulatory test to replace the customer benefits test. After the initial stages of its operation, the ACCC undertook a comprehensive review of the regulatory test and released the regulatory test version two in 2004.

In October 2005, the Ministerial Council on Energy (MCE) lodged a rule change proposal with the AEMC to amend the Electricity Rules to include a series of regulatory test principles.² Under the proposal the AER was required to follow these principles when promulgating the regulatory test. While under these principles the broad approach to the regulatory test remained, the AER was required to incorporate new concepts for new large transmission network investments assessed under the

¹ Unless otherwise stated, all references in this Report to the Electricity Rules is to Version 29 of these Rules.

² MCE, *National Electricity Rules—Rule change application reform of the regulatory test principles*, 2005.

market benefits limb of the test. The AER issued version three of the regulatory test and regulatory test application guidelines in November 2007.

Version three of the regulatory test consists of two limbs:

- *The reliability limb*—applied to investments which are required to meet service standards obligations in the Electricity Rules, jurisdictional legislation, regulations or statutory instruments. A reliability augmentation will satisfy the test if it is the least cost option compared to a range of alternatives in a majority of reasonable scenarios.
- *The market benefits limb*—applied to non-reliability driven investment. New investment will satisfy the test if it maximises the net present value of the market benefits having regard to alternative options, timing and market development.

1.3.1 Intent of the regulatory test

The regulatory test is applied by Network Service Providers (NSPs) and is based on a cost-benefit analysis framework which is used to assess and rank different investment options.

Policy makers have agreed that transparency in the provision of information is one of the cornerstones for driving competitive and efficient investment outcomes in the energy market. The discussion below highlights the importance of transparency in the context of clause 5.6.6 of the Electricity Rules and the regulatory test.

The Energy Reform Implementation Group (ERIG) reviewed the role of the regulatory test. In its report to the Council of Australian Governments (COAG) in January 2007, ERIG stated that:

“The application of the regulatory test today is an obligation on TNSPs that has value through its role as a consultative mechanism and which provides some transparency on the TNSP’s decision making particularly in respect to the ranking of various project options.”³

3 Energy Reform Implementation Group, *Energy Reform: The Way Forward for Australia – A report to the Council of Australian Governments*, January 2007, p183.

ERIG further stated that, where there is insufficient transparency in the application of the regulatory test, investors may interpret decisions in the regulated sector as being based on grounds other than economic efficiency.⁴

In its final determination on the reform of the regulatory test principles in 2006, the AEMC supported ERIG's view that the regulatory test is an important consultative mechanism which improves the transparency with which network investment decisions are made.⁵

The AEMC considered that the application of the regulatory test by Transmission Network Service Providers (TNSPs), as a public planning and consultation process, increases the chance of developing an efficient solution to network investment.⁶ In its Final Rule Determination, it stated that transparency would help to elicit "alternative investment proposals that may be more efficient than those put forward by the proponent of network investment."⁷

It also stated that transparency would assist in creating an environment in which market participants would be more willing to trade and invest.

In regards to competitive neutrality, the AEMC noted that:

"From an economic perspective, "competitive neutrality" is essentially a means of achieving an overarching efficiency objective. It seems clear that the objective of achieving efficient investment outcomes would require an obligation on NSPs to assess all investment alternatives, irrespective of whether these are network or non-network options or undertaken by an NSP or market participant (that is, a competitive neutrality obligation). In the absence of such a requirement, NSPs may give preference to an investment option that would increase their asset base or otherwise suit their commercial interests, rather than reflect the public interest in an option that is most efficient.

Therefore, the Commission has determined that an objective of competitive neutrality should form part of the regulatory test principles."⁸

When developing the regulatory test, the ACCC and the AER also relied on the principles of economic efficiency and competitive neutrality. Given this, the test is

4 ERIG, Ibid, p169

5 Australian Energy Market Commission (AEMC), Reform of the regulatory test Principles, Final Determination, 2006, p48

6 AEMC, Ibid, p49

7 AEMC, Ibid, p49

8 AEMC, Ibid, p45

designed to ensure that network and non-network investments (such as generation and demand side management options) are considered equally.⁹

This policy history is instructive in understanding the intent of the regulatory test and clause 5.6.6 of the Electricity Rules. In summary, the two key relevant principles are transparency and competitive neutrality.

