

EnergyAustralia™

145 Newcastle Road
Wallsend NSW 2287
Telephone 13 1525
+61 2 4951 9555

Address all mail to
PO Box 487
Newcastle NSW 2300
Australia

9 July 2007

Mr Mike Buckley
General Manager
Network Regulation North
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Process guideline for contingent project applications

Dear Mr Buckley,

EnergyAustralia appreciates the opportunity to comment on the AER's draft process guideline for contingent project application. The guideline appears to be a statement of intent as to how the AER would assess a TNSPs contingent project. The Rules envisages a very quick 30 business day assessment process, which seems at odds with the AER's guideline, which would extend the assessment of applications with an informal pre-lodgement consultation process.

EnergyAustralia supports the pre-lodgement process, but only on the proviso that it should be used to deliver investment certainty, rather than permit the AER to conduct an intrusive data mining and information gathering exercise.

As it stands, the draft guideline appears to allow the AER to demand more information without providing any benefit to the TNSP. It would be of greater benefit if the consideration under an informal process:

- extends to the substantive issues; and
- allows for 'best information available' to be submitted without prejudice.

These two issues are discussed below, however prior to this it seems appropriate to explain our understanding of the Rule requirements in this regard.

The Rule requirements

The contingent project regime set out in the Rules is a simple two step process that commences with an application from the TNSP and requires completion in 30 business days.

Step 1/ The TNSP may submit an application¹.

¹ Clause 6A8.2(a).

Step 2/ The AER must make a determination if:

- the occurrence of a trigger event is substantiated²; and
- the threshold is met³.

In making this determination, the AER must accept the TNSPs application if:

- the threshold is met;
- the proposed capital and operating expenditure complies with the relevant capital and operating expenditure factors set out in the Rules⁴;
- the associated estimates of the incremental revenue are reasonable; and
- the dates are reasonable.

It is clear that the second of these requirements reflects the majority of the work for the TNSP and AER. Without restating the capital and operating expenditure criteria and factors here, it can be said that they focus on ensuring the TNSP has made a reasonable attempt to ensure its investment is based on realistic and efficient costs and demand forecasts.

Informal process

At this stage EnergyAustralia understands that the AER's guideline would create an informal process that only considers whether a valid application exists. Further, the guideline notes that if the TNSP does not engage in this recommended pre-lodgement consultation process, there would be a higher risk of the AER rejecting the application.

In that instance, it would be simple for a TNSP to re-lodge an application with corrections to ensure it was valid upon re-lodgement. However this is not a constructive approach and the TNSP still would face the risk of substantive decision making.

If any pre-lodgement process is employed, it would be of much greater value to the proponent if the AER's informal assessment were to include consideration of the substance of the application. That is, whether the draft application submitted during pre-lodgement would meet the requirements of clause 6A.8.2(f), and if not, what modification or additional information would be required. EnergyAustralia would assume by this stage the AER would have had its consultant review the application.

The AER would not be asked to pre-suppose what its decision would be after receiving submissions, rather it would be expected to provide a letter of comfort to the effect that the application, based in an initial view, would or would not meet the lodgement criteria in clause 6A.8.2(f).

If the application is not likely to meet the criteria, the AER could provide a statement of issues, similar to that applied by the ACCC in its informal mergers process. This approach would ensure any necessary additional information can be included in the formal application and allow a much smoother formal decision making process.

² The requirement is in clause 6A.8.2(e) and the TNSP must provide substantiation in clause 6A.8.2(b)(3)(i)

³ The requirement is in clause 6A.8.2(e) and the relevant threshold is set out in 6A.8.1(b)(2)(iii)

⁴ Clauses 6A.6.7(c)(1)-(3), 6A.6.7(e)(1)-(10), 6A.6.6(c)(1)-(3), 6A.6.6 (e)(1)-(10)

EnergyAustralia requests that the final guideline provide for a statement of issues, akin to the ACCC's statement of issues under the informal mergers process.

Timing

At EnergyAustralia, projects are not generally authorised until all external approvals have been received, including planning, regulatory and environmental approvals. Only when the project is authorised, is a regulatory test issued. EnergyAustralia sees the AER's approval as one of the suite of external approvals required for it to authorise a project.

Given that the contingent project regime is part of the ex ante incentive arrangements, it seems appropriate that the AER's decision be made before (ex ante) the business commits to the project. Without the AER's prior approval, the TNSP's decision to authorise a project would not be influenced by same ex ante incentive as the majority of other projects approved as part of its determination.

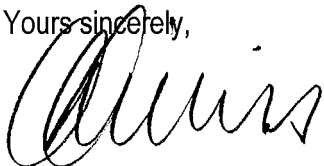
As is the case with the determination approval process, the AER must base its decision on the best cost information available to the business at the time the decision is made. At EnergyAustralia, a regulatory test would not normally be complete at the time of seeking contingent approval. The AER cannot rely on a finalised regulatory test, but instead should base its approval on the best information that can be made available to it by the business at the time. In most cases, EnergyAustralia should be able to submit an Application Notice (draft regulatory test assessment).

In relation to the other external approvals, it will depend on the specific project whether a final approval is available. The guideline should specifically recognise that some approvals might not be available at the time of application, or even when the AER has to make its final decision.

EnergyAustralia recommends that the guideline be made more flexible in its requirements for "final" information and approvals. That is, where planning approvals or a regulatory test are not available, the guideline should be sufficiently flexible to allow 'best available information'.

Please do not hesitate to call Harry Colebourn on 02 9279 4171 if you would like to discuss this submission.

Yours sincerely,



Geoff Lilliss
Executive General Manager Network