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Mr Warwick Anderson
General Manager, Network Finance and Reporting
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Via email: warwick.anderson@aer.gov.au

Dear Mr Anderson,

Feedback on the Australian Energy Regulator's (AER's) initial report on the review of regulatory tax approach

Thank you for the opportunity to comment on the AER's initial report on how regulatory tax is determined. We support the AER's review and recognise the importance to consumers and other stakeholders of ensuring that tax allowances are fair and reasonable.

This review raises several important conceptual and factual issues that need to be understood and tested – and this should be done before any changes are made to how tax allowances are set. We support Energy Network Australia's submission on these points and hope to engage constructively with the AER and other stakeholders on these throughout the review.

The review also has the potential to negatively affect our work on the 2019-24 regulatory reset period and our response to the AER's annual regulatory information notice (RIN) applying to the 2017-18 year. Our letter focuses on these concerns. We ask that the AER consider these concerns before issuing its proposed 'tax RIN' to us.

Our background

Power and Water Corporation (Power and Water) owns and operates the smallest electricity network in the country. We are transitioning from jurisdictional regulation to the national framework, which is a significant change for our business, our people and our customers. Economic regulation has recently transitioned from the Northern Territory's (NT's) Utilities Commission to the AER, and other functions are following suit over the coming 18 months.

We are currently working with the AER on our first regulatory determination (to be) made under the National Electricity Law, and spent much of last year consulting with our customers and other stakeholders on our plans – and potential prices – for the 2019 to 2024 regulatory period. We continue to engage with AER staff on several tax-related matters as part of that work.

We expect the AER to issue its draft decision on our initial regulatory proposal in September and for us

to respond to it in October 2018. The timeframes are tight.

Our concerns

Our key concern is that the proposed 'tax RIN' raised in the initial report – and discussed at the 18 July 2018 workshop – will significantly limit our ability to engage effectively in the regulatory processes already afoot. We are a small network, with limited resources, new to the national framework, and new to the setting of tax allowances (as the UC applied a pre-tax building block framework). We consider that our customers are better served by these resources being focused on responding to the AER's annual RIN and its forthcoming draft decision, and on engaging with AER staff in their review of our initial regulatory proposal.

In short, our concerns are:

- **Timeframes are challenging.** The AER proposes issuing the final tax RIN in September and use the information collected from this to inform its October draft findings report, suggesting that we will have 4-6 weeks to respond. This is a short window. Something that was recognised by other stakeholders at the 18 July 2018 workshop, including staff from the Australian Tax Office.
- **Our resources are limited.** As well as being a short window, the timing overlaps when many of the staff that would respond to the tax RIN will also be responding to the AER's annual RIN and its draft decision on our initial regulatory proposal. A significant drain on our limited resources will compromise the quality of those responses to the detriment of us and our stakeholders, including our customers.
- **Our tax information is not very useful to the AER's review.** We do not adopt aggressive tax positions when compared to other networks. We adopt straight line depreciation for tax purposes – consistent with how tax allowances are set – unlike some other networks. We do not have stapled securities or corporate trust loans that affect taxable interest expenses.

Yet we have the somewhat unique complication that Power and Water is a single legal and tax paying entity that has multiple unrelated business units, including regulated and unregulated electricity networks, gas assets, water assets, and system control assets. Identifying the tax contribution from our regulated electricity network will involve significant allocation assumptions.

We also have some real challenges with our records – both in terms of quality and availability – and have raised this with the AER at various stages through the regulatory reset process. We raise this now not as an excuse, but as a challenge that we face when it comes to collecting the information required to respond to the proposed tax RIN and in the reliability of information collected.

- **We are already engaging with the AER on tax.** As noted, we are actively engaging with AER staff on our proposed tax allowance for the 2019-24 regulatory period. This has involved noticeable input from our team. While we appreciate this engagement, we want to avoid duplicating this

effort through the AER's tax review.

We of course recognise that the AER needs to collect tax-relevant information from the networks it regulates to complete its review. We simply ask that our concerns are considered when designing the scope of any tax RIN issued for us.

Our recommendation

Specifically, we ask that the AER adopt a limited form tax RIN for our network. There is no requirement that the same information is collected from all networks. If, for instance, the AER and other stakeholders are most interested in the tax practices that private networks adopt, then it makes little sense applying the same RIN issued for those networks to small government-owned networks like us.

A limited form tax RIN may, for instance:

- Ask for fewer years of historical data
- Not cover items that have already been discussed with AER staff through the regulatory reset process (e.g. on tax asset registers and tax depreciation)
- Focus on the practices that we adopt currently rather than what we have done in the past.

We would welcome the opportunity to discuss this recommendation further with AER staff; and will actively engage with the AER on its draft tax RIN when issued.

If you have any questions regarding our feedback in this submission, please do not hesitate to contact Jodi Triggs, Senior Executive Manager Network Regulation and Commercial at Jodi.Triggs@powerwater.com.au or on [REDACTED].

Yours sincerely

Michael Thomson
Chief Executive
26 July 2018