1.4 Review of planning and consultation process

As part of its ongoing compliance and enforcement process, the AER began reviewing TransGrid's compliance with clause 5.6.6 of the Electricity Rules in October 2009 in regard to its proposed 330kV transmission line from Dumaresq to Lismore.¹⁰

Shortly after the decision to commence the compliance review, the AER received correspondence alleging two specific breaches of the Electricity Rules by TransGrid in relation to the project. The complainant alleged that TransGrid breached:

- clause 5.6.6 (c)(iii) by failing to provide a detailed description of all other reasonable network and non-network alternatives
- clause 5.6.6(h) by failing to summarise the submissions received from interested parties and TransGrid's response to each submission.

1.5 Revenue application review

In considering TransGrid's 2009-2014 revenue proposal the AER accounted for estimated capital requirements for the Dumaresq-Lismore project. As part of this assessment, the AER received an independent review from PB Associates.¹¹

There is a distinction between an AER assessment of capital expenditure requirements under chapter 6A of the Electricity Rules and a compliance review of the relevant

⁹ ACCC, regulatory test for new interconnectors and network augmentations, 15 December 1999, p. 4.

¹⁰ TransGrid's conduct of the regulatory test was the subject of a dispute notice lodged with the AER on 30 July 2009. However, the Electricity Rules did not allow the AER discretion to consider the dispute notice (including whether or not the complainant met the definition of an "interested party") as more than 30 business days had passed since the publication of the final report.

¹¹ PB Associates, TransGrid revenue reset – An independent review, November 2008

provisions of chapter 5. In relation to chapter 6A, the AER must determine whether it is satisfied that the forecast capital expenditure represents:

- the efficient costs of achieving the expenditure's objectives
- the costs a prudent operator in the circumstances of the relevant service provider would incur to achieve those objectives
- a realistic expectation of the demand forecast and cost inputs required to achieve the objectives.

This is a separate process from the planning and consultation procedures governed by chapter 5. The fact that the forecast capital expenditure included in the 2009 revenue determination was in part justified by the inclusion of an allowance for the Dumaresq to Lismore line, does not demonstrate compliance with chapter 5. TNSPs are still required to complete a compliant planning and consultation process under chapter 5, regardless of whether the project was examined as part of a revenue reset process under chapter 6.

That said PB Associates highlighted significant issues in its report that are relevant to this assessment of TransGrid's compliance with clause 5.6.6. These issues are discussed in section 2 of this report.

2 Review of compliance

2.1 Needs analysis

Clause 5.6.6(c)(1)(ii) of the Electricity Rules requires that, in its application notice and final report, TransGrid provide a detailed description of the reasons for proposing the new asset, including a description of all load forecasts and assumptions used.

As outlined in the application notice, with all lines in service, the TransGrid network is currently capable of meeting demand over a 10-year planning horizon. However, TransGrid found that some augmentation to its existing network—or a non-network alternative—would be needed to meet N-1 criteria, which requires that demand be met with any one element of the network not in service.

2.1.1 AER's assessment of TransGrid's needs analysis

While TransGrid did conduct a needs analysis, the AER is concerned that it did not provide sufficient information to enable a prospective provider of non-network alternatives to formulate a proposal. TransGrid relied on prospective proponents requesting further information regarding the service that would be required to defer the preferred network option.

The AER considers that a key reason for the needs analysis is to provide sufficient information so that all options to address the need can be adequately explored. This in turn will assist in ensuring that all reasonable non-network alternatives are considered both in the final report and the regulatory test. For example, the application notice should have outlined the extent to which the reliability standard was not being met in terms of maximum demand, duration in hours and energy not supplied in order to enable assessment of alternative non network options such as for a local generator, or the location of the most effective demand side solutions.

In response to questions on this issue, TransGrid noted that it does not routinely use the application notice to request commercial proposals. Instead, TransGrid relies on a separate Request for Proposals (RFP) that sets out the service being requested and seeks appropriate non-network alternatives. Further discussion of this issue is provided below.

In regards to the jurisdictional planning standards that apply in this case, clause 5.6.6(c)(1)(ii) requires that TransGrid provide a detailed description of the “network performance requirements set out in schedule 5.1 or relevant legislation or regulations of a participating jurisdiction.”

As part of previous revenue determination processes, the AER has accepted that TransGrid’s use of the N-1 criteria as the basis for planning solutions is appropriate. However, the Electricity Rules requirement to transparently establish the need for the project with reference to relevant legislation or regulation in the application notice and final report remains.

