25 February 2013

Mr Chris Pattas
General Manager
Network Operations and Development
Australian Energy Regulator
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energex
positive energy

Dear Mr Pattas

**ISSUES PAPER REGULATION INVESTMENT TEST FOR DISTRIBUTION**

Energex Limited (Energex) appreciates the opportunity to provide a submission on the Australian Energy Regulator's (AER) Regulatory Investment Test for Distribution (RIT-D) Issues Paper (Issues Paper).

Energex notes the AER intends to employ the Regulatory Investment Test for Transmission (RIT-T) as a template to develop the RIT-D. The RIT-T requires a particularly complex option assessment which reflects the relatively small volume of long lead time augmentation projects undertaken by Transmission Network Service Providers. Distribution Network Service Providers (DNSPs), however, are required to address a number of network constraints within relatively limited planning horizons. It is important that the RIT-D supports efficient and prudent planning processes specific to DNSPs.

In addition, the nature of distribution network investments increases the likelihood of engagement with non-network providers and the community in the assessment of credible options. It is important that RIT-D frameworks are sufficiently defined to support this level of interaction, including dispute resolution and re-application requirements.

These views are reflected in Energex's response to the Issues Paper questions, which is provided as an Attachment. Energex also supports the submission lodged by the Energy Networks Association (ENA). Energex would welcome the opportunity to work collaboratively with the AER, through the ENA, to develop worked examples to include in the RIT-D Application Guidelines.

Should you have any enquiries regarding this report please contact Louise Dwyer, Group Manager Regulatory Affairs on (07) 3664 4047.

Yours sincerely

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# AER Issues Paper:
# Regulatory Investment Test for Distribution

## Energex Submission

## 25 February 2013

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| Issue | Energex Response |
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| **4. Similarities and differences between the RIT-T and RIT-D** - Stakeholders should have regard to the regulatory test, RIT-T and RIT-T guidelines when considering their response to this Issues Paper. | |
| What provisions of the RIT-T should be included in the RIT-D, modified or excluded altogether? | There are many similarities between transmission and distribution investment assessment under the Rules. However, there are some critical differences that should be reflected in the RIT-D. Many of these differences have been identified by the AEMC and are reflected in the RIT-D provisions of Chapter 5. It is expected that these will be transferred into the RIT-D (e.g. list of potential market benefits).<br><br>Energex has reviewed the RIT-T and RIT-T Application Guidelines and believes that the following provisions should be appropriately modified:<br><br>• References to large-scale generation reflect a transmission focus and could be excluded from the RIT-D.<br>• Preparation of a base-case is costly and should be optional because it is unlikely to be a credible option (it would not meet the identified need). This approach accords with the AER's reasoning in its RIT-T Final decision (p 9).<br>• The worked examples in the RIT-D Guideline should have a distributor focus. The RIT-T Guidelines include generation dispatch and ancillary service based worked examples which are not appropriate for the RIT-D Guidelines. Worked examples could therefore provide guidance on the calculation of:<br>- the augmentation component of refurbishments/replacements with incidental augmentation;<br>- reliability benefits with a special focus on how the value of customer reliability could be included in the analysis; and<br>- electricity losses and how these are to be taken into account in estimating costs/benefits.<br>• The RIT-D should clearly state that quantification of market benefits is optional. This is likely to be a key point for third parties. This should also be noted (e.g. in footnotes) when using the phrases like 'economic benefit assessment' and 'net economic benefit'.<br>• The RIT-T process is different to RIT-D. For example, the project specification consultation report |

is not required under RIT-D. This should be reflected in Section 4 of the Guidelines.

- Sensitivity analysis for the discount rate should use the regulatory determination WACC as the starting point, and the guideline should provide guidance on the scope of the sensitivities to provide clarity across the market and consistency in application across DNSPs.

- Energex notes the RIT-T Guidelines comment (p12): *If the TNSP reasonably estimates that the costs arising from any one of several credible options orientated towards meeting an N-1 reliability standard at town X is $50 million, the TNSP should consider a larger number and range of credible options than if the estimated cost was $10 million.* Energex understands that it needs to consider all credible options in all RIT-D assessments, so it is not clear how it could assess more or less based on the costs of some credible options. As this requirement is unclear and may create confusion, it should be removed.

