7 December 2023

James King
Senior Advisor
Australian Energy Market Commission

Sent via email

Updated national energy objectives – harmonising rule changes – AEMC Draft Determination

Dear Mr. King,

Energy Networks Australia (**ENA**) appreciates the opportunity to respond to the Australian Energy Market Commission's (**AEMC**) Draft Determination on the Energy Senior Official's rule change requests seeking harmonisation of the National Electricity Rules (**NER**) and National Gas Rules (**NGR**) with the updated national energy objectives (**Draft Determination**).[1]

ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

Network service providers (**NSPs**) are essential partners in supporting government commitments to achieve a decarbonised, modern, and reliable grid, and ENA strongly supports harmonising the NER and NGR with the amended national energy objectives that now include an emissions reduction component.

ENA's feedback on the Draft Determination seeks to ensure the policy intent of the updated national energy objectives is appropriately captured and there is equal and consistent treatment for all regulatory processes subject to the amended objectives. Key to this is the inclusion of expenditure transitional provisions in the final rule, without which we risk unintentionally muting the impact of the legislative reform.

NER & NGR expenditure transitional provisions

Aligning the expenditure rules with the amended national energy objectives will ensure that the new emissions reduction objective is factored into the AER's assessment of expenditure proposals.

In particular, it will ensure that the Australian Energy Regulator (**AER**) is able to approve prudent and efficient expenditure required to support the achievement of emissions reduction targets in those circumstances where the expenditure is deemed not necessary to meet any of the current expenditure objectives. It will also allow the AER to consider the benefits of emissions reduction when considering projects that

[1] AEMC, Harmonising the rules with the updated objectives, Draft rule determination, 26 October 2023

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may meet multiple limbs of the expenditure objectives, including the emissions reduction objective.

Decisions made under these amended rules will then best reflect the expressed policy intent of the emissions reform, and provide certainty and transparency for networks, consumers, and energy market bodies.

Inclusion of expenditure transitional provisions in the rules

The AEMC's final rule is expected to commence on 1 February 2024, and therefore to ensure that the amended expenditure rules also apply to those regulatory reset processes currently underway, transitional provisions are necessary for:

- the NSW, ACT, NT, and Tasmanian distributors plus TasNetworks transmission (the 2024-2029 reset group),
- SA Power Networks and Energy Queensland (the 2025-2030 reset group), and
- ATCO and Goldfields Gas Transmission (APA) (the gas access arrangements group).

Due to the transitional arrangements in the *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023*, the amended national energy objectives will apply to these regulatory reset processes. Specific NER and NGR expenditure related transitional arrangements, however, are also required for these processes to avoid a misalignment between the amended national energy objectives and the rules that will be applied to their final decisions.

A failure to include expenditure transitional provisions will result in those reset processes underway at the time the rule change commences falling under the 'old' expenditure rules that do not recognise emissions reduction.

The current (soon to be 'old') expenditure objectives are focused on meeting / managing demand, complying with regulatory obligations, and supply quality / reliability / security and safety; they do not contemplate emissions reduction related expenditure.

Therefore, excluding expenditure transitional provisions for regulatory reset processes currently underway creates a substantial risk of two different sets of 'rules of the road', impacting on consistent incentives and outcomes across the national energy rules regime. This outcome would then be inconsistent with intent of the legislative changes to the national energy objectives, which are expressly intended to apply to regulatory reset processes currently underway.

Timing of changes in Western Australia

We agree with the AEMC that any change to the NGR expenditure rules for WA gas businesses should be aligned with the new national gas objective (NGO) taking effect in Western Australia. However, this affects the timing for commencement of the NGR changes in Western Australia more generally – not just their application to the APA and ATCO access arrangement processes.

This broader issue could be addressed by aligning the timing for commencement of NGR changes in Western Australia with the timing for commencement of the National Gas Law (**NGL**) changes. On 5 December 2023, the Western Australian Government announced that it intends to adopt NGL reforms to include emission reductions in the NGO as it applies in Western Australia. Therefore, to ensure that the amended expenditure rules also apply to the APA and ATCO processes, we support NGR expenditure transitional provisions being included in the AEMC's final rule.

Emissions reductions targets

There is a broader issue raised by the rule change regarding the potential for emissions reductions targets (including those in the targets statement) to change after an initial proposal has been submitted.

There is currently no scope under the electricity and gas rules to amend an expenditure proposal to account for this change in circumstances, unless the amendment is otherwise necessary to address matters raised in a draft decision. For example, if a new target for a participating jurisdiction is introduced, or an existing target updated between a network service provider submitting its initial and revised proposals to the AER, the network service provider would be unable to amend its expenditure forecasts in the revised proposal to reflect the updated target, unless the updated target were raised in a draft decision.

This issue is not specific to emissions reduction targets or this harmonisation rule change. It potentially also arises in connection with other expenditure drivers – such as regulatory obligations or forecast demand – which could also change during the course of a reset process.

