



Trans-Grid – Supplementary Draft Decision

1 Introduction

The comments submitted by TXU in this paper reflect the position that there is a key requirement in the National Electricity Code that transmission should be delivered in the National Electricity Market in an efficient manner.¹ The regulatory principles applied by the ACCC, consistent with the Statement of Regulatory Principles (SRP), may have been applied by the ACCC to breach its requirement to deliver an efficient level of transmission. TXU request the ACCC carefully consider the following issues before making its final determination in this decision.

TXU's position on the ACCC's Supplementary Draft Decision (Trans-Grid Network Revenue Cap Forward capital Expenditure 2004/05- 2008/09) is it has concerns about the decision. It has concerns regarding

- The off ramp regime in this decision is more consistent with rate of return regulation.
- The capital expenditure framework applied will not encourage generator support payments.

2 The off ramp regime/combined with the excluded projects regime is more consistent with rate of return regulation.

TXU remains concerned the off ramp regime combined with the "excluded projects" provision applied to Trans-Grid appears more consistent with rate of return regulation.

Section 6.2.4 (a) of the code states

"Economic regulation is to be of the CPI-X form, or some incentive based variant to the CPI-X form which is consistent with the objectives and principles outlined in clauses 6.2.2 & 6.2.3."

The ACCC states that there are no limitations to the nature of events that could give rise to a re-opening of the cap.² However, TXU remains concerned this means

¹ Section 6.2.2 (d) of the Code states

" The transmission regulatory regime to be administered by the ACCC pursuant to the Code must seek to achieve the following outcomes "

: an environment which fosters an efficient level of investment within the transmission sector, and upstream and downstream of the transmission sector.

² NSW & ACT Transmission Network Revenue Cap TransGrid : Supplementary Draft Decision: Forward Capex Expenditure P.3

- There are no constraints on Trans-Grid re-opening the revenue cap.
- There is no description on whether the re-opening provision is symmetrical.

TXU supports the use of off-ramps that form a part of the ex-ante revenue cap subject to some important conditions:

- The event that triggered the off ramp would need to have a material impact on the need for transmission.
- The range of off-ramps should be **limited and clearly** defined.
- Any adjustments for “exogenous” capital expenditure be used sparingly.
- They are allowable under the Code.

By excluding corrections for most or all-exogenous factors, the regulatory process can be streamlined, and the regulated firm can be forced to become accustomed to the harsh realities of the marketplace. However, whilst this may be true, TXU supports including corrections for relevant exogenous factors, so that the firm does not suffer or gain because of events that are beyond its control.

The characteristics of an event that triggers adjustments to the price cap include

- The event is truly exogenous. That is, it is beyond the control of management and its financial impact is beyond the management’s control.
- The event has a pronounced magnitude, which will help to prevent excessive regulatory hearings.

Adjustments for a limited set of exogenous factors can capture some of the beneficial elements of rate of return regulatory regimes without introducing too many of its disadvantages. However, the range of possible exogenous factors should be extremely limited, to prevent excessive regulatory hearings.

TXU warns against including corrections for of a broad range of exogenous factors in the regulatory process because it might introduce some of the negative factors associated with rate of return regimes.

If the ACCC choose to implement an opened ended provision that allows Trans-Grid to re-open the revenue cap, subject to no limitations, then this might lead to

- Frequently costly and contentious regulatory hearings or re-openings to assess off ramps applications.
- Consumers, rather than the regulated firm bearing much of the market risk.
- A regime that provides limited incentive for performance in the market.

“To take account of events that could significantly alter the allowed efficient investment level, the ACCC will allow the revenue cap to be re-opened during the regulatory control period. Only TNSPs may propose that the revenue cap be re-opened. There is no limitation as to the nature of the event that could give rise to a re-opening of the cap.”

TXU submits the regulatory precedent set by the ESC in the TXU initiated access arrangement variation³ to vary its access arrangement mid review, provides guidance on whether the regime applied to Trans-Grid in this decision amounts to rate of return regulation. Whilst TXU agree that transmission is an entirely different regime to distribution and regulators are free to implement their own interpretations to key clauses in the Code, the Barwon Heads case provides some guidance on whether rate of return regulation has been applied here.

TXU initiated a variation to its access arrangement to recover a return on all “exogenously driven” capital expenditure. This would appear to be similar to the treatment of capital expenditure included & applied under an ‘off ramp’ regime/or driven by the ‘excluded projects’ provision. The ESC rejected this form of regulatory treatment on the basis that allowing a recovery for all exogenously driven capital expenditure would be more consistent with the ‘cost of service’ approach to regulation rather than the price path approach.⁴ TXU hopes the ACCC might be guided by this approach.

3 The capital expenditure framework applied will not encourage embedded generation options.

TXU remains concerned the capital expenditure framework applied discourages the use of embedded generation options in the network because of the mini-revenue cap applied for excluded projects. The ACCC has a responsibility in the Code to create an environment for these projects to be given due consideration.⁵

The problem with providing a mini revenue cap for excluded projects is that the revenue for these projects is not included in the revenue cap up-front. Trans-Grid would be unable to provide network support payments to embedded generators by deferring augmentations for an excluded project, because it did not have revenue in its tariffs for these projects up front. As such, the form of revenue cap applied by the ACCC does not encourage these embedded generation options.

³ Application for revision to Westar’s (TXU) Gas Access Arrangement – Draft Decision November 2000.

⁴ Application for revision to Westar’s (TXU) Gas Access Arrangement – Draft Decision November 2000. p. 16

“ While the proposed revisions would appear to provide greater certainty for investors it would reduce the incentives for the service providers to minimise the cost of providing distribution services. That is, the effect of the proposed revisions suggest that TXU would be guaranteed a return on any ‘exogenously driven’ investment undertaken on an ex -post adjustment. By its nature, this would be reflective of a cost of service approach to regulation, rather than a price path approach as required by the tariff order.

⁵ Section 6.2.3 (2) of the Code states

“ The regime under which the revenues of the Transmission Network Owners and/or Transmission Network Service Providers (as appropriate) are to be regulated is to be administered by the ACCC from 1 July 1999 in accordance with the following principles
: create an environment in which generation, energy storage, demand side options and network augmentation options are given due and reasonable consideration.

4 Conclusion

So in summary the two reasons TXU has concerns regarding this decision is because of :

- Concern the off ramp provision applied in this decision is consistent with rate of return regulation.
- The capital expenditure framework applied will not encourage embedded generation options.

TXU hopes the ACCC will provide due consideration to these issues before they make this decision.

Regards

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