



Mr Warwick Anderson
General Manager, Network Finance and Reporting
Australian Energy Regulator
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Dear Mr Anderson

Thank you for the opportunity to comment on the Discussion Paper for the AER's Review of the Regulatory Calculation of Tax (the Review).

The Australian Government's priority is ensuring the energy system remains affordable and reliable. It is essential that we have a strong regulatory framework to ensure consumers pay a fair price for their energy. This includes rigorously testing the assumptions the regulator makes in setting the revenue network businesses can pass onto consumers.

The AER's Discussion Paper makes an initial finding that while there is a material discrepancy between the regulatory tax allowance and tax paid by network businesses, the current approach to calculating tax is appropriate. The Department disagrees with this assessment.

To the extent the model allows networks to recover company tax that has not been paid, the model is clearly enriching networks at the cost to consumers. The Department considers an approach worth testing is one where company tax is treated as a statutory obligation and networks are compensated to the extent they need to pay. In cases where networks do need to pay company tax, the regulatory framework could provide cost-pass through to cover the costs of this statutory obligation as it does with various imposts such as industry specific or state-based levies or charges.

The Department considers there is an important principle at stake. The tax in question is company income tax. It is only levied on companies – not trusts, partnerships, individuals or superannuation funds. Accordingly, where a network business is not paying company tax, it should not be entitled to such an allowance.

While the original discrepancy was first identified by the Australian Taxation Office (ATO), the Department notes that standard consultation within Government is still to occur. With respect to this, the Department recommends that the AER utilise the ATO's expertise by working closely with them in preparing its final report. The AER may also want to consider how it could better share information with the ATO, and whether this could form the basis of an alternative mechanism for compensating businesses for their relevant tax liabilities such as cost-pass through. We have discussed this approach with the ATO and they are open to working with the AER on developing an appropriate model. The Department would be happy to work with the Treasury, ATO and the AER to identify, and then work to remove, any legislative obstacles to information sharing between the two agencies.

The AER indicated in its Discussion Paper that it may postpone a final report until early 2019. If that were to occur, the AER should ensure that any modelling changes are in place before the April 2019 revenue determinations that will lock in network charges until 2024. Energy

consumers should not have to pay for a tax allowance that the AER may find to be not fit for purpose.

The Department has provided detailed comments on the Discussion Paper in the attached document.

We again appreciate the opportunity to provide comment, and would be happy to discuss our submission further. Please contact James O'Toole, Assistant Secretary, Electricity Branch on [REDACTED] if you have any questions.

Yours sincerely

[REDACTED]

Rob Heferen

Deputy Secretary

Department of the Environment and Energy

23 November 2018