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National Electricity Market Campaign

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Submission to Australian Energy Regulator

Draft regulatory investment test for distribution and application guidelines

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Total Environment Centre's National Electricity Market Advocacy

Established in 1972 by pioneers of the Australian environmental movement, Total Environment Centre (TEC) is a veteran of more than 100 successful campaigns. For nearly 40 years, we have been working to protect this country's natural and urban environment, flagging the issues, driving debate, supporting community activism and pushing for better environmental policy and practice.

TEC has been involved in National Electricity Market (NEM) advocacy for eight years, arguing above all for greater utilisation of demand side participation — energy conservation and efficiency, demand management and decentralised generation — to meet Australia's electricity needs. By reforming the NEM we are working to contribute to climate change mitigation and improve other environmental outcomes of Australia's energy sector, while also constraining retail prices and improving the economic efficiency of the NEM — all in the long term interest of consumers, pursuant to the National Electricity Objective (NEO).

General comments

TEC has on several occasions voiced its scepticism about the potential for the RIT-D to contribute to less network gold-plating, and therefore to lower retail electricity prices.[1] We see nothing in the Draft RIT-D and application guidelines to allay our concerns, and consider that there is little to be gained by tweaking the design of an inherently seriously flawed regulatory mechanism. Our experience with the RIT-T, on which the RIT-D is based, suggests that it has been a complete failure in constraining network overspending.

To reiterate, TEC considers that the 'long term interests of consumers' entails the prioritisation of effective non-network alternatives over network augmentation wherever possible and efficient, and that network investment should be subject to public tender in which proponents of non-network alternatives, such as demand management (DM) aggregators and local energy efficiency and solar power providers, can compete on an equal footing.

We recognise that this is a deficiency in the rules and is not within the AER's purview to amend. Likewise, we regard several of the exceptions in the Rules to preparing a RIT-D – ie, for replacement assets, for 'urgent and unforeseen investments' relating to reliability, and for investments under $5 million – as ripe for exploitation by network businesses, since they could in each case be viable scenarios for non-network alternatives.

Further, Clause 5.17.4(c) gives networks an excuse to opt out of preparing non-network options reports that we consider is unwarranted, given the wide variety and scale of non-network options now available.

Finally, we consider it ridiculous that it is the proponent who gets to determine, under C.5.17.4(t), whether circumstances have changed sufficiently to require the reapplication of the RIT-D, since it is obviously in its interest not to go back and reapply the RIT-D if it can avoid this. In the case of the RIT-T, we are aware of a case in which additional spending of $20 million by a network has not been deemed as significant enough to warrant a new regulatory test. This clearly makes a mockery of the whole regulatory regime.

Proposed RIT-D application guidelines

We recognise that the above matters are prescribed by the Rules and are not amendable by the AER. Within the 'prescriptive' constraints afforded by the NER, we consider that the AER's proposed RIT-D is generally reasonable. In particular, we agree that "It is essential to set out formal guidance on screening for non-network options" (17).

However, there are several serious flaws with the proposed process that we consider will render it next to useless in delivering non-network solutions to identified needs, as follows:

[1] See, eg, TEC, Submission to the AER, RIT-D Issues Paper, February 2013.

1. There is no requirement for networks to consult with persons or companies on its demand side engagement register *before* compiling its non-network options report. Given that it is usually in a network's financial interest not to opt for non-network solutions to building new infrastructure, this introduces a bias at an early stage of the process that effectively puts other solutions in a reactive position.
2. There is no requirement for networks to either assist those on its demand side engagement register who respond to the non-network options report to prepare reasonable alternative solutions to the identified need, or to formally consider such input. From our experience with the Requests for Proposals related to RIT-Ts as well as from the application guidelines, it is very likely that providers non-network options will once again be excluded from participating in the RIT-D process by onerous, obscure and biased requirements for non-network solutions to identified needs.
3. We also do not agree that it is not necessary for the RIT-D "to include specific guidance on stakeholder consultation because we note that the NER provides detailed guidance on this issue" (16). The NER do not define non-network providers, and the definition of "interested parties" in the NER glossary requires such parties to identify themselves to AEMO. This may be reasonable in the case of established DM aggregators like EnerNOC, but local PV or energy efficient lighting installers, for instance, cannot be expected to suddenly become sufficiently familiar with the NEM to this extent as soon as a network considers a new infrastructure project.
4. Likewise there is no formal process for networks to comprehensively compile and regularly update its demand side engagement register – an omission that one network has recently attempted (to its credit) to overcome by asking TEC to effectively act as the mailbox for DSP providers in the areas likely to be affected by its proposed projects. If it does not do so, it is likely to be too late to lodge a formal objection by the time such providers are made aware of a network's Final Project Assessment Report.

In relation to point 4, we therefore consider that it would be appropriate to specify that the persons or companies that should be registered on a network's demand side register include:

- All non-network providers in the same NEM region with which the network has had dealings over the past 3 years in all regulatory processes.
- All providers of renewable energy, energy efficiency and demand management and related energy products and services listed in the local White Pages.

We also consider that networks proposing to undertake a RIT-D should be explicitly required under the RIT-D to advertise in a variety of local media in affected areas for persons or companies to be included on its demand side register.

Even these changes are minor, though, and are unlikely to allow a serious and genuine consideration of non-network options. The entire RIT-D process appears to have been designed by and for networks rather than consumers or embedded generators.

We therefore request that the whole issue of non-network options and stakeholder consultation be revised to afford providers of non-network options a realistic chance of competing on a level playing field with networks. If this does not happen, the whole RIT-D process is likely to be controlled by established market participants with a vested interest in a particular outcome. In this event, another Rule change will be required to genuinely bring non-network options into the RIT processes.

Yours sincerely,

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