The AER does not consider that TransGrid’s references to the expectations of the NSW jurisdiction or the statutory requirements on a distribution business meets the requirements of clause 5.6.6(c)(1)(ii).

Whilst TransGrid did not admit a breach of the Electricity Rules in this area, it did recognise that more information could have been set out in the application notice to further enable assessment of alternative non-network options.¹²

2.2 Range of options considered

Following the justification of the need for a solution to an emerging network limitation, clause 5.6.6(c)(1)(iii) requires that the application notice provide a detailed description of all other reasonable network and non-network alternatives to address the identified constraint.

The AER notes paragraphs 14 and 15 of the regulatory test version 3 define alternative options that may be considered as a generation option, demand side management/response option, network option, the substitution of electricity by the provision of alternative forms of energy or a combination of these. To be considered as part of the regulatory test an option must be a “genuine alternative.”

This is a separate requirement to clause 5.6.6(c)(1)(iii) that requires that all reasonable network and non-network alternatives be described in detail. Clause 5.6.6(c)(1)(iii) provides that these alternatives include, but are not limited to, interconnectors,

¹² TransGrid letter, 4 August 2010

generation options, demand side options, market network service options and options involving other transmission and distribution networks. Clause 5.6.6(c)(1)(iii) does not limit the description of options to those that have a proponent.

2.2.1 Options considered in the application notice

The TransGrid application notice proposed two “feasible” network options to address the constraint: a new line from Dumaresq to Lismore or a line from Armidale to Lismore.

The notice briefly considered other network solutions, including:

- a new Armidale – Kempsey Area 330 kV line
- a new Ebenezer – Lismore 330 kV line
- a new Armidale – Coffs Harbour – Lismore 330 kV line and
- various 132 kV line developments.

The application notice noted that no non-network alternative proponents had come forward in response to the previous public documents. It concluded that: “None the less (sic) proponents of non-network developments which may relieve the limitations in the transmission network are encouraged to submit proposals in response to this document.”¹³

2.2.2 AER’s assessment of options considered by TransGrid in the application notice

A clear policy intention underpinning clause 5.6.6 and the regulatory test is to ensure a robust and transparent process for the selection of projects to meet clearly identified needs.¹⁴

Despite the requirements of clause 5.6.6(c)(1)(iii) to describe all reasonable network and non-network alternatives to address the identified constraint, the application notice did not describe the sorts of non-network alternatives that would address the emerging network limitation.

¹³ Application notice, Development of Supply to the NSW Far North Coast, p18

¹⁴ AEMC, Ibid.

Further, TransGrid did not provide sufficient detail in its public documents to support its conclusions on the inappropriateness of some options. For example, the AER was provided with internal TransGrid planning documents that considered a range of broader options that were not published as part of the application notice.

The AER notes that during its investigation, TransGrid has provided further information on its assessment of options. The AER considers that much of this information should have been in the application notice.

This mirrors concerns raised by PB Associates during the revenue determination process that “except as what appeared to be retrospective technical and economical analysis, TransGrid could not support its position with a detailed internal report on the matter.”¹⁵

Further, PB Associates noted that “a number of options were dismissed on the grounds of costs, environmental issues, technical issues, etc without sufficient rigour and transparency.”¹⁶ PB Associates noted that such forms of analysis ran the risk that “there maybe a chance that TransGrid misses a more efficient project by dismissing options at too early a stage within its assessments.”

In some cases, TransGrid ruled out options on the basis that it would be difficult to obtain an easement. However, difficulty in obtaining easements is not uncommon with new transmission line developments. The AER considers that further explanation and justification is required over and above a simple statement on the likely difficulty in obtaining easements. Without this further analysis, decisions to dismiss an option on such a basis lack transparency and cannot be independently tested.

In response, TransGrid noted its belief that there were no reasonable non-network alternatives available at the time the application notice was published. However, the AER considers that TransGrid has not correctly interpreted the requirement to provide a detailed description of all other reasonable network and non-network alternatives (clause 5.6.6(c)(1)(iii)).

¹⁵ PB, Ibid, pg A57

¹⁶ PB, Ibid, pg A56

The AER considers that TransGrid is required to detail all reasonable network and non-network alternatives, regardless of whether there is a proponent for these options. This allows potential providers to come forward in response to the application notice if they believe they can provide the services identified in the application notice.

