

23 October 2015

Dear Moston

I refer to the final decision for the distribution determination for SA Power Networks (SAPN) due to be published by 31 October 2015.

As you know, the AER undertook a single integrated consideration to the rate of return aspects of SAPN's Preliminary Determination and each of the other businesses who were referred to in the Rate of Return Fact Sheet dated April 2015.

In the recent Australian Competition Tribunal proceedings concerning the NSW and ACT electricity distribution businesses, ACT 1 – 7 of 2015, there was some lack of clarity as to the record for the purposes of section 28ZJ(1) of the National Electricity Law. That section provides that a record is to be kept of the "decision related matter" which includes the decision and the reasons for it, submissions received by the AER, reports and materials received and considered by the AER in making the decision, and similar materials lodged with the AER before the decision is made.

The Tribunal has not yet released its findings and is unlikely to do so before the AER's final decision for SA Power Networks. The purpose of this letter is to ensure that there is clarity concerning certain return on debt and gamma materials for the purposes of section 28ZJ(1) for the SAPN final determination.

Cost of debt materials

The Australian Competition Tribunal is currently considering applications by the NSW / ACT electricity distribution businesses and Jemena Gas Networks for departures from the Rate of Return Guidelines in relation to the debt allowances. It is not currently known whether the Tribunal will consider the approach used in the AER's Final Determination, the NSW/ACT distributors' method or the JGN method to be correct.

SAPN has put forward a full suite of materials concerning the hybrid transition method which is also the method that JGN submitted. The AER has before it a suite of materials listed in Attachment A to this letter lodged by the NSW / ACT distribution businesses which supports the immediate introduction of the trailing average method without any transition.

All the material in Attachment A is relevant to the AER's determination for SAPN because it was part of the integrated determination it made at the time of the Preliminary Determination for SAPN, and is relevant at the time of the Final Determination. The AER needs to provide our business with a rate

of return allowance that best meets the allowed rate of return objective having regard to all the materials put to it during the determination process.

Gamma materials

The Tribunal also heard detailed evidence on gamma including submissions concerning the appropriateness of using certain dividend drop off studies that pre-date the Tribunal's determination in the *Energex* case. The AER itself previously rejected the usefulness of these studies but later reversed that decision and again gave them weight. In the Tribunal case, the AER appeared to raise doubt as to whether the evidence that the AER has considered several times previously concerning these studies constitutes 'decision related matter'. Of course when considering what is the most appropriate value for gamma, and whether to depart from the 2013 rate of return guideline, the details and characteristics of the suite of key dividend drop-off studies referred to in McKenzie and Partington's report of 5, October 2013¹ are centrally relevant.

The attached is a short memorandum from Professor Gray that re-states the key points of relevance that the AER needs to consider concerning those older dividend drop off studies.

Although this memorandum is being provided at a late stage in the process, we note that this material has been before the AER on multiple previous occasions and formed the key reasoning upon which the AER's draft rate of return guideline declined to give these older studies material weight.

Additionally, we provide Officer's 1990 paper which the AER appears to have asserted that it did not have before it in the Tribunal proceedings. Having regard to the nature and extent of the AER's reliance on the Officer 1994 article, when we submitted both our original and revised regulatory proposals, it was inconceivable to us that the AER would have regard to a document that constitutes one of the seven documents footnoted in the Officer 1994 article. The 1990 document is centrally relevant to the 1994 piece.

Conclusion

I would appreciate it if you could ensure that the materials appearing on Attachment A and the attached memorandum from Professor Gray are included in the section 28ZJ(1) list for SAPN's final determination.

Regards



Patrick Makinson
Company Secretary,

On behalf of Sean Kelly
General Manager Corporate Strategy

¹ M. McKenzie and G. Partington, Report to the Queensland Resources Council - Review of Aurizon Network's draft access undertaking, 5 October 2013.

