

Mr Warwick Anderson
General Manager Network Regulation
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

9 October 2015

Dear Mr Anderson

2015 Draft Benchmarking Report

On 16 September 2015, the Australian Energy Regulator (AER) circulated for comment a draft copy of the Annual Benchmarking Report (2015 Draft Benchmarking Report), forward dated to November 2015. This is the second such annual benchmarking report under the new National Electricity Rules. The AER also provided a note from its consultants Economic Insights (EI) dated 12 August 2015 explaining the update and any changes since the annual benchmarking report was first published in November 2014 (2014 Annual Benchmarking Report), and underlying data and models.

The 2015 Draft Benchmarking Report has been circulated for comment amongst a backdrop of considerable debate, disagreement and the consequent legal proceedings related directly to the AER's approach and use of benchmarking.

ActewAGL Distribution (AAD) had previously raised a series of fundamental concerns regarding the AER's use of benchmarking during the course of the 2014-19 distribution determination process. In particular, AAD's concerns about the 2014 Draft Benchmarking Report are available on the public record in our submission to the AER dated 3 September 2014. Further, these concerns about the AER's econometric and other benchmarking analyses are covered in AAD's Revised Regulatory Proposal of 20 January 2015, and covered extensively in its merits and judicial review applications, primary and reply submissions, and oral submissions. As a result, AAD does not repeat these concerns here.

Whilst AAD always welcomes the opportunity to participate in such consultation processes and assist in meaningful debate, it notes that the timing of the 2015 Draft Benchmarking Report release date and request for comment by 9 October 2015. This coincides with appeal proceedings underway at the Australian Competition Tribunal and the subject of the draft report directly relates to some of our appeal grounds. Nothing in

this response should be taken to prejudice our submissions in the current proceedings before the Australian Competition Tribunal.

We do note though that one consequence is the insufficient time available to us properly undertake any detailed interrogation of the data and check for issues or errors. What AAD is able to garner from its review of the 2015 Draft Benchmarking Report is that:

- The AER has made no attempt to address any of the concerns and comments provided by AAD on the 2014 Annual Benchmarking Report covering issues such as data comparability, specification of the multilateral total factor productivity (MTFP), multilateral partial factor productivity (MPFP) and flaws in the partial performance indicators. As EI's memorandum of 12 August 2015 indicates, the 2015 Draft Benchmarking Report is simply the same analysis using updated information set containing an additional year (that is, the financial year 2013/14) and some minor revisions to DNSP data.
- The AER makes no attempt to provide meaningful commentary on the results and conclusions, especially for stakeholders not familiar with the complexities of benchmarking. For example the results do not contain any general limitations to the underlying data, or differences in either business practices or network differences, which may cause differences in benchmarking performance. This is despite the extensive operating environment factor adjustments the AER has made in its recent determinations. Hence, the AER does not attempt in any way to qualify that the "raw" benchmarking results may be skewed as they do not contain the required adjustments.
- The AER continues to report results from its MTFP and MPFP despite the fact that the results of these techniques cannot be tested for robustness.
- The AER preferred benchmarking approach that it has relied on to set opex allowance for AAD, the Cobb Douglas Stochastic Frontier Analysis model, plays no part in the benchmarking report. This is curious and raises questions about the validity of the continuing bifurcation of benchmarking techniques that are included in the annual benchmarking report and those used as part of the reset process.

Additionally, AAD also adopts the detailed concerns raised by NSW in its response to the 2015 Draft Benchmarking Report.

If you wish to discuss any aspect of our response, please do not hesitate to Usman Saadat, Manager Regulatory Affairs on 02 6248 3806.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'David Graham', with a stylized, flowing script.

David Graham

Director of Regulatory Affairs and Pricing