The AER considers that the regulatory test (version 3) requirements that a non-network alternative must have a proponent and be a genuine alternative, are a quite separate issue. These requirements fulfil a different purpose to the application notice, as described above.

Without conceding a breach of the Electricity Rules, TransGrid has accepted that more detailed information could have been included in the application notice.

2.2.3 AER's assessment of options considered by TransGrid in the final report

On 15 February 2010, the AER wrote to TransGrid seeking a detailed explanation and supporting materials relating to its assessment of options in the final report, including non-network alternatives. In its response of 12 March 2010, TransGrid provided a copy of each of the submissions received in response to the application notice.

TransGrid stated that it did not prepare supporting documentation or materials setting out its analysis of the non-network alternatives in its final report because it was “obvious on the face of the submissions” that the non-network alternatives proposed were not realistic alternatives.¹⁷

The AER is concerned that the planning and consultation process used by TransGrid in this instance reflects a bias towards considering only those options which TransGrid had already unilaterally decided were appropriate. In this case, TransGrid issued an application notice which did not facilitate commercial non-network alternatives coming forward. The subsequent final report then did not assess any non-network alternatives, as they did not in TransGrid's view represent viable non-network alternative options.

¹⁷ TransGrid letter to the AER, 12 March 2010

The intent of the regulatory test process is that network and non-network alternatives are considered together on a level playing field. For this to occur, commercial offers must be sought prior to the publication of the final report.

Further, the AER is concerned by TransGrid's statement that it does not routinely use the application notice to seek commercial proposals and that this will always occur through the issuing of an RFP.¹⁸ The AER is concerned that, in cases where a RFP is conducted after the final report, there is a risk that not all reasonable non-network alternatives can be described in the final report as required by clause 5.6.6(h).

To assure stakeholders that there is no systemic bias against the consideration of non-network solutions, the AER sought further evidence from TransGrid of similar processes that allowed reasonable non-network solutions to be described in the final report and, where applicable, included in the regulatory test assessment. TransGrid did not respond to this request.

This area will be a particular focus of the AER in future compliance assessments. In addition, the AER expects this issue to be addressed by TransGrid in future.

2.2.4 TransGrid's Request for Proposals Process

As outlined above, TransGrid do not routinely use the application notice to seek commercial proposals that could be assessed in the final report. The Final Report stated that submissions from parties interested in providing network support had been received in response to the application notice, and that discussion were continuing with those parties. A RFP was issued for the NSW far north coast in May 2010¹⁹.

In a letter to the AER in July 2010, TransGrid noted that three facts had changed in the 15 months after the final report that led to the publication of the RFP:

- the proposed project delivery date had slipped
- the peak load forecast had been revised down
- Directlink (now called Terranora) had become more unreliable.

¹⁸ TransGrid letter to the AER, 25 June 2010

¹⁹ The AER notes that the prospect of an RFP process was not mentioned by TransGrid in any of its public documents, prior to the release of the invitation to tender documents in May 2010.

In regard to the requirements of clause 5.6.6(c)(1)(iii), the AER considers that at least some of the previously non-public information set out in this recent RFP, should have been included in the application notice, such as:

- Potential (but not exhaustive) types of possible non-network solutions
- Geographic location for network support
- Magnitude of network support required
- Timing, duration and frequency for which the service would be required.

It is this kind of information that would have assisted in making the 5.6.6 and regulatory test process conducted by TransGrid more transparent and competitively neutral as between network and non-network options. The final report should then have assessed the network options on the same footing as any non-network options that had been proposed, leading to a firm statement on which option minimises the costs and thereby passes the regulatory test.

This approach also better aligns with the requirements of clause 5.6.6(h) that the final report both summarise and respond to submissions received on the application notice. The requirements of clause 5.6.6(h) are discussed further in detail below.

2.3 Other issues identified

2.3.1 Material inter-network impact

At the time this project was developed, clause 5.6.6(c)(5) required an augmentation technical report be prepared by the Inter-regional Planning Committee (IRPC), if there was likely to be a material inter-network impact and if consent to build the asset had not been received from all materially affected networks.

The IRPC published criteria to guide network service providers in determining whether a project has a material inter-network impact. Clause 5.6.6(d) requires that these criteria are considered in assessing whether there is a material inter-network impact.

