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ECONOMIC REGULATION AUTHORITY (ERA) DRAFT DECISION ON PROPOSED REVISIONS TO THE ACCESS ARRANGEMENT FOR THE WESTERN POWER NETWORK (DRAFT DECISION)

The Australian Energy Council (**Energy Council**) welcomes the opportunity to make a submission to the ERA in response to the Draft Decision.

The Energy Council is the industry body representing 21 electricity and downstream natural gas businesses operating in competitive wholesale and retail energy markets throughout Australia. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The ERA released its Draft Decision on 2 May 2018 for public comment. The ERA did not approve Western Power's (**network operator**) proposed revisions to its Access Arrangement for the fourth Access Arrangement (**AA4**) for the period 1 July 2017 to 30 June 2022. The ERA requested the network operator to make 91 amendments before the ERA will approve the network operator's proposed AA4.

The ERA also required the rectification of a number of inconsistencies between the *Electricity Networks Access Code 2004 (WA)* (**Access Code**) and the network operator's proposed AA4.

The Energy Council, on balance, considers the ERA's required amendments and rectifications represent an improvement relative to the network operator's proposed AA4.

The following details the Energy Council's assessment of the ERA's Draft Decision against the matters raised in the Energy Council's 11 December 2017 submission (**earlier submission**).

1. Standard electricity transfer access contract (ETAC)

The Energy Council in its earlier submission requested that the ERA consider whether the following AA4 proposals by the network operator were consistent with the Access Code, as the Energy Council considered they were not consistent:

- (a) the network operator sought to impose a strict obligation in the ETAC on retailers (**network users**) to ensure contracted capacity in respect of a connection point is not exceeded;
- (b) amend the ETAC so the network operator can unilaterally determine the transport service a network user must have, and thus the network service the network user must force its customers to receive; and
- (c) make a number of amendments to the ETAC's liability and insurance regime that materially improve the network operator's risk profile relative to the position in the current ETAC, with no concomitant reduction in prices to be charged under the ETAC.

The Energy Council considers the ERA's Draft Decision:

- (a) Adequately identifies [the] inconsistencies between the network operator's proposals and the requirements under the Access Code. [Draft Decision (**DD**) paragraphs 1312-1313];
- (b) Partially recognises and addresses the Energy Council's concerns [DD1329-1332]. However, the Energy Council remains concerned that the network operator will still retain significant discretion to determine the transport services a retailer, and hence its customer, have to accept receive, which is inconsistent with the Access Code. This matter is detailed under item 2 (reference services) below.
- (c) Has not adequately recognised and addressed member concerns in relation to intermediary liability [DD1393]. The Energy Council submits the ERA has not achieved a reasonable balance between the legitimate business interests of the network operator and network users on the basis the indemnity given to the network operator is too broad and hence transfers greater liability risk to the network user. This risk transfer occurs in circumstances where the network operator is better able to mitigate the risk. Retailers have no ability to mitigate network risk and can only address customer risk contractually. The network operator can directly address customer risk created by customer facilities through various mechanisms including the Technical Rules. The Energy Council submits the ERA must consider whether this outcome is in the long-term interests of consumers.

2. Reference services

Service adequacy

The Energy Council advocated, consistent with the Access Code, that the ERA must ensure in its Draft Decision that the network operator's proposed reference services meet the needs of network users, including retailers; specifically:

- (a) The network operator's proposal to mandate time of use reference services for any network user's customer who receives a type 4 meter. In the National Electricity Market (**NEM**) it is standard for customers to be able to opt in or opt out of time of use transport charges.
- (b) Whether existing or prospective network users have been adequately engaged to determine their reference service requirements. For example, to what extent did the network operator modify or introduce new reference services directly in response to network user requests?
- (c) Benchmarking the network operator's reference services against those offered by transmission and distribution businesses in the NEM.

The Energy Council, in relation to the above matters, considers the ERA has in its Draft Decision:

- (a) Addressed member concerns in relation to mandating time of use reference services, except that the ERA has not clarified whether, and if so how, differential pricing will apply to the different time of use bands.
- (b) Acknowledged network users do not consider the network operator has considered network user requirements in its development of reference services. However, the ERA has not directly addressed the question of the extent to which the network operator modified or introduced new reference services directly in response to demand from network users.
- (c) Did not benchmark the network operator's range of reference services against network services offered by distribution network service providers or transmission network service providers in the NEM or elsewhere to determine whether the network operator's proposed reference services represent "best practice", or whether it is unnecessarily narrow in meeting the needs of network users.

