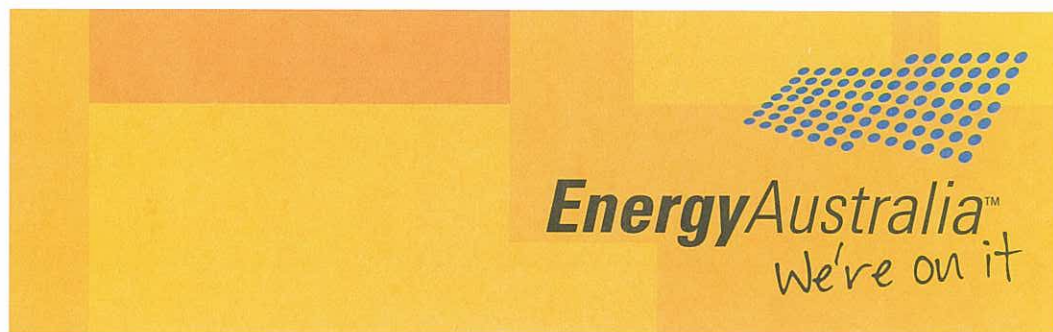


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10 October 2008

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H166
Australia Square NSW 1215

Email to: submissions@aemc.gov.au

Dear Dr Tamblyn

Submission on AEMC Draft Rule Determination – Parameter Values, equity beta and gamma

EnergyAustralia supports the AEMC's draft determination not to make the Rule change proposed by the Energy Users Association of Australia (EUAA). We also endorse the AEMC's decision not to make the alternate Rule change proposed by the EUAA at the first round consultation stage.

EnergyAustralia's reasons for not supporting the original Rule change proposal were set out in our submission to the AEMC in the first round consultation stage. We noted that:

- The Rule change would alter transitional arrangements for the NSW and ACT regulatory determination processes, which formally commenced on 2 June 2008. This would be contrary to the policy intent of the decision by the Ministerial Council of Energy's (MCE) to implement transitional arrangements for WACC parameters.
- The Rule change process would presuppose and ultimately prejudice the Australian Energy Regulator's (AER) upcoming reviews. Having individual parameters investigated by the AEMC concurrently to the AER reviews is contrary to the policy intent of the MCE and AEMC.
- The arguments and analysis put forward by EUAA do not provide the AEMC with compelling evidence to warrant a change to the values of the equity beta and gamma prescribed in the NER.

On 23 June 2008, the EUAA proposed an alternate Rule change proposal requiring the AER to apply the outcomes of the AER's reviews of rate of return parameters to the 2009-14 ACT/NSW and Tasmanian regulatory determinations. We consider that the arguments raised by EnergyAustralia not to make the original rule change proposal are equally valid to the EUAA's alternate proposal.

In addition to the arguments we raised previously, the EUAA's alternate Rule change proposal is contrary to the policy intent of the MCE when it drafted the Chapter 6 Rules. Clause 6.5.4(f) of the Rules provides that a statement of regulatory intent applies only for the purposes of a building block proposal

submitted to the AER after publication of the statement. Amending this clause would significantly increase uncertainty in the regulatory framework and would be entirely inappropriate considering that the ACT/ NSW regulatory 2009-14 determination process is significantly advanced.

The alternate Rule change would also be contrary to the policy intent of the MCE to enable DNSPs to propose departures from the values and methods in the AER's statement of regulatory intent. Clauses 6.5.4(g)-(i) of the Rules contemplate that the AER may depart from the values, methods and credit ratings set in a statement of regulatory intent if there is persuasive evidence to justify such a departure. Under the EUAA's alternate Rule change proposal, ACT and NSW DNSPs would not have the same opportunity to justify departures from rate of return parameters that other DNSPs have under the Rules.

Any changes in the values and methods of rate of return parameters from the transitional Rules will have implications for the forecasts of capital and operating expenditure requirements in the ACT/NSW regulatory proposals. For instance, the efficient debt and equity raising costs proposed by DNSPs are affected by changes in the methods to determine rate of return parameters such as the maturity of Commonwealth Government bonds. This is why any changes to parameters must be finalised prior to a DNSP submitting its building block proposal.

EnergyAustralia also considers that the EUAA's alternate Rule change proposal may prejudice the AER's review. The AER intends to publish draft determinations for ACT and NSW distribution businesses at the end of November 2008. These decisions will be based on the values and methods prescribed in the transitional Rules. If the alternate Rule change was made, the AER would more likely adopt a more cautious approach in its rate of return reviews to recognise the regulatory uncertainty faced by these businesses from unanticipated changes to values and methods from the draft determination. This would jeopardise the procedural integrity of the AER's reviews of rate of return parameters.

It is unclear from EUAA's submission whether it is still seeking a Rule change to amend the values of the equity beta and gamma prescribed in the transitional Rules or whether it considers that these values should be determined in the AER's rate of return review. We consider that the MCE and AEMC clearly intended for the AER to undertake periodic and comprehensive reviews of rate of return parameters rather than ad-hoc Rule changes to individual parameters. The AER commenced its reviews by publishing an issues paper in September 2008. The issues paper seeks the views of stakeholders on WACC parameters including the values of the equity beta and gamma. The AER's current and subsequent reviews will allow interested parties including the EUAA opportunities to participate in extensive consultation processes.

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

Yours sincerely



Trevor Armstrong
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