- RIT-T Dispute Resolution Guidelines need to be modified in respect of what can and cannot be disputed. For example, re-application is not subject to dispute.

New provisions that should be included in RIT-D include:

- A section on the re-application process including the circumstances in which the AER to make a determination.

- Energex also notes that it was unable to locate the Chapter 10 Rule definition of 'identified need' as referred to under section 3.1 of the guidelines.

Energex also requests that the AER provide more clarity with respect to the definition of 'commercial feasibility'. The RIT-T guidelines state that:

> *The AER considers that an option is commercially feasible under clause 5.6.5D(a)(2) of the Electricity Rules if a reasonable and objective operator, acting rationally in accordance with the requirements of the RIT-T, would be prepared to develop or provide the option in isolation of any substitute options*

It is unclear to Energex what 'in isolation of any substitute options' means. If it means "in the absence of any substitute option" Energex notes then the objective operator would always consider building an uneconomic option if the only alternative was to breach mandated reliability standards.

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| | Energex notes that, while the term 'economic feasibility' is not referenced under the RIT-D Rules, elements of the AER's interpretation of the term 'economic feasibility' in RIT-T context could be incorporated into the interpretation of 'commercial feasibility'. The RIT-T application guidelines states that:<br>*The AER considers that an option is likely to be economically feasible where its estimated costs are comparable to other credible options which address the identified need. One important exception to this general guidance applies where it is expected that a credible option or options are likely to deliver materially higher benefits.*<br><br>Energex is supportive of assessing and comparing costs in determining commercial feasibility. However, the consideration of market benefits should be based on information *readily* available at the time of the RIT-D threshold assessment. This balanced approach recognises that quantification of market benefits is optional under the RIT-D itself, and is particularly important if it is not clarified that the application of the RIT-D threshold is not subject to dispute. |
| The AER is interested in how the differences in electricity distribution and transmission may require it to adjust its approach to the way RIT-T and RIT-D should be considered. | Broadly, the following factors drive differences between transmission and distribution:<br>• The average DNSP will need to undertake significantly more RIT-Ds than the average TNSP will have to undertake RIT-Ts. Therefore, the balance between practicality and detail included in the test needs to be carefully considered, otherwise distribution projects may be delayed and/or distributors will need to consider engaging additional resources to address the RIT-D requirements;<br>• Upstream impacts are less relevant to distribution investments (e.g. generation dispatch);<br>• Distribution investments are often visible to the community and customers, and are therefore more likely to receive community feedback and engagement. This should be taken into account in establishing the dispute resolution and reapplication provisions. |
| **4.1 Removal of the base case -** The RIT-D removes the requirement under the RIT-T for each credible option to be compared against a base case where no option is implemented. RIT-D proponents would otherwise have been required to develop a 'do nothing' option for each credible option. | |
| The AER is interested in how stakeholders believe this will change the analysis for RIT-D proponents. | Under the RIT-D, Energex supports optionality for a do-nothing base case. A 'do nothing' approach will generally not be a credible 'option' because it does not resolve the identified network limitation and would result in non-compliance with the applicable service and security standards. |

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| **4.2 Distribution level market benefits** - Clause 5.17.1(c)(4) requires RIT-D proponents to consider whether each credible option could deliver market benefits from changes relating to:<br>• Voluntary load curtailment<br>• Involuntary load shedding and customer interruptions caused by network outages, using a reasonable forecast of the value of electricity to customers<br>• Other parties' costs from differences in the timing of new plant, capital costs, as well as operating and maintenance costs<br>• Timing of expenditure<br>• Load transfer capacity and the capacity of Embedded Generators to take up load<br>• Additional option value where this had not already been included in other classes of market benefits<br>• Electrical energy losses; and<br>• Any other class of market benefit determined to be relevant by us. | |
| How should any of the factors which deliver market benefits listed above be clarified? | Energex supports worked examples on how it should take into account each of these market benefits. The worked examples should reflect the level of detail the DNSP would be required to undertake in assessing the market benefits for a particular project. In the absence of further guidance, DNSPs may be particularly hesitant to quantify market benefits because the methodology and level of detail required would be unclear and may result in a third party dispute on the approach adopted. |
| Should the AER look at any additional distribution level market benefits, other than those specified under clause 5.17.1(c)(4). In particular, are broader types of demand side participation likely to result in distribution level market benefits? Stakeholders should have regard to the AEMC's Power of Choice Review when addressing this issue. | Energex supports the position outlined in the ENA response. |
| Specifically, noting the recently released Power of Choice report, does the RIT-D consideration of market benefits need to be amended to support demand side participation? | Energex supports the position outlined in the ENA response. |
| How should the consideration of market benefits under | A reliability project may be expected to improve STPIS performance. However the targets would already |

