

18 October 2013



Mr Chris Pattas
General Manager – Network Operations and Development
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email to: expenditure@aer.gov.au

Dear Mr Pattas

Response to AER Draft Regulatory Information Notice for economic benchmarking

ActewAGL Distribution (ActewAGL) welcomes the opportunity to provide this submission pursuant to section 28J of the National Electricity Law (NEL) in relation to the Draft Regulatory Information Notice (the draft RIN) issued to ActewAGL on 18 September 2013 under Division 4 of Part 3 of the NEL.

ActewAGL appreciates the considerable effort of the Australian Energy Regulator (AER) in developing its economic benchmarking framework and the RIN, and acknowledges the process of consultation undertaken on the economic benchmarking templates during recent months. However, ActewAGL continues to have significant concerns, both with the AER's approach to benchmarking and the specific requirements in the draft RIN.

ActewAGL remains concerned in relation to the broader context of benchmarking and the potential for misunderstanding and misuse of benchmarks in assessing performance and relative efficiency of service providers in the absence of direct evaluation of the circumstances and requirements facing individual networks and their stakeholders. These concerns have been expressed in ActewAGL submissions to the AER's Expenditure Forecast Assessment Guidelines consultation process and in the substantial contributions of the Energy Networks Association (ENA) on behalf of network service providers (NSPs) to that process.

An example of a highly relevant environmental factor which ActewAGL has raised with the AER in the context of the economic benchmarking templates is backyard reticulation. In the explanatory statement to the draft RIN (page 44), the AER says that it is interested in views on how to take into account factors such as legislative requirements. A variable such as the proportion of lines or poles in backyards due to legislative requirements should be considered.

ActewAGL's overarching concern with the current RIN is with regard to the excessive additional burden placed on NSPs, especially relatively small scale NSPs such as ActewAGL, by the process of assembling and verifying the requested detailed information. ActewAGL is currently preparing for submission to the AER in relation to the 2014-19 ACT electricity distribution network determination a Transitional Regulatory Proposal by 31 January 2014 and a full Regulatory Proposal by 30 May. Both of these require interpretation of and compliance with new and transitional rules, and are informed by important guidelines currently under development by the AER that will not be finalised until mid December 2013.

In addition to the RIN for economic benchmarking (due 16 February 2014), the same key ActewAGL staff involved in preparing expenditure forecasts for proposals will be required to respond to the requirements of the annual reporting RIN (due 13 December 2013), category analysis RIN (due 31 May 2014) and reset RIN (also due 31 May 2014). Each of these is associated with review of data requirements, and extensive auditing and sign off requirements. The engagement of additional resources to cope with such a peak in requirements is not a viable option given the required experience in sourcing and reconciling data, much of which does not correspond to the standard information used in running and reporting on the business. Third party auditing of non-standard information will, as well, require significant attention of key personnel to what we know from experience will be frequent and often in-depth queries by the auditor.

While these timeframes and the requirements of the immediate reporting demands are effectively set, two areas exacerbating this burden are the inconsistency of data requirements between the RINs and the inherent difficulty in estimating and reconstructing historic data back to 2003, the latter of which can be directly addressed now, at this stage of the RIN process.

The AER should acknowledge that there will be unavoidable issues with backcast data that will reduce the reliability of benchmarking conclusions, and thus the validity of findings based on them. The lower value to be accorded to such data would consequently reduce the justifiable cost of collection. This accords with the conclusion of the AEMC in its 2011 review of the requirements for introducing TFP where it found the need to first establish standard definitions and understanding of data requirements before initiating collections of a critical mass of data to be used in analysis. This approach is consistent with our understanding of the AER's information gathering powers under the NEL which does not provide for the estimation or construction of historic data, but provides for the production of data held by the NSP, or future requirements for data being subject to advance notice by the AER to keep the data in a particular form.

The AER's own reasons for seeking such an extensive dataset in the draft RIN also seem to go well beyond the information powers set out in the NEL, which allow the AER to collect information it requires to perform or exercise its functions or powers. For example in the explanatory statement to the draft RIN, the AER says:

We consider that it is appropriate to request a broad range of data for economic benchmarking, some of which not all NSPs will be able to provide. Some of the data may explain relative differences in productivity. Further much of the data will be of interest to other stakeholders undertaking their own benchmarking analysis. By requesting and publishing this data, stakeholders will be able to conduct sensitivity analysis of economic benchmarking results using the data and develop their own models. Publishing more data will give stakeholders more ability to conduct their own analysis and will ensure that a broader and longer series of data will be available for analysis.¹

ActewAGL would be concerned if intended analysis by such stakeholders was performed on the basis of estimated data which has invalidated or weakened the basis for conclusions and the current arrangements do not look to offer any safeguards against this potential outcome.