The Energy Council understands from the Draft Decision and its member's feedback that network users have made requests to the network operator in respect of the network services required as reference services. However, none of these requests were reflected in the network operator's proposed revisions to the reference services in the Access Arrangement.

Consequently, the Energy Council submits the ERA's required amendments in the Draft Decision do not result in an access arrangement that is consistent with section 5.2 of the Access Code because it does not specify a reference service for each covered service that is

likely to be sought by either or both of a significant number of network users and applicants or a substantial proportion of the market for services in the covered network.

The network operator's response to addressing peak demand at the "small customer" level has focused on an approach to time of use pricing that penalises end-use customers if they consume in peak periods, thus incentivising customers to consume off-peak. Importantly, this traditional approach is predicated on retailers selecting time of use network services to underpin time of use retail products that respond to the needs of retail customers who are free to select time of use or any-time energy tariffs. As such, time of use network and retail tariffs in the south west interconnected system (**SWIS**) have been "voluntary".

The Energy Council acknowledges the voluntary nature of time of use tariffs means that many, if not most, end use customers that select time of use products are likely to fall into one of two classes:

- end use customers whose current load profile means they will be better off on time of use products; or
- end use customers who consider they will be able to modify their current load profile under a time of use product, resulting in them being better off in future.

The Energy Council acknowledges that this "self-selection" bias means a large number of end use customers whose behaviour disproportionately contributes to coincident peak demand may not be confronted with the full economic cost of their load profile.

Nevertheless, the network operator's proposal to mandate time of use network tariffs based on meter type is plainly inconsistent with the Access Code and the ERA correctly required that the proposal be deleted from the network operator's proposal.

In the Energy Council's view , the network operator has a number of non-network options available to it to avoid capital expenditure associated with serving peak demand that are also likely to be consistent with the requirements of the Access Code.

Embedded generation, micro-grids, standalone power systems, demand management programs, and battery systems etc (**non-network solutions**) all have a vital role in promoting the efficient utilisation of network and avoiding capital expenditure. These however, are not monopoly assets or services but are properly assets and services that can be provided via competitive markets in response to efficient network signals. The Energy Council's view is that non-network solutions must be promoted and supported by network services, not restricted or limited by them.

The Energy Council seeks to draw specific attention to the network operator's prudent discount mechanism in that regard. The Energy Council considers the existing prudent discount scheme does not address the need in the SWIS for the network operator's reference services to support network users offering non-network solutions to end use customers to reduce their electricity costs or consume electricity more efficiently. The Energy Council's members are seeking to offer non-network solutions to end use customers to reduce their electricity costs or consume electricity more efficiently. Such an outcome is consistent with the Access Code.

Conceptually, the network operator's prudent discount contemplated by the Access Code could be used to reward a particular network user for engaging in conduct that avoids network investment by means of a discount and share the cost of that discount proportionately across all other network users.

The Energy Council's Western Australian members advise they are not aware of examples of the network operator offering a prudent discount under the scheme. The prudent discount scheme is also highly dependent on a network user demonstrating the case for a discount in circumstances where a network user is at a relative disadvantage in all matters relating to the management, planning and operation of the network and the network operator is not necessarily financially incentivised to agree to offer a prudent discount for non-network solutions when it would result in the network operator not making a capital investment in the network on which it would earn a regulated return, subject to that investment meeting the new facilities investment test.

The Energy Council notes the significant concern in the NEM at the prospect of distribution network businesses potentially using, or seeking to use, their market power to limit competition in non-network solutions and to earn regulated returns on contestable energy market services. These concerns prompted the Australian Energy Regulator's ring-fencing guidelines, which were initiated in July 2017.

The Energy Council submits any requirement for a network user to negotiate with a network operator to obtain a network service that incentivises a customer to use alternative non-network solutions will be of limited use because of the inherently unequal bargaining power between a monopoly network owner and contestable service provider. Further, it is far from clear that the network operator is financially incentivised to offer such a network service if the network operator could, instead, capture the benefit of behind the non-network solutions by utilising its regulated assets.

Plainly, a regulated reference service would avoid the aforementioned conflicts of interest and could facilitate non-network solutions to improve network efficiency and would be available to any network user. It would also, in the Energy Council's view, be consistent with the Access Code objective of promoting the economically efficient investment in and operation of and use of networks and services of networks in Western Australia to promote competition in markets upstream and downstream of the networks.

Accordingly, the Energy Council requests the ERA to determine a reference service or services that meets the Access Code's competition objective in terms of network users being able to provide non-network solutions to customers on the basis that the such a reference service is likely to be sought by either or both of a significant number of users and applicants or a substantial proportion of the market for services in the covered network.