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| the RIT-D recognise the impact the proposed works would have on the STPIS? | have been adjusted based on the reliability capital expenditure program included in the determination and paid for by customers. It is not clear why, when the program is undertaken, the STPIS would then be revisited.<br><br>As a practical matter, reliability performance and subsequent STPIS outcomes are annual measures that depend on the mix of projects completed in a given Program of Work as opposed to the potential benefits provided by any single project. For DNSPs this constitutes numerous projects in any given year. The RIT-D is applied to proposed augmentations on a project basis. Attributing STPIS outcomes to specific projects would be spurious. |
| A portion of electricity is naturally lost in its transmission and distribution. RIT-D proponents pass through these costs on the network, although proponents are obligated to comply with certain efficiency standards.[1] How should the economic cost of electricity loss be treated within the market benefits assessment? | Energex suggests that if the AER publishes a value for electricity losses for a given DNSP on average terms, that DNSPs may be able to calculate the possible loss reduction gained through a proposed capital work, and use this to calculate the value of loss reduction as a market benefit. Energex suggests that DNSPs need guidance on how to calculate the value of losses for the purposes of market benefits. |
| **4.3 Material and adverse NEM impacts for the purposes of interested parties** - Interested parties are defined as end users or their representatives who we consider could suffer a material and adverse NEM impact from the proposed preferred option. This differs from the previous definition of interested parties, which defined interested parties as end users or representatives who the AER consider, or who have identified themselves, as potentially suffering a material and adverse market impact from the proposed preferred option.<br><br>By specifying material and adverse 'NEM impacts' as opposed to 'market impacts', the AER considers there is likely to be more clarity in how this should be interpreted. For example, this would ensure that the focus of the RIT-D is kept in the context of the NEM specifically, as opposed to other impacts like those relating to environmental or planning issues. The NEM is defined in the National Electricity Law as: the wholesale exchange operated and administered by the Australian Energy Market Operator (AEMO) under the National Electricity Law and the NER; and the national electricity system. | |
| Who should be considered an interested party under this definition? | Energex supports the AER's changes in terminology from material and adverse 'market impacts' to 'NEM impacts'. Such a change in terminology would help prevent project delays strategically raised by third parties and would help prevent further costs to DNSPs (and ultimately customers) due to the increased risk of lengthy and protracted disputes. |

[1] AEMC, November 2012, Power of choice review - giving consumers options in the way they used their electricity

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| What guidance stakeholders would find useful in interpreting the definition of interested parties. | Please refer to comments above. |
| The AER is of the view that the change in terminology from material and adverse 'market impacts' to 'NEM impacts' improves clarity. What are stakeholder's views on this? | Please refer to comments above. |
| **5.1 Estimating Costs** - Under clause 5.17.1(c)(6) of the NER, the RIT-D proponent must consider whether the following classes of costs would be associated with each credible option:<br>• Financial costs incurred in constructing or providing the credible option.<br>• Operating and maintenance costs over the operating life of the credible option.<br>• Cost of complying with laws, regulations and applicable administrative requirements in relation to the credible option.<br>• Any other financial costs determined to be relevant by us. | |
| What other financial costs are likely to be relevant. | Energex notes that some costs may be incurred by the DNSP before the actual RIT-D process is finalised. Further, these costs might be incurred at different stages of the Test. Energex suggests that the AER should consider providing clarity around the treatment of these types of costs. For example:<br>• interest on borrowings<br>• land strategically acquired prior to or during the Test, and<br>• design costs. |
| The RIT-T specifies that transmission network service providers could determine additional classes of costs if the AER agreed that they were relevant. Should the AER make a similar specification for RIT-D proponents under the RIT-D? | Energex supports a similar specification being adopted under the RIT-D and further suggests that the AER should also set out a timeframe for such agreement. Energex believes that 10 business days is an appropriate period that would prevent the assessment process being delayed. |
| The RIT-T specifies that if the costs were materially uncertain, the cost should reflect the probability weighted present value of the direct costs of the credible option under a range of different cost | Energex is concerned by the requirement to account for material uncertainty and risk in benefits and costs by developing probability distributions. Energex considers that any probability-weighting of benefits and costs will be highly subjective and only introduces a level of unnecessary complexity in the RIT-D process. Energex recognises that this detail might be reasonable in the transmission context. However, |