The criteria define that a material inter-network impact for a transmission augmentation occurs if:

- there is a decrease in power transfer capability between transmission networks or in another TNSP's network of more than the minimum of 3% of maximum transfer capability and 50 MW, or
- there is an increase in power transfer capability between transmission networks of more than the minimum of 3% of maximum transfer capability and 50 MW.²⁰

TransGrid's application notice and final report stated it had "determined that none of the options ... would impose power transfer constraints or adversely impact on the quality of supply to adjoining transmission networks."

The AER considers that the Electricity Rules required that TransGrid undertake an analysis to determine the impact on other networks and then assess the materiality of any impact with regard to the criteria above. TransGrid has not provided evidence that this analysis occurred. Rather, TransGrid has simply stated that there is no material inter-network impact and as a result no augmentation technical report was required.

Further, TransGrid has noted that its assessment of the materiality of any inter-network impact was not set out in the application notice. However, TransGrid contend that it was not a requirement of clause 5.6.6 that a detailed assessment be set out in the application notice. Whilst clause 5.6.6(c)(5) of the Electricity Rules is unclear whether TransGrid was required to provide a detailed assessment of the materiality of any inter-network impact in its application notice, the AER considers that TransGrid's approach falls well short of best practice and is counter to the intent of an open and transparent process envisaged by clause 5.6.6.²¹

In addition, TransGrid also contends that even if there was likely to be a material inter-network impact, an augmentation technical report would not have been required as it had received consent to proceed with the construction of the line.

²⁰ Pg 16, Final Determination: Criteria for Assessing Material Inter-Network Impact of Transmission Augmentations, IRPC, 2004.

²¹ See, for example, clause 5.6.6(d) of the Electricity Rules.

However, the AER wrote to TransGrid on 15 February 2010, requesting details of any communication with either Directlink or Powerlink regarding the proposed options, including details of the consent referred to in clause 5.6.6(c)(5)(ii) or agreement that there was no material inter-network impact.

In its response of 12 March 2010, TransGrid stated:

“Joint planning is a well established process and the benefits it delivers are self evident to the participants. Consequently, formal documentation of those benefits, which include inherently managing inter-network impacts, is rarely undertaken. In this instance there is no formal documentation specifically relating to inter-network impacts.

In addition, TransGrid provided two e-mails from Powerlink in response to drafts of the application notice and final report. Following consideration of these e-mails, the AER does not consider that they constitute consent to the construction of the asset as required by clause 5.6.6(c)(5)(ii) – as they refer exclusively to comments on the application notice and final report, with no mention of construction of the asset.

However, TransGrid’s reference to a lack of formal documentation highlights a serious deficiency in the process conducted by TransGrid. Poor quality information can have significant ramifications for other market participants, who rely on operational and planning publications by network operators for the purposes of their operational and investment decisions.

As discussed below, TransGrid has committed to reporting on its new compliance systems to ensure future compliance with the new clause 5.6.6 and RIT-T processes. Given the importance of high quality information on the impact on power transfer capability for the efficient functioning of the market, the AER will give further consideration to the adequacy of the information disclosure required in this area.

2.3.2 Treatment of submissions

The Electricity Rules provide for a period of 30 business days following publication of the application notice for parties to make submissions.

It is a requirement of clause 5.6.6(h) that the final report summarise submissions and TransGrid’s response to each submission. TransGrid’s final report did not contain such a summary. The only statement in the final report about submissions was:

“In response to the application notice, TransGrid received submissions from parties interested in providing network support. Discussions are continuing with those parties to determine whether a cost effective network support arrangement can be achieved.”

The AER does not accept that this constitutes either a summary of submissions or a response to them.

TransGrid argued that the submissions did not raise realistic options. However, clause 5.6.6(h) does not require that submissions meet any particular standard. Rather, it just requires that all submissions be summarised and responded to. TransGrid’s final report did not meet this requirement.

TransGrid noted that one submission was marked “commercial in confidence” and considered the author could not be identified. TransGrid also explained that the identity of parties providing submissions was not revealed “in line with normal commercial practice and TransGrid’s purchasing policies.”

The AER considers that an appropriate course of action in these circumstances is to approach the party in question to seek agreement on a summary that does not reveal the source. For example, the summary could perhaps describe the service that was offered, without describing in detail the nature of the technology used to provide it.