There also appears to be a presumption in the draft RIN that in all cases where information is not collected, it will be estimated. This is reflected in the proposed statutory declaration which requires the Chief Executive Officer or a director to sign a statement that "where it is not possible to provide

¹ Explanatory Statement to the draft RIN, p 16

the information required by the Notice I have provided an estimate.” There will, however, be cases where the requested information is not relevant, is otherwise unable to be estimated, or where potential techniques of estimation are considered unreliable, impractical, or inappropriate, so an estimate cannot be provided.

On slide 13 of its presentation to the 9 October 2013 workshop on the draft RIN, the AER appears to acknowledge that further guidance could be added to the draft RIN in the form of “Instructions on how to complete the template” as to when an NSP can grey out cells and what to do if an estimate cannot be provided. However, the scope for confusion is already apparent here. ActewAGL commented, for example, in its 16 August 2013 response to the officer-level email request for comments on the revised economic benchmarking templates that it does not calculate weather adjusted historic demand. In the explanatory statement to the draft RIN (page 35), the AER states that “if an NSP did not weather adjust in the past, then unadjusted maximum demand can be provided, though in the same document (page 34), the AER states “for businesses that do not adjust their historical demands, an estimate should be provided based on its weather adjusted demand forecast methodology.” ActewAGL requires confirmation that it will be acceptable to say when and why an estimate cannot be provided.

Significant levels of difficulty and questions of reliability are posed by the historical information sought on the Regulatory Asset Base (RAB). As the AER would be aware, before 2008, ActewAGL has a single class of asset forming its RAB. There is no clear way to accomplish the AER’s requirement to split the historic RAB into the asset classes nominated in the draft RIN. ActewAGL accounts for its capital expenditure according to activity drivers (for example, growth or customer initiated) rather than class of asset. ActewAGL cannot therefore use historic capital expenditure to split the assets into classes. The alternative is to manually extract information from the 2003 asset register, which includes both regulated and unregulated assets for gas and electricity networks, and sort it into RAB classes. Such an exercise was undertaken to establish ActewAGL’s 2008 tax asset base over a period of two to three months. Given the time available to complete the RIN, an extract of the asset register from a specific year could be used and applied on a pro rata basis to the subsequent years, but it would be arguable that this would not represent an appropriate method of estimation as to considerations of accuracy and representativeness of the breakdown. One specific issue that must be overcome is that ActewAGL’s asset register does not include the original date of acquisition of the individual assets before October 2000. As a result, ActewAGL would have to make assumptions based on depreciation rates of net book values to estimate the remaining lives for the specific assets. Also, the AER’s preference is for replacement cost as a reasonable proxy if disaggregation within each category of the RAB is not available. ActewAGL does not hold historical information on asset replacement cost.

ActewAGL also notes the AER’s intention to seek to seek historical data on the RAB, adjusted for changes in the approved Cost Allocation Method (CAM). While it is possible to estimate with precision the impact that the recently approved CAM would have had on operating expenditure back to 2003, historic capital expenditure can only be adjusted at the highest level of disaggregation in the accounts. Accounting for the impact of the CAM on the historic RAB at the asset class level required by the draft RIN is therefore impossible.

With respect to the next phase of work regarding data requirements for economic benchmarking, greater effort needs to be made to reduce the regulatory data collection burden through:

- improved integration and coordination of AER RINs to ensure they include as little duplication as possible,
- adopting consistent, agreed definitions for data serving similar purposes,

- removing redundant data requests from information requests, and
- applying data definitions consistent with accepted and meaningful industry use.

The proposed development, as flagged by the AER, of a uniform industry wide Regulatory Information Order (RIO) might help to resolve these issues while allowing NSPs to progressively improve data by investing in appropriate mechanisms geared to efficiently meeting the confirmed requirements.

If you require discussion of any aspect of this submission, please contact Chris Bell, Manager Regulatory Affairs on (02) 6248 3180.

Yours sincerely



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