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**Rate of Return
Pathway to the 2022 RoRI
CP on Instrument Process**

Major Energy Users Inc (MEU) is pleased to provide its thoughts on the issues raised in the AER consultation paper relating to the Instrument process for the pathway of the 2022 rate of return instrument (RoRI).

The MEU was established by very large energy using firms to represent their interests in the energy markets. With regard to all of the energy supplies they need to continue their operations and so supply to their customers, MEU members are vitally interested in four key aspects – the cost of the energy supplies, the reliability of delivery for those supplies, the quality of the delivered supplies and the long-term security for the continuation of those supplies.

Many of the MEU members, being regionally based, are heavily dependent on local staff, suppliers of hardware and services, and have an obligation to represent the views of these local suppliers. With this in mind, the members of the MEU require their views to not only represent the views of large energy users, but also those interests of smaller power and gas users, and even at the residences used by their workforces that live in the regions where the members operate.

It is on this basis the MEU and its regional affiliates have been advocating in the interests of energy consumers for over 20 years and it has a high recognition as providing informed comment on energy issues from a consumer viewpoint with various regulators (ACCC, AEMO, AEMC, AER and regional regulators) and with governments.

The MEU generally supports the proposals incorporated in the consultation paper of the 2022 RoRI pathway in relation to establishing and operating the Expert and Independent panels to support the AER in the development of the 2022 RoRI.

Specifically, the MEU agrees with the AER that:

1. The concurrent evidence sessions should be continued and should only be advisory and not determinative.
2. Members of the Expert Panel should be directly employed by the AER and not employed by the nominating parties. The MEU saw that in the 2018 RoRI, the experts effectively supported the views of the nominating parties and so did not necessarily provide unbiased advice.
3. The introduction of the Expert Conclave has benefits and detriments. The benefit is that aspects where there is no contention will not detract from more discussion of disputed issues. The detriment is that this discussion is not held in open forum where stakeholders might learn but might also have differing views as to whether the aspects are indeed non-contentious. On balance, the MEU considers that in the interests of open and transparent analysis but also of time management, the expert conclave should be held as an additional forum, but where stakeholders can hear the discussion but cannot provide input during the conclave. This will allow stakeholders to provide informed written input on those issues of concern that might otherwise be excluded from the more focused sessions.
4. The MEU supports the Expert Sessions being more focused and potentially shorter in time, but more accessible to greater stakeholder attendance. The MEU is concerned that the time allowed for the expert sessions has been predetermined and potentially cutting short useful debate. The AER should allow for the potential that greater time might be needed for these sessions on an as needs basis.
5. While the AER has envisaged that stakeholders should be permitted to provide questions to the Expert panel via an ex-ante process, this does not allow stakeholders to seek greater clarification of issues discussed in the conclave or the sessions. The MEU suggests that the AER allow stakeholders to question aspects after the conclave and each session and for answers to be provided by the experts at the start of the next session. This might require a slightly longer time allowance for each expert session.
6. The MEU has no view on whether the expert conclave or sessions should have an external facilitator or a facilitator being an AER board member.
7. The MEU agrees with the AER that production of a report from the expert sessions is unlikely to provide either agreements or sufficient arguments to support one view or another, but if the sessions are recorded, the AER would have access to more detailed arguments in multiple directions via the recording than it might from a written report.
8. The MEU supports the AER approach to the establishment of the Independent Panel and its operation. The MEU does not support the ability of stakeholders to directly provide submissions (or even short summary submissions) to the Independent Panel – any submissions from stakeholders must be provided to

the AER before it presents its draft RoRI to the Independent Panel. It must be remembered that the Independent Panel is charged with assessing whether the AER has implemented an appropriate RoRI based on the information before it. The Independent panel must focus on this aspect, not be exposed to any lobbying by stakeholders.

The MEU has one over-riding concern. The MEU is aware that the establishment of the Expert panel is to be via a nomination process. The MEU notes that there have consistently been more nominations for experts to such panels from the supply side entities than from consumer entities. This creates the potential for the AER to establish an Expert Panel where there are more experts who were nominated by supply side entities on it than from consumer entities. While the approach implemented by the AER for all experts to be paid by the AER will tend to impose a requirement on them that the experts will provide unbiased advice, the MEU notes that not only could these experts could be retained by the different entities for later work but that the nominating entities will nominate experts that have views favouring the nominator. These issues could still lead to individual experts providing biased advice at the expert sessions.

With this in mind, the MEU suggests that the AER needs to take care in its decisions about which experts are accepted onto the Expert Panel and should ensure that there is balance in numbers of experts nominated by supply side entities (especially networks) and those nominated by consumers.

The MEU is happy to discuss the issues further with you if needed or if you feel that any expansion on the above comments is necessary. If so, please contact the undersigned at [REDACTED] or [REDACTED].

Yours faithfully

[REDACTED]
David Headberry
Public Officer