It should also be emphasised to the submitting party that the Electricity Rules require a summary to be published. If these steps fail, a TNSP could approach the AER and explain the apparent “conflict” faced in trying to comply with the Electricity Rules. The AER could then provide guidance on the appropriate course of action in the specific circumstances. It is not adequate for participants to simply cite commercial practices as a reason for non-compliance with the requirements of the Electricity Rules.

Without admitting a breach in this area, TransGrid has recognised that more information could have been provided in the final report on the submissions received.

2.3.3 Projects and scenarios – regulatory test

The reliability limb of the regulatory test is satisfied if the option minimises the costs of meeting the requirement in a majority of reasonable scenarios. TransGrid determined that only a single reasonable scenario should be assessed as:

- it considered that a variation in load forecast made no difference to the project needs date
- no local generation was suitable for reliance as a substitute for network services and no information was provided that indicated that the local generators would be able to increase their reliability levels
- no new generation projects or demand side response projects of sufficient magnitude were committed or advanced to be included in a scenario that may influence the outcome of the analysis.²²

The AER considers that, given the considerable cost of the proposed project, TransGrid should have considered a full range of scenarios. While TransGrid undertook a sensitivity analysis, as part of the regulatory determination in 2008, PB Associates noted that these sensitivities were applied evenly across each project, meaning that the relative costs of the projects did not change. The AER agrees with PB that it is likely that some options are more sensitive to cost pressures than others. For example, the cost of obtaining easements is not likely to be equally sensitive across a range of projects.

With regard to load forecasting, paragraph 19(a)(1) of the regulatory test effectively requires that reasonable scenarios include a reasonable and mutually consistent forecast of “electricity demand (modified where appropriate to take into account demand-side options, economic growth, weather patterns and price elasticity).”

TransGrid assessed that the date the project was needed did not alter under any of the low, medium or high growth scenarios.²³ PB Associates noted it “would have expected some degree of discussion within the application notice regarding the sensitivity of the constraint and the project timing to the range of demand forecasts.”²⁴

²² TransGrid letter to the AER, 12 March 2010

²³ These low, medium and high growth scenarios were presented to the AER as part of TransGrid’s 2009-2014 revenue determination.

²⁴ PB, Ibid pg A57

The AER considers that the process used by TransGrid to arrive at the conclusions on the impact of demand forecast should have been explained in greater detail in the public documents.

TransGrid has accepted that “its approach to, and analysis of, determining the number and characteristics of any reasonable scenario was not set out in detail in the Application Notice or Final Report.” TransGrid contends that this was not a requirement of clause 5.6.6.

However, the AER disagrees with TransGrid’s interpretation of the requirements in this clause. Clause 5.6.6(c)(6) requires a detailed analysis of why the applicant considers that the asset satisfies the regulatory test and, where the applicant considers that the asset satisfies the regulatory test as a reliability augmentation, analysis of why the applicant considers that the asset is a reliability augmentation.

Paragraph 1 of the regulatory test (version 3) states that a reliability driven augmentation satisfies the regulatory test if the option minimises the costs of meeting those requirements, compared with the alternative option/s in a majority of reasonable scenarios.

Reading these two provisions together, it is clear that TransGrid had a requirement to detail why it considered that the asset satisfied the regulatory test by explaining the matters set out in the previous paragraph in detail. Accordingly, the AER considers that the failure to provide a detailed analysis in relation to the reasonable scenarios is contrary to the requirements of clause 5.6.6(c)(6) of the Electricity Rules.

2.3.4 Nature of final report

In many areas the final report relies on text from the application notice. To some extent this repetition is a consequence of clause 5.6.6(h) which requires the final report to set out the matters dealt with in the application notice. However, the reproduction of text from the application notice draws into question the report’s status as a “final” document.

For example, the final report states that it:

“[H]as been prepared to provide a basis for TransGrid and Country Energy to consult with registered participants and interested parties to identify options for the development of electricity supply to the far north coast area of New South Wales.”

While this may have been true of the application notice, (which made the same statement), the final report should have presented the results of the consultation.

In addition, given that clause 5.6.6(c)(6) requires that the final report outline why the asset satisfies the regulatory test, the reference to continuing negotiations with potential non-network providers is problematic as it is not clear what process would be undertaken if a more cost effective solution were to be found.

TransGrid has accepted that the quote re-produced above was more appropriate for the application notice and not the final report. However, TransGrid consider that the final report did reach a clear final conclusion, despite references to on-going negotiations.