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| assumptions. Should the AER make a similar specification under the RIT-D? | Energex believes that a different balance is required in the distribution context given the larger volume of projects. Energex believes that a more appropriate approach for the RIT-D is to retain the approach included in the regulatory test which did not require probability weighting. |
| **5.2 Determining discount rates** - The RIT-T and the current regulatory test (version 3) have specified a particular method for determining the discount rate for present value calculations. They state that a commercial discount rate appropriate for the analysis of a private enterprise investment in the electricity sector should be used. They also specify that this discount rate should be consistent with the cash flows being discounted. | |
| Should the RIT-D specify the same methodology for determining the discount rate as the RIT-T and current regulatory test? | Energex believes that it would be a useful simplification to specify the use of the current regulatory WACC (i.e. the WACC in the prevailing Distribution Determination) as the discount rate. If the AER chooses to specify a different process, then the guidelines should set out the reasoning behind such a choice and provide a clear and simple means of determining the appropriate rate, including worked examples.<br><br>In addition, specification of suitable variances of the discount rate (e.g. ± 1.5%, ± 3%) for use within the sensitivity analysis would also be of assistance in order to maintain consistency across DNSPs and reduce the likelihood of third party challenges to the RIT-D results. |
| **5.4 Methodologies for estimating costs** - The RIT-T requires different classes of costs to be quantified. For instance, costs incurred in providing, operating and maintaining the credible option. Where there is a material degree of uncertainty in the costs, the RIT-T requires the cost to be the probability weighted present value of the direct costs of the credible option under a range of different cost assumptions. | |
| What methodology should the RIT-D specify for estimating costs? | Energex supports the position outlined in the ENA response. |
| Should the methodology be adopted from those specified under the RIT-T and regulatory test? | Energex supports the position outlined in the ENA response. |

| **6. RIT-D Guidelines issues** - Clause 5.17.2(b)(2) of the NER requires the RIT-D guidelines to include guidance on the following:<br>• The operation and application of the RIT-D<br>• The process to be followed in applying the RIT-D<br>• What will be considered a material and adverse NEM impact for the purposes of the definition of interested parties (considered earlier)<br>• How disputes raised in relation to the RIT-D and its application will be addressed and resolved | |
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| What guidance and examples for distribution would be useful to in the RIT-D guidelines? | Energex suggests that the following guidance and examples would be useful in the RIT-D guidelines:<br><br><u>Calculation of the augmentation component of refurbishment/replacement projects</u><br><br>Energex understands that it will be required to conduct a RIT-D where there is an augmentation component of refurbishment/replacement projects that meet the RIT-D cost threshold. Energex believes that in the development of the Guidelines is important to determine the calculation of the augmentation component of these types of projects. As previously indicated, Energex is happy to work with the industry and the AER to develop an appropriate calculation and worked example.<br><br><u>Re-application</u><br><br>Energex suggests that it is unclear in what circumstances the AER would be required to make a determination in relation to re-application of the RIT-D. For example, it is unclear which parties could request the AER to make a determination and in what circumstances would it be appropriate for the AER to make such a determination. Energex seeks clarity in the Guidelines on these matters.<br><br>Energex believes that a DNSP's assessment to reapply/not reapply the RIT-D should not be subject to the RIT-D dispute resolution process. The AER already has the power to independently review a DNSPs re-application assessment as part of its monitoring and enforcement role of the National Electricity Rules.<br><br>It is also of concern that if re-application was subject to dispute this would inevitably result in further project delays, particularly where reapplication became an issue well outside the period (i.e. months/years) after which the original RIT-D was conducted.<br><br>Lastly, Energex suggests that the AER should clarify that re-application of the RIT-D is not required where a project is urgent or where the additional delay caused by any re-application would result in the DNSP being unable to meet its reliability standards.<br><br><u>Clarification of the purpose of the RIT-D</u> |

