

27 August 2015

Mr Stephen King
Acting Chairman
WA Economic Regulation Authority
PO Box 8469, PERTH BC WA 6849

By email: publicsubmissions@erawa.com.au

Consultation on the Proposed Amendments to the ATCO Access Arrangement Final Decision

Dear Mr King,

The Energy Networks Association (ENA) welcomes the opportunity to respond to the Economic Regulation Authority's (ERA) Consultation on the Proposed Amendments to the ATCO Access Arrangement Final Decision for July 2014 to December 2019 period.

By way of background, the ENA is the national industry association representing the businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia. ENA members own assets valued at over \$100 billion in energy network infrastructure.

ATCO has shared with the ENA its prior submission that it made to the ERA in relation to the items requiring clarification in the Final Decision, which brought to light several other issues in addition to those that the ERA has identified in its Notice from 21 August 2015.

In this letter the ENA wishes to address its concerns in relation these issues in the ERA's Final Decision, particularly, where the ERA significantly departs from sound, predictable and consistent regulatory practice. The key issues in the Final Decision are summarised as follows:

- » Lack of compensation for the additional costs of preparing and managing the access arrangement process, which have been incurred due to significant delays in the access arrangement process;
- » Use of forecast rather than actual revenue in the ERA's tariff model, which is inconsistent with the established regulatory practice to use the best and most current information available in regulatory decision-making; and
- » Exclusion of licence fee cost pass through, thereby denying ATCO a reasonable opportunity to recover at least efficient costs under the *National Gas Law* revenue and pricing principles.

The ENA addresses each of its concerns with the ERA's approach below.

Operating costs

The current access arrangement process has been affected by significant delays arising from the ERA being unable to publish its Final Decision by the prescribed deadline. In part, this can be attributed to the new rate of return framework and the fact that the ERA did not arrive at its position on the return on debt until relatively late in the process.

The ENA observes that the ERA deferred the release of its Final Decision from 17 April 2015 to 1 July 2015. As a result ATCO continued to incur costs in relation to the current access arrangement process. These costs constitute prudent and efficient spending as they have been incurred to provide the ERA with additional information to demonstrate compliance with the *National Gas Rules*.

The ENA considers that, ATCO should not be disadvantaged as a result of resourcing burden from the delays in the access arrangement process.

Forecast vs. actual revenue

The ERA's proposed amendments to the Final Decision do not acknowledge the impact of the Authority's use of forecast tariff revenue for the July to December 2014 period, for which ATCO provided actual information. In ATCO's case, this results in it making losses as the actual revenue recovered during this period is below the revenue estimate used by the ERA in its tariff model.

The ENA notes that due to the unavoidable delays resulting from the 2012 rule changes, at the time of making its Final Decision, the ERA had the actual revenue information for July to December 2014. Given that the decision relates to a period that includes the past, it needs to recognise revenue actually generated in that period. This is also consistent with the established regulatory practice to use the best and most current information available in regulatory decision-making.

The ENA urges that ERA re-considers its approach in this area as it effectively results in ATCO being penalised for an unavoidable delay in the access arrangement process.

Licence fee cost pass through

The ENA observes that ATCO has proposed to include specific information in the cost pass through mechanism, so that it can recover full licence fee charges where they deviate from the forecast. However, the ERA appears to be of the view that ATCO should be able to forecast licence fee costs accurately. The Final Decision provides that only those changes to licence fees that are the result of a change in law can be considered as a cost pass through.

ATCO does not have visibility of licence fee charges until they are invoiced by the relevant agencies. Therefore, a prudent and efficient service provider has no control over these costs and there is no reasonable way of forecasting them. It would be inappropriate to deny ATCO an opportunity to recover any difference between actual and forecast licence fees costs through the cost pass through mechanism. The ERA's current approach is inconsistent with its legal duty to ensure a reasonable opportunity to recover at least efficient costs under the *National Gas Law* revenue and pricing principles.

The ENA considers that the ERA should use this consultation process to include the recovery of licence fees into the cost pass through mechanism.

If you have any questions, or ENA can be of further assistance, please contact Garth Crawford, Principal Advisor, Economic Regulation on 02 6272 1555.

Yours sincerely,



John Bradley
Chief Executive Officer