3 Outcomes of the investigation

This investigation into the process undertaken by TransGrid in its development of a new transmission line has identified a lack of transparent analysis and limited public disclosure of data underpinning key conclusions.

Clause 5.6.6 is designed to provide transparency and accountability in planning and consultation processes and to ensure competitive neutrality between network and non-network alternatives.

This investigation report has found shortcomings in the process conducted by TransGrid in reaching its decision to build the 330kV transmission line between Dumaresq and Lismore:

- the application notice did not contain an adequate analysis of all reasonable network and non-network options (clause 5.6.6(c)(iii))
- neither the application notice nor the final report adequately examined the potential for material inter-network impacts, (clauses 5.6.6(c)(5) and 5.6.6(d))
- the final report did not summarise or respond to submissions on the application notice (clause 5.6.6(h))
- the decision to limit the analysis to a single reasonable scenario was inadequately justified (regulatory test version 3, paragraph 19) and thus did not meet the requirement for the application notice to set out a detailed analysis of why the regulatory test was satisfied or, alternatively, if the asset satisfied the regulatory test as a reliability augmentation, why the asset was a reliability augmentation (clause 5.6.6(6)).

3.1 Enforcement options

An infringement notice cannot be issued to TransGrid because clause 5.6.6 of the Electricity Rules is not a civil penalty provision. However, it is open to the AER to consider instituting proceedings against TransGrid and seeking appropriate orders from a Court.

However, in this instance it appears unlikely that a fundamentally different outcome would be achieved even if the shortcomings of the process were addressed. As noted above, a RFP was issued to seek non-network alternatives in May 2010. The AER considers that the RFP contained sufficient information to enable prospective providers of non-network solutions to formulate alternative options. TransGrid are currently considering the responses received.

Accordingly, on this occasion, the AER has decided that the appropriate response on this issue is to:

- seek commitments from TransGrid to improve future compliance
- publish this public investigation report
- commit to future audits of clause 5.6.6 processes.

3.2 Commitments received from TransGrid

To address the compliance concerns that have been outlined by the AER, TransGrid have provided a range of commitments on future compliance.

TransGrid has committed to:

1. Completing a review of TransGrid's planning, documentation, and compliance systems, including governance arrangements, for the new RIT-T framework within three months of this report being published with the assistance of expert external input from NERA.
2. Ensuring that this review has expressly considered the processes and systems needed to ensure:
 - Adequate publication of the data and analysis that underpins TransGrid's decision making in future RIT-T assessments
 - Submissions are properly responded to in public reports
 - Requirements in relation to material inter-network impacts, inter-regional impacts and material inter-regional network impact, as set out in the Rules for the RIT-T, are clarified and appropriately addressed

- Consideration of a sufficient range of market development scenarios
3. Implementing any findings of the above mentioned review by March 2011
 4. Providing reports to the AER:
 - At the completion of the initial review proposed in point 1
 - On the implementation of the new procedures as per point 3.

In addition, TransGrid has committed to engaging with the AER where confidentiality issues arise that may conflict with Electricity Rule requirements.

3.3 Future compliance monitoring

To encourage better performance in this area across the sector, the AER will undertake compliance checks of future planning and consultation processes. This will include random audits of processes based on publicly available information, including how network service providers have sought to apply the regulatory test, (or the new regulatory investment test for those that commenced after 1 August 2010).

Future work by the AER will focus on ensuring that the processes used by TNSPs are competitively neutral and that there is an appropriate quantity and quality of publicly available analysis used to justify conclusions.

Specifically, application notices should contain sufficient information to assist non-network proponents to compose commercial offers. Any submissions to the application notice must be summarised and responded to in the final report in detail. In the event that the TNSP does not consider that any of the proposed options are not technically feasible, this decision and associated detailed reasoning should be included.

The regulatory test included in the final report must then rank any commercial offers for non-network alternatives alongside network options. This is the competitively neutral approach envisaged by policy makers and is the intent behind clause 5.6.6.

Analyses of whether a material inter-network impact exists should be made with reference to the relevant criteria and supported by data analysis. It is not sufficient to simply state that there is no material impact.

More generally, each of the key decisions in the final report must be explained in full with all underlying assumptions included. The AER expects significant improvement in the conduct of future planning and consultation processes. This includes an improvement in the quality of information provided by network service providers in their documents required under clause 5.6.6 (the application notice and final report) and other supporting documentation.