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| | Energex suggests that the AER consider including the AEMC's statement on page 174 of its Draft Determination that:<br><br>*'The RIT-D is not intended to test the efficiency of a particular proposed investment per se, nor does it require that a particular investment that satisfies the RIT-D be undertaken'.*<br><br>Energex believes this statement is a fundamental principle that DNSPs, non-network proponents, the AER and other third parties should be cognisant. This is also important in the context of the AER's question regarding the use of the RIT-D to assess the capital program ex post.<br><br>Worked examples<br><br>The RIT-D Guidelines should include worked examples based on the power distribution aspects relevant to DNSPs. For example, the generation worked examples set out in RIT-T are largely irrelevant for DNSPs.<br><br>Energex notes that the RIT-T specifies that TNSPs can determine additional classes of costs if the AER agrees that they were relevant. Energex suggests that this provision should be adopted in the RIT-D Guidelines. |
| **6.1 Operation and application of the RIT-D -** The RIT-T application guidelines have included guidance and worked examples on many of these topics. These are included under section 3 of the guidelines, titled Operation and application of the RIT-T. These included but are not limited to:<br>• what constitutes a credible option<br>• what constitutes an externality<br>• the appropriate approach to undertaking sensitivity analysis<br>• the appropriate approaches to assessing uncertainty and risks | |
| The RIT-T guidelines provide guidance and worked examples on these topics. Having regard to the RIT-T guidelines, do the RIT-T guidelines provide useful information which should be adopted in the RIT-D guidelines? | Energex refers to its comments above. |
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| Do stakeholders consider the guidelines should provide guidance and worked examples on any additional areas that have not been specified under clauses 5.17.2(c) or 5.17.2(b)(2) of the NER? | Energex suggests that if the approach to discount rates proposed previously and by the ENA is not adopted, a worked example on how to determine the applicable discount rate for an assessment would be valuable for all stakeholders. |
| **6.2 Application of guidelines** - Clause 11.50.5 of the NER addresses the transition from the regulatory test to the RIT-D. It states that the AER must provide guidance on when a regulatory test assessment will be considered to have commenced. Some electricity distribution projects are likely to be initiated around the commencement of the RIT-D. The AER will be required to set a cut-off so that there is no confusion in terms of whether the old regulatory test or the RIT-D should be applied. Clause 11.50.5(c) requires each NSP that has commenced assessing a project under the regulatory test to submit a list of projects to us by 31 December 2013. This list will assist us in determining which projects have started off on a regulatory test assessment. | |
| What guidance should the AER give on when a regulatory test assessment will be considered to have commenced for the purposes of 11.50.5(c)? | Energex suggests that the AER should clarify what will constitute as 'having commenced the regulatory test process' for the purpose of a project being exempt from the RIT-D. Energex suggests that this should be no later than the stage at which option analysis under the Regulatory Test has been initiated. |
| **6.3 Process to be followed** - Under clause 5.17.2(b)(2)(ii) of the NER, we must provide guidance on the process to be followed in applying the RIT-D. Details of the process to be followed are set out in clause 5.17.4 and include:<br>• Screening for non-network options<br>• Preparing and publishing a non-network options report<br>• Drafting a project assessment report<br>• Circumstances in which RIT-D proponents are exempt from drafting a project assessment report<br>• Processes required if a RIT-D proponent wishes to re-apply the RIT-D to a particular distribution project | |
| Are there are any particular areas where further guidance on the RIT-T assessment process would be useful? | Energex suggests that the AER consider providing guidance as to how it intends to deal with situations involving joint planning and parties being unable to agree on a lead party for the purpose of conducting a RIT-T. |
| **6.4 Estimating market benefits** - Clause 5.17.1(c)(9)(1) of the NER requires the RIT-D to specify the method/s permitted for estimating the magnitude of different classes of market benefits. We are also required to specify which methods are permitted for estimating market benefits under the RIT-D application guidelines. | |

