

31 May 2013

Mr Lyndon Rowe
Chairman
WA Economic Regulation Authority
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Dear Mr Rowe

Proposed Variations to Western Power's Access Arrangement for 2012-13 to 2016-17

The Energy Networks Association (ENA) welcomes the opportunity to comment on the Economic Regulation Authority's (ERA's) *Issues Paper on Proposed Variations to Western Power's Access Arrangement for 2012-13 to 2016-17* published on 17 May 2013.

The ENA is concerned by the ERA's intention to vary the price control for Western Power that was finalised in the *Amended Proposed Revisions to the Access Arrangement for the Western Power Network* in November 2012.

In the ENA's view, a decision to vary Western Power's price control would represent a significant departure from sound, predictable and consistent regulatory practice. ENA is concerned that the ERA has not made a compelling case to exercise its powers under Section 4.38 of the *Electricity Networks Access Code 2004* (the Code) and that the proposed variation of Western Power's price control would negatively impact regulatory certainty intended to be fostered by the regime.

The ERA has proposed to vary Western Power's price control to recover the deferred revenue over the life of the assets, rather than recovery over ten years as determined in Western Power's access arrangement. On this basis, the ERA is considering two options for the network tariffs path over the remaining four years of the current access arrangement period. The ENA does not support the proposed options and considers that Western Power's access arrangement should remain unchanged.

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

- i) *The approved Access Arrangement provides explicit mechanisms to address the issues of concern to the ERA.*

The Access Arrangement approved by the ERA in November 2012 is not silent regarding the manner in which variations in demand or Tariff Equalisation Contribution (TEC) should be recovered.

Section 5.7.6 explicitly provides for the recovery of TEC, defined as "...any cost incurred by the distribution system for the financial year *t* as a result of the tariff equalisation contribution in accordance with section 6.37A of the Code."¹

¹ Western Power *Amended proposed revisions to the Access Arrangement for the Western Power Network*, November 2012, p.32

Similarly, Western Power's access arrangement explicitly provides the mechanism to accommodate volume variation through the revenue cap control mechanism. It is a foreseeable feature of the revenue cap control mechanism that the revenue remains fixed over the access arrangement period regardless of the actual volume of sales.

Therefore, the ENA considers that "revenue under-recovery and lower demand forecasts"² are factors which already accommodated under the access arrangement, rather than significant unforeseen developments which represent a trigger to reopen the price arrangement.

- ii) *The ERA proposes to revisit its decision on the appropriate timeframe for deferred revenue recovery to address unrelated developments.*

The network sector is concerned that the ERA's approach is directed at amending an element of the final access arrangement decision which was determined independently of the factors which are now the subject of the Authority's concern. The ERA's proposal to adopt a policy principle that deferred revenue would be recovered over the life of the assets, rather than 10 years, has not been supported by any regulatory policy logic. Moreover, while the ERA's proposed intervention appears solely intended to provide short-term price benefits to users, the Issues Paper does not quantify or address the impact on future price outcomes for users of this change in methodology.

- iii) *Impacts on regulatory certainty of re-opening decision elements for unforeseen developments*

The ENA considers that *ad hoc* amendments to the approved access arrangement to maintain preferred network tariffs paths put into question the capacity of network businesses to rely on the outcome of final determinations made by the ERA. It also has the potential to adversely impact on the regulatory certainty and stability that is essential to maintaining access to efficiently priced capital for long-term investments in energy networks. Such interventions have the potential to negatively affect efficient investment in those firms subject to access and pricing review processes by the ERA. To the extent that this approach is considered by investors or potential investors as representative of Australian regulatory practice more broadly, it will also have a wider potential impact.

- iv) *Broader Australian regulatory practice*

Based on the experience of its members, the ENA has been unable to identify any plausible Australian regulatory precedent for the proposed approach set out in the Issues Paper. Under energy access regimes to date, effective re-openings of finalised access arrangements have occurred extremely rarely. Critically, they have occurred only in cases where the original decision has been found to be affected by or based on a material error.

Regulatory best practice in regime design has moved away from provisions which have uncertain operation and which present opportunities for undue regulatory risk. Under both the previous *National Gas Code*, and the current *National Electricity Rules*, the scope for the revocation and amendment of a finalised access determination was substantially constrained, following agreement between rule making bodies, policy makers and regulated firms that the operation of such clauses was contrary to the long term interests of customers. By way of example, *the National Electricity Rules* (Clause 6A.15 or 6.13) confines re-opening of access determination or price control elements to a narrow set of

² ERA Issues Paper on Proposed Variations to Western Power's Access Arrangement for 2012-13 to 2016-17, p.6

circumstances based on a material error or deficiency, rather than broad and vague concepts of unforeseen developments.

It is emphasised that these constraints on retrospective 're-opening' were not established to maximise returns to network owners but to lower the cost of capital environment and the cost outcomes for end-users.

The ENA is concerned that the ERA has not made a compelling case to exercise its powers under section 4.38 of the Code. For the reasons explained above, the ENA does not believe that 'the advantages of making the variation before the end of the access arrangement period outweigh the disadvantages, having regard to the impact of the variation on regulatory certainty'.³

ENA urges that ERA considers revisiting its position in relation to Western Power's Access Arrangement and examine alternative approaches which do not rely on re-opening unrelated decision elements of a settled Access Arrangement.

If you have any questions, or ENA can be of further assistance in developing ERA's views on this important issue, please contact Garth Crawford, Principal Advisor, Economic Regulation on 02 6272 1555.

Yours sincerely

John Bradley
Chief Executive Officer

³ *Electricity Networks Access Code 2004*, section 4.38