

28 August 2017

Mr Warwick Anderson  
General Manager  
Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

By email to: [rateofreturn@aer.gov.au](mailto:rateofreturn@aer.gov.au)

Dear Warwick

**Process for reviewing the rate of return guidelines  
Consultation paper**

Thank you for the opportunity for the Major Energy Users Inc (MEU), to provide input into the AER review of the rate of return guidelines through this submission to the recently released consultation paper.

The MEU considers that while the various steps proposed for the AER to review the rate of return guidelines are appropriate for the task, the MEU has concerns that the information provided in the consultation paper does not give adequate clarity about a number of the steps proposed to be taken.

**Consumer Reference Group (CRG)**

While the concept of a consumer reference group is strongly supported, there is no clarity provided as to:

- ) The planned size of the group so that it provides sufficient coverage of consumer interests but does not become unwieldy
- ) How the members will be appointed
- ) What skills its members will be required to have
- ) Bearing in mind the extensive time commitment required of members to attend workshops and information sessions, how the AER proposes their time and incidental costs will be covered

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## **Use of Consumer Challenge Panel**

The MEU supports the AER decision to establish a sub panel of the Consumer Challenge Panel (CCP) to be involved in the process and provide feedback to the AER. The MEU also notes that the AER should carefully select the members of that sub-panel to ensure that those selected have detailed knowledge of the issues involved in the rate of return, have previously provided detailed feedback to the AER on rate of return issues and have a strong exposure to consumer issues relating to the rate of return.

## **Hot-tubbing of expert advisers**

While concept of “hot-tubbing” of expert advisers is supported, there is no clarity as to how this process can be used to provide exposure to the information imparted by the expert advisers to enhance the input expected to be provided by stakeholders. It would seem that the AER intends to take the information imparted by these experts, filter it and then provide its assessment of the issues arising from the hot-tubbing in its draft decision.

Specifically, the CRG and the CCP subpanel need to be exposed to the arguments and opinions of the expert advisers in order to provide the valuable consumer input expected of them by the AER. Consumer responses to the draft decision will be enhanced by being informed by exposure to the discussions from the hot-tubbing exercise.

## **Independent panel**

The MEU supports the involvement of an Independent Panel to review the process used by the AER to develop its guideline and that the AER has appropriately assessed the material provided to the AER and the decision reached by the AER is supported by that material; the MEU considers that the independent panel review would be similar to that which might be undertaken by Judicial Review.

The MEU supports the AER view that the independent panel should not be responsible for assessing the content of the guideline, although the MEU hopes that the AER will take notice of any useful feedback the independent panel might provide on the content.

## **Long term interests of consumers**

What is absent from the consultation paper is an explanation as to how the AER intends to ensure that its guideline will deliver an outcome that is in the long term interests of consumers. While it is accepted that the concept of “long term interests of consumers” is an economic construct, what is not clear how this construct will be converted into actual applications which underpin the guideline. Specifically,

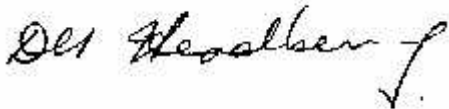
the MEU points out that energy market regulation is to be based on incentive regulation, yet in the past, the AER has not included in the rate of return guideline any incentives which will lead the regulated entities delivering the benefits of improved methods to reduce the cost of capital that is the single largest driver of the costs incurred by consumers in the use of networks.

An example of this concern is that under the current guideline, the AER sets the costs of debt based on publicly available information, yet it has been observed that regulated entities have incurred lower costs of debt than that delivered by the current guideline. Under incentive regulation, the benefit of these methods to reduce the cost of equity and debt should ultimately deliver the benefit of these methods to consumers, yet so far, this has not occurred.

The MEU therefore considers the AER needs to detail how it intends to ensure that the benefits of incentive regulation will be used to ensure that the long term interests of consumers will be delivered by the process the AER intends to follow in the development of the rate of return guideline.

Should the AER require additional explanation as to the concerns expressed herein, please contact the undersigned.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Headberry". The signature is written in a cursive style with a large, sweeping flourish at the end.

David Headberry  
Public Officer