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| Section 3.5 of the RIT-T application guidelines provides detailed examples of how to apply the regulatory test in a transmission setting.[2] This includes the scenarios that should be considered, the categories of market benefit, benefits accruing across regions, and uncertainties and risk. However, the RIT-T application guidelines also state that the market benefit of a credible option is obtained by comparing, for each reasonable scenario, the state of the world with the credible option in place with the state of the world in the base case. Since the RIT-D does not require a comparison against a base case, it is expected that the RIT-D guidance will differ to the RIT-T guidance on this aspect. | |
| What methodologies should the RIT-D application guidelines adopt for valuing market benefits? | Energex does not provide any comments to this question. |
| **6.5 Dispute resolution** | |
| What dispute resolution guidance would be of assistance? The RIT-T guidelines provide guidance on dispute resolution. | Energex understands that it was the AEMC's intention that the RIT-D cost threshold not be subject to the RIT-D dispute resolution process because at this stage of the process, it was not determined if the RIT-D was actually applicable. Energex noted its support, both at the workshop and in its response (page 3) to the Draft Rule for this to be reflected in the Final Determination and Final Rule. The AEMC does not appear to have addressed nor clarified its intention to remove application of the RIT-T threshold from the RIT-D dispute resolution process in the Final.<br><br>Energex requests that the RIT-D dispute resolution process be limited to the RIT-D process only and suggests that the RIT-D process commences at the Screening for Non Network Options stage. |
| Should the content in the RIT-T guidelines be adopted into the RIT-D guidelines? | Energex is largely supportive of adopting the RIT-T dispute resolution guidelines. However, Energex has identified the following provisions that need to be amended/added into any adoption of the RIT-T dispute resolution guidelines to ensure they correctly reflect the RIT-D dispute resolution process:<br><br>• Section 5.2 of the RIT-T guidelines should include 'non-network providers' in the list of parties that can raise a dispute.<br>• The definition of 'interested party' under section 5.2 needs to be amended to reflect the current Rules and read as:<br>*(b) Despite the definition in (a) above, in clauses in clauses 5.16.4, 5.16.5, 5.17.4 and* |

[2] AER, June 2010, RIT-T application guidelines, Section 3.5: Methodology for calculating market benefits

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| | *5.17.5, the meaning given to it in clause 5.15.1.*<br>• The section on what can be disputed needs to be updated to reflect Clause 5.17.5(t) of the Rules.<br>• The section on the scope of AER determination should be updated to reflect clause 5.17.5(g) of the Rules.<br>• Section 5.5 'TNSP May Request AER Determination' should be removed as it is not applicable to DNSPs under the RIT-D dispute resolution process.<br>• Section 5.6 'Cost Determinations' should be removed as it does not apply to DNSPs under the Rules. |
| **7. Further issues for AER consideration** | |
| Screening for non-network options<br><br>The non-network options screening test has been designed to ensure that DNSPs prepare and publish a non-network options report in the instance a DNSP is uncertain as to whether or not a non-network option will be a potential credible option to address the identified need.<br><br>To ensure this is clear, the AEMC made a minor change to clause 5.17.4(c) such that a DNSP must determine "on reasonable grounds" that there will not be a non-network option that is a potential credible option to address an identified need. Where a DNSP does not have reasonable grounds to make such a determination, it would be required to prepare and publish a non-network options report. | A minor change was made to clause 5.17.4(c) such that a DNSP must determine "on reasonable grounds" that there will not be a non-network option that is a potential credible option to address an identified need.<br><br>Energex suggests that the AER should consider giving clarity as to what will be considered 'reasonable grounds'. Energex believes that without clarity, it would be forced to consult on all projects to manage the risk of dispute and delay (at significant cost and effort). Clarity would enable DNSPs to determine the risk they are being exposed to if a Notice is published. For example, would it cover aspects of cost, timing, technical feasibility, market potential or all of the above? |