

28 August 2017

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

Lodged via email: rateofreturn@aer.gov.au

Dear Mr Anderson,

Consultation paper: Process for reviewing the rate of return guidelines

TransGrid welcomes the opportunity to provide input to the AER in relation to the proposed process for the review of the rate of return guidelines. The allowed rate of return is central to the determination of regulated revenue, and these guidelines will increase in importance given the COAG Energy Council's commitment to make their use binding on the AER and regulated businesses.

While TransGrid supports many aspects of the AER's proposed process, we are concerned about a number of elements, in particular:

- > the criteria for selecting consumer representatives in the consumer reference group;
- > ensuring the consumer workshops provide a balanced view of rate of return issues;
- > the process surrounding the 'hot tub' sessions, including how the experts participating in the 'hot tub' are selected; the way in which these sessions are run and their transparency; and the reporting requirements following the hot tub sessions;
- > the process for selecting the independent review panel; and the scope and transparency of their analysis;
- > the limited opportunity for stakeholders to provide input to the review, apart from written submissions.

We provide comments below on each of the steps in the proposed review process, together with our recommendations to further articulate and improve the process.

Consumer reference group

TransGrid supports the formation of a consumer reference group for the review. We note that the composition of this group will be important in determining whether it adequately reflects consumer interests, and is able to make a productive contribution to the review process. Clear criteria are required to manage who is included in the group.

TransGrid seeks clarification of the proposed criteria for selecting a representative consumer reference group.

Consumer challenge subpanel

TransGrid supports the formation of the consumer challenge subpanel.

Targeted workshops and information sessions for consumers

TransGrid supports providing workshops and information sessions for consumers, given the technical nature of rate of return discussions. However, we note that it is important these sessions offer a neutral perspective on the issues involved in developing an allowed rate of return.

TransGrid seeks clarification regarding the AER's proposed approach to ensuring that the targeted workshops and information sessions provide an unbiased perspective on the various rate of return issues.

Issues paper

TransGrid supports the release of an issues paper in October 2017, for consultation with stakeholders. The issues paper will be of most value to stakeholders if it outlines the AER's preliminary views or perspectives, where these have been formed.

TransGrid recommends that the Issues paper include any preliminary views or perspectives held by the AER on the various issues raised.

'Hot-tubbing' of expert advisers

While TransGrid supports the concept of 'hot-tub' sessions with expert advisers, more thought needs to be given to the purpose, makeup and conduct of these sessions to ensure they are a useful tool in the review process.

Our understanding of the hot-tub process in the context of litigation is that experts are appointed by different parties to a hearing or dispute, and use this process to draw out the matters on which they agree, and those on which they are not in agreement. They may produce a joint report outlining the areas of agreement and dispute.

The process serves the following purposes:

- > it draws out the issues from the perspective of different stakeholders;
- > it clarifies which issues are in dispute and which matters are not in dispute;
- > it allows the court to focus on the issues in dispute, and hopefully reduces overall court time.

If the 'hot tub' process proposed by the AER aims to achieve a similar purpose, then several issues need to be resolved:

- > Who appoints the experts to the hot tub, and how do we ensure they reflect the views of different stakeholders? TransGrid believes the integrity of the process requires experts to be chosen by agreement with stakeholders.
- > Similarly, who decides which experts are represented for which issues? Again, TransGrid regards the input of the industry as essential to ensure the process achieves the objective of highlighting the perspectives of different stakeholders.
- > How is the process made transparent? Will hot tub sessions be public, or the record of meetings be public?
- > Which parties can ask the experts questions (the consultation paper suggests the AER board and 'other parties')?
- > What is the intended output from the hot tub? Is it a report outlining areas of agreement and disagreement, with supporting information?

TransGrid recommends the AER flesh out the hot tub process in greater detail to ensure it meets its objectives, and that

- > *the AER seek agreement of both industry and consumer representatives in selecting experts to participate in the hot tub*
- > *the AER allow the industry and other stakeholders to ask questions of the experts*
- > *the experts be required to produce a public report which highlights areas of agreement and those in dispute, with supporting documentation.*

Independent panel review

TransGrid supports an independent panel review of the AER's draft guidelines, but we are concerned that the role of the panel review could be unduly constrained. It is important the panel review extends further than a simple review of process. It should extend to an assessment of whether the AER's draft guidelines reflect decisions that are well thought out, are justified by the evidence and can be defended.

The legitimacy of the panel review will depend on the makeup of the panel, and the transparency of their conclusions. TransGrid notes the consultation paper does not clarify what will happen if the panel review highlights deficiencies in the AER's process.

TransGrid recommends that:

- > *the AER seek the agreement of industry representatives on the membership of the review panel, to ensure the process has the confidence of stakeholders;*
- > *the panel review extends beyond the process followed by the AER, to an assessment of whether the AER's draft guidelines can be justified and defended;*
- > *the panel review be required to publish their findings, with supporting evidence of the merit of their decision and evidence of best practice;*
- > *the AER be required to review and remedy any deficiencies highlighted by the panel review.*

Additional step – workshops with stakeholders

TransGrid is concerned that, apart from written submissions, the proposed review process does not allow for consultation with stakeholders. To provide for further consultation we suggest an additional step in the review process, where the AER undertakes stakeholder workshops that allow the AER to explain and discuss their preliminary views; and allow stakeholders to ask questions and provide input and feedback.

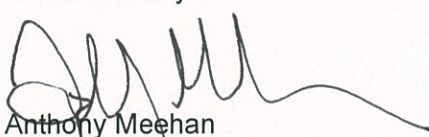
The timing of these workshops needs to be considered – our initial view is that they could be held either:

- > in between the hot tub sessions and the release of the draft guidelines, or
- > following the release of the draft guidelines.

TransGrid recommends that the AER introduce an additional step into the review process by undertaking workshops for the AER to consult with stakeholders on their preliminary views and draft guidelines.

TransGrid appreciates the opportunity to comment on the process for reviewing the rate of return guidelines and we are keen to engage further with the AER. If you would like to discuss this submission, please contact Stuart McGrow on 02 9284 3615 in the first instance. We look forward to engaging further with the AER and other stakeholders on this important process.

Yours faithfully


 Anthony Meehan
 Executive Manager, Regulation