We therefore encourage the AEMC to consider whether a more general amendment to the rules is required to ensure that revised proposals can incorporate material changes in assumptions underpinning expenditure forecasts – whether these be regulatory obligations, forecast demand, or emissions targets. This would then clarify the ability of NSPs and the AER to address these types of material changes through the regulatory process.

NGR expenditure rules

The Draft Determination proposes changes to the capital and operating expenditure *criteria* in the NGR[2] to include reference to emissions reduction targets. However, there is a concern that requiring all expenditure to be incurred "in a manner that contributes to meeting emissions reductions targets" may unintentionally constrain the AER's ability to approve expenditure that does not *positively* contribute to the achievement of emissions reductions targets (importantly, even where that expenditure was not *contrary* to the achievement of such targets).

A preferable alternative, for the AEMC's consideration is, rather than requiring all expenditure to be incurred "in a manner that contributes to meeting emissions

[2] NGR r79(1) and NGR r91(1).

reductions targets", this criterion could instead refer to the service provider "having regard to" emissions reduction targets.

That is, in the amendment to rule 79(1)(a) of the NGR:

(1) Conforming capital expenditure is capital expenditure that conforms with the following criteria:

(a) the capital expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services, having regard to *emissions reduction targets*; and

A similar approach could be adopted for rule 91(1) of the NGR, which applies to operating expenditure. That is:

(1) Operating expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering *pipeline* services, having regard to *emissions reduction targets*.

Regulatory investment tests

ENA strongly supports the development of specific regulatory investment test (**RIT**)[3] related transitional arrangements to ensure that any RIT projects that are subject to the updated national energy objective (**NEO**) under the amendments to the National Electricity Law (**NEL**) are also subject to the amended NER.

Proposed RIT-T transitional drafting amendment

We do, however, recommend a minor drafting amendment to the proposed regulatory investment test for transmission (**RIT-T**) transitional to reflect RIT-T projects where a project assessment draft report (**PADR**) is not required.

Some of these projects may be approaching a final report stage. However, because a draft report has not been published for these projects, under the AEMC's draft transitional rules, the new RIT rules (including the new class of market benefits) would technically need to apply.

Under the NEL, the amended NEO will apply to a project where the PADR has not *yet* been published as at the law start date. As we understand it, this applies the amended NEO to RITs in train only where a PADR is required, and it has not yet been published. The amended NEO will otherwise not apply to RIT processes that were started prior to the law start date – this would include those that have passed the PADR (if one is required) and those where a project specification consultation report has been published but no PADR is required.

The proposed drafting in the Draft Determination adopts slightly different language – applying the amended rules to projects where a PADR *was not* made available prior to

[3] For both regulatory investment tests for transmission and regulatory investment tests for distribution.

the law start date, which would pick up projects where a PADR is simply not required under the rules.

To address this, we recommend a relatively minor amendment to the AEMC's RIT-T transitional provision, to better align these with the NEL transitional provision.

Our proposed amendment to the RIT-T transitional provision is as follows:

11.XXX.2 Application to RIT-T projects for project assessment draft reports

(a) If a *project assessment draft report* for a *RIT-T project* ~~was~~ had not yet been made available by a *RIT-T proponent* under clause 5.16.4(j) or clause 5.16A.4(c) by the law start date, then new clauses 5.15A.1 and 5.15A.2 apply for the purposes of applying *the regulatory investment test for transmission to the RIT-T project*.

(b) For the avoidance of doubt, ~~I~~if either:

(i) a *project assessment draft report* for a *RIT-T project* was made available by the *RIT-T proponent* under clause 5.16.4(j) or clause 5.16A.4(c) by the law start date; or

(ii) a *project specification consultation report* for a *RIT-T project* was made available by the *RIT-T proponent* under clause 5.16.4(b) by the law start date and clause 5.16.4(z1) applies to the RIT-T project,

then old clauses 5.15A.1 and 5.15A.2 apply for the purposes of applying the *regulatory investment test for transmission* to the *RIT-T project* ~~project assessment draft report~~.

Minor drafting amendments

AER guidelines – transitional provisions

ENA supports the development of transitionals that allow the AER to undertake streamlined consultation processes for the AER guidelines that require updating as a result of the change to the national energy objectives.

We do, however, recommend a minor change to transitional 11.XXX.4 (Updates to AER guidelines related to network planning) to enable the AER to consult on instruments / guidelines in groups, as well as individually. The amended subparagraph would therefore read:

(b) The *AER* may undertake consultation on the instruments and guidelines listed in subparagraph (a) using the *standard rules consultation procedures* as either:

1 a single process; or

2 multiple processes, applied to each instrument or guideline separately or in groups.

NER expenditure criteria

ENA supports the AEMC's proposed amendments to the operating and capital expenditure criteria in the NER to also include 'other relevant inputs', and we would recommend that the AEMC confirm the intent of this amendment in its final determination.

If you wish to discuss any of the matters raised in this letter further, please contact Lucy Moon, Head of Regulation, on lucymoon@energynetworks.com.au.

Yours sincerely,

G. Crawford

Garth Crawford
General Manager Economic Regulation