

Mr Chris Pattas
General Manager
Network Regulation South
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3000

23rd February 2009

Sent electronically to: AERInquiry@aer.gov.au.

Dear Chris,

RE: Transend's 2009-2014 Draft Revenue Determination

Hydro Tasmania would like to thank the AER for the opportunity to make this submission to the draft decision on 27 November 2008 on Transend Network's (Transend) transmission determination for the regulatory control period 1 July 2009 to 30 June 2014.

We apologise for the lateness of our reply, which is due to the absence from the office of critical personnel.

Hydro Tasmania has reviewed Transend's proposed Negotiating Framework for the regulatory period. As noted in the AER's Draft Determination, we reserved the right to comment on the negotiating framework at a later stage. Our review has identified two gaps or omissions in the proposed Negotiating Framework:

1. **Credit risk terms** – Transend's terms of credit are very restrictive, essentially accepting no counterparty credit risk. Given that this is a fundamental term for a commercial negotiation, we would expect Transend's proposed requirements to be in line with normal commercial practice and with industry practice.

2. **Allocation of risk** – we note that the AER in its paper *Proposed Negotiated Transmission Services Criteria for Transend* dated June 2008, page 5, says,

"The terms and conditions of access for a negotiated transmission service (including, in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between the TNSP and the other party, the price for the negotiated transmission service and the costs to the TNSP of providing the negotiated transmission service".

We are somewhat surprised that Transend hasn't addressed this issue explicitly in its proposed Negotiating Framework because:

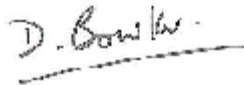
- Allocation of risk utilising terms in a contract is a fundamental element of a commercial negotiation; and
- The AER has specifically emphasised (underlined text) this issue.

In light of the negotiating position of Transend, as a monopoly service provider, we think it is important that both credit risk and allocation of risk are dealt with in the Negotiating Framework, to avoid any perception of unreasonableness during a negotiation of terms.

We are concerned that unless the AER directs otherwise, Transend may continue to apply this unreasonable approach for the whole of the 2009-2014 regulatory control period. This will potentially inhibit optimal development of the network to support increased generation and new connections in Tasmania, which will not be in the long-term interest of customers.

If you require any further information, please contact me on (03) 6230 5775.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'D. Bowker', with a horizontal line drawn underneath it.

David Bowker
Manager Regulatory Affairs
Hydro Tasmania