Unbundling metering services

The Energy Council notes the ERA's draft determination to unbundle metering services from reference services and specify separate metering services as reference services based on the meter reading services required by users [Required Amendment 14].

Although the Energy Council would have preferred to see the NEM's 'power of choice' approach to competitive metering adopted in Western Australia, it commends the ERA's decision to unbundle metering services from transport services to provide greater visibility and transparency of SWIS metering costs than what currently exists today. Going forward this will now enable real comparisons to be drawn between the relative efficiency of WEM and NEM meter service provision.

The ERA considers [DD726] metering services at a minimum should include:

- An accumulation meter manual read every two months
- An interval meter manual read with data provided every two months
- An interval meter manual read with data provided every month
- A one-off interval meter manual read
- An interval meter remote read.

The Energy Council considers the ERA's determination should also specify the minimum frequency of interval meter remote reads for example daily remote interval meter readings.

Negotiated ETAC access to reference services

The Energy Council notes that network users [DD1296, 1297] highlighted there are different versions of access contracts in use and the ERA considers each version of the ETAC should represent a commercially workable access contract at the time it is approved. However, the network operator, under its proposed reference service eligibility criteria, does not permit a network user to use any reference service if their access contract is materially different to the standard access contract. (Refer each reference criteria for details.) There is no objective definition of what constitutes "materially different". Therefore, if there is a difference of opinion between the network user and the network operator, the latter can use its monopoly power in negotiating the ETAC with a prospective user.

The Energy Council is concerned the network operator, through the reference service eligibility criteria, unnecessarily restricts a network user's future access to reference services based on the version of ETAC they may with the network operator and whether the network operator considers it to be materially different to the standard access contract approved by the ERA.

The Energy Council contends this unreasonable and commercially unworkable on the basis such a requirement does not promote competition upstream or downstream of the network. Network users who have been using reference services under their negotiated ETAC should be allowed to continue to do so in the future. Therefore, the Energy Council requires the ERA to clarify the intent of this restriction and ensure network users retailers who have been using reference services previously will be allowed to do so under AA4 under a negotiated ETAC.

3. Model service level agreement (MSLA)

The Energy Council notes that the ERA by notice dated 17 May 2018 extended the deadline to publish its draft findings on the MSLA to Friday 27 July 2018 on the basis the ERA required additional time to consider relevant matters following publication of the Draft Decision.

The Energy Council agrees with the ERA's decision particularly because the terms of the MSLA are likely to be influenced by whether or not the ERA ultimately approves the network operator's revised proposed investment in advanced meter infrastructure (**AMI**).

The Energy Council supports efficient investment in AMI provided such investment (including the communications technology proposed to be adopted in the SWIS) meets the requirements of network users and passes the new facilities investment test and regulatory test respectively under the Access Code.

4. Transfer & relocation policy (TARP)

The Energy Council advocated to the ERA it ensures in its draft decision that the network operator's TARP meets the Access Code's objectives, specifically whether:

- (a) the proposed changes are a reasonable apportionment of risk between retailer and network operator;
- (b) the amendments provide the network operator with excessive discretion in determining the extent to which a retailer may be permitted to exercise its transfer and relocation rights;
- (c) the requirement for the TARP to be subservient to the Applications and Queuing Policy is consistent with, or contrary to the Access Code; and
- (d) the proposed changes promote fair market conduct.

The Energy Council considers the ERA's draft determination has reasonably addressed the above matters.

5. Applications and queuing policy (AQP)

The Energy Council sought the ERA to ensure in its draft decision the following matters were consistent with the Access Code requirements and objectives in relation to:

- (a) whether the AQP applies to all services provided by the network operator under the Access Code or just covered services;
- (b) the treatment of confidential information;
- (c) whether dormant applications are dealt with in a legitimate, transparent and consistent manner;
- (d) whether there is a mandatory preliminary connection assessment in all instances;
- (e) what constitutes a modification to equipment and facilities; for example, embedded generation and behind the meter energy efficient appliances; and
- (f) whether there is sufficient clarity on the concept of "multiple trading" relationships.

Overall the Energy Council considers the ERA's Draft Decision improves a user's access to electricity transmission and distribution networks within the SWIS. However, the Energy Council considers:

- (a) The ERA's Draft Decision did not provide sufficient network user clarity as to whether "excluded services" falls under the AQP.
- (e) the ERA's determination [DD1586] that relies on what "a reasonable and prudent person might require" does not provide sufficient clarity in relation to Technical Rules (WA) compliance.
- (f) the concept of multiple trading relationships still requires greater specificity to reduce market uncertainty.

