FILE No.

DOC:

MARS/PRISM:

21 December 2006

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Dear Mr Buckley,

TransGrid Revenue Cap – Request for Revocation

The Energy Users Association of Australia (EUAA) is aware that the Australian Energy Regulator (AER) has received a request from TransGrid for the revocation and substitution of its revenue cap set for the period 2004-05 to 2008-09.

The EUAA is a national body representing the interests of major electricity and gas users. We have over 85 members, a significant number whom have operations and interests in NSW.

The EUAA understands that the AER considers it appropriate that TransGrid's revenue cap be revoked and a revised revenue cap be substituted, on the basis that a 'material error' was made in assessing TransGrid's debt margin by the Australian Competition and Consumer Commission (ACCC). The alleged material error relates to a failure to address a series of confidential submissions made by TransGrid relating to the use of CBASpectrum data. The EUAA does not agree with this conclusion and the actions the AER proposes to undertake to address this 'material error'.

The EUAA questions whether, in fact, a material error has been made? Given that these submissions were not made available publicly for stakeholder assessment, the EUAA is of the strong view that the ACCC was correct in not considering these submissions in the revenue cap determination. The EUAA firmly believes that the provision of information for public scrutiny is a crucial part of regulating transmission network service providers and that regulated monopoly businesses should be held to comply with this. The making of confidential submissions to the regulator plainly exacerbates the 'asymmetric information' condition that exists in the regulation of revenues of transmission network owners, and the acceptance of such submissions further increases the scope for regulatory manipulation in the favour of the latter. Regulated monopoly businesses should, as a matter of regulatory principle, be required to make information public rather than be allowed to disguise it behind a veil of confidentiality. This should be part of the privileged position they hold as monopolies. The regulator should force the publication of all information or ignore it in its determination. It should not be open to regulated businesses to subsequently seek a re-determination or re-opening based on information that was provided confidentially. To do otherwise makes a mockery of the regulatory process.

The AER has assessed that the failure to adhere to a process for considering confidential submissions amounts to a material error and a better estimate of TransGrid's debt margin would be achieved using data from Bloomberg, rather than CBASpectrum. However, the AER has not provided a detailed explanation as to how they have reached this conclusion, nor released the original submissions for public scrutiny. The AER has not explained how consideration of the submissions would have lead to a different outcome to the one reached by the ACCC in setting the revenue cap. The EUAA urges that, in the interests of ensuring the transparency of such an assessment, the AER provide such an explanation and release the submissions prior to issuing a letter of revocation for TransGrid's existing revenue cap.



Under clause 6.2.4(d) of the *National Electricity Rules*, a revocation of a revenue determination can only be performed if a material error was made in the setting of the revenue cap and prior written consent of parties affected by the proposed subsequent re-opening of the revenue cap has been obtained by the AER. As we understand, the AER has written to a number of affected parties based on the advice of TransGrid. The EUAA is particularly concerned that the majority of the listed parties would not be materially affected by the reopening of TransGrid's revenue cap, given that they can simply pass on increased prices to end users via cost pass through arrangements and only two of the ten listed parties are actual end users. In short, most of the parties from whom consent is being sought are indifferent to the outcome. This appears to be a cursory approach to obtaining the consent of affected parties, which does not give regard to those parties who will be ultimately most affected. End users are being asked to bear almost \$28 million in extra costs and should have been consulted from the outset.

The EUAA also questions why it has taken Transgrid and the AER so long to raise this issue. All the facts were known at the time of the determination and Transgrid would have been able to initiate action at the time. To seek a reopening so late smacks of 'shopping' for the best outcome, even when the system provides for 'overs and unders'. We consider that if the determination is to be reopened then this aspect of it should not be the only matter placed under AER scrutiny. Other aspects where there may have been a contrary movement in costs or other parameters should also be considered by the AER.

The EUAA believes that this request for a reopening raises some fundamental issues of principle. The process for regulating monopoly businesses is afflicted by an imbalance in information between the regulator and end users on one hand and the regulated business on other, and its effectiveness is largely dependant on the regulator having equally effective information (which is extremely unlikely). Information asymmetries in the regulatory process are also compounded by the appeal of revenue determinations favouring regulated monopoly businesses. As can be seen in this case, the regulated party enjoys the privilege of requesting a correction during a regulatory control period where that correction would serve to positively impact their allowable revenue. Clearly, there would be no undertaking to seek a re-opening based on a material error that would serve to reduce their maximum allowable revenue.

Yours sincerely

Roman Domanski Executive Director