The Energy Council requests the ERA to revisit the above matters.

6. Price control and pricing methods

The Energy Council advocated the ERA ensure in its Draft Decision the following matters are consistent with the Access Code requirements and objectives in relation to:

- (a) whether the network operator has adequately publicly substantiated its demand forecasts and revenue model;
- (b) whether the incentive schemes actually deliver efficient network investment and operational outcomes;
- (c) whether the gain sharing mechanism actually delivers efficient investment and operational outcomes;
- (d) whether distribution customers should subsidise transmission customers as proposed under the network operator's proposed transmission price path; and
- (e) whether the weighted average cost of capital is reasonable.

Overall the Energy Council considers the ERA has reasonably considered the above matters. However, the Energy Council considers the ERA needs to focus further on:

1. Whether network operator's capex proposal is reasonable and justified given its falling demand forecast.
2. Whether the proposed one percent per annum productivity improvement in operating costs is reasonable, specifically given the network operator does not appear to have adequately taken into account the operational efficiencies from proposed depot modernisations and technology system improvements.

In addition, the ERA considers amending the network operator's price control to expose it to demand risk will encourage the network operator to develop more efficient tariff structures, including the balance between fixed and variable charges and the basis of setting any fixed charges. [DD829]. The Energy Council considers this to be an appropriate mechanism to manage demand risk opposed to the network operator simply increasing its risk premium in the weighted average cost of capital calculation and hence increasing its target revenue.

7. Other - Ongoing right to use reference services in AA4

The Energy Council's Western Australian members are concerned that Western Power has the ability to deny network users the ongoing right to use some or all reference services during the AA4 period.

Western Power has included the following provision in all AA4 reference services that permits it to deny a network user the right to use any or all reference service in the future based on its opinion of whether the network users ETAC is materially different from the AA4 ETAC approved by the ERA.

each of the following does not apply under an agreement with Western Power:

- a. The terms and conditions of the *access contract* under which the *service* will be provided are materially different to the Applicable Standard Access Contract for this *service*,

In addition, it is important to note Western Power has not specified any objective criteria in relation to what constitutes "materially different". It is based solely on Western Power's opinion that the reference service should be denied to a network user. Western Power may exercise this right at any time even if the network user has been previously using the reference services for many years to supply its customers under standard ETACs approved by the ERA in access arrangement periods 1-3. Therefore, Western Power may deny reference services to a user with an AA1 ETAC, approved by the ERA, because it forms the opinion that the AA1 ETAC is materially different to the AA4 ETAC.

Under the Access Code a reference service is a service likely to be sought by a significant number of network users. Further, the ERA also determined retailers should have choice i.e. mandating reference services is not consistent with the Access Code objective and Western Power should base its reference services on network user requirements rather than basing it on what Western Power thinks is required [DD659, 686, 688]. Therefore, Western Power's proposal for it to have the unilateral ability to deny network users the ongoing right to choose and use reference services, based on what Western Power considers is a material difference in ETACs, is inconsistent with these principles.

The Energy Council considers this unilateral ability to deny reference services and the manner it is being implemented, under the reference service eligibility criteria, is not commercially workable¹. In addition, the Energy Council considers it is also inconsistent with the Code objectives and clause 4.34² of the Access Code.

Therefore, the Energy Council submits on behalf of its members, the ERA consistent with the Access Code should not to approve this reference services eligibility criterion that provides Western Power with the right to deny a network user the ongoing right to use reference services.

¹ Noting the ERA's views on what is commercially workable [DD1284].

² Clause 4.34 of Access Code contemplates an access arrangement should not deprive a network user of a prior contractual right, for example the right for the ongoing use of reference services. In addition, clause 4.34 also requires the ERA to consider these matters and not approve an access arrangement that would deprive a network user of a prior contractual right.

Conclusion

The Energy Council considers the ERA's draft determination to be a reasonable outcome for retailers and customers within the SWIS and is pleased with its level of scrutiny having regard to the applicable regulatory requirements in forming its views.

There are however, still matters as highlighted in this submission that the ERA must consider further if competition in markets upstream and downstream network operator's transmission and distribution network are to be facilitated. The Energy Council trusts this submission is useful in that regard.

Any questions regarding this submission should be addressed to David Markham by email to david.markham@energycouncil.com.au or by telephone on 03 9205 3107.

Yours sincerely,

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