

2. NERA/ACG: A National Framework for Network Development and Planning Arrangements

Ergon Energy supports a national framework for network development and planning arrangements. Ergon Energy submits that the national framework should:

- not adopt the institutional arrangements that apply for transmission given the different and more localised function of distribution networks;
- incorporate obligations on DNSPs to undertake and publish annual planning reports which include only that information which can be reasonably provided and is of real and measurable benefit to the market and alternative proponents;
- ensure the costs (to DNSPs and ultimately customers) of planning and development activities do not outweigh the benefits;
- include a cost-benefit test of network and non-network options which is tailored to distribution investment considerations (as opposed to adopting, without a detailed consideration, the Regulatory Test, as amended by reference to the transmission network environment); and
- incorporate a dispute resolution process which involves 'affected parties' only, is limited to those matters directly relevant to the conduct of the cost-benefit analysis and allows for timely and cost-effective resolution of disputes.

Compliance Related Reporting

Recommendation 1:- The Rules should required DNSPs to undertake an annual planning process and publish an annual planning report that sets out the outcomes of that planning process. The annual planning report should include:

- ***a 5-year forecast of potential constraints, together with preliminary estimates of the costs of network solutions;***
- ***a forecast of areas of substantially under-utilised existing transfer capability;***
- ***a forecast of average and marginal distribution loss factors for different points in the network over the planning horizon; and***
- ***a description of the DNSP's compliance with their planning-related obligations, including:***
 - ***a summary of case-by-case applications of the regulatory test completed in the previous year, and on the status of the relevant projects (and the status of any projects from previous years); and***
 - ***the results of applying the regulatory test to projects below the threshold for a case-by-case process but that meet the threshold for transparent reporting and the status of the relevant projects (and the status of any projects from previous years).***

The annual planning reports (and any other planning-related information) should be made public and available from a single point (such as the NEMMCO website).

Ergon Energy supports in principle NERA/Allen's recommendation that DNSPs undertake an annual planning process and publish a report in a centralised location. Annual planning reports should, however, be limited to the sub-transmission level and above to ensure specific projects can be detailed rather than the high volume of smaller projects that occur at distribution voltages and below.

In this context, Ergon Energy notes the differences between transmission and distribution planning, in particular, the capacity to forecast future constraints and network augmentations and notes NERA/Allen's comments that:

...the sensitivity of distribution to the decisions of small groups of customers means that it is more difficult to forecast future specific investments – or future constraints – than it is for transmission¹.

Ergon Energy submits that the content of DNSPs' annual planning reports should:

- contain information that can be provided with reasonable certainty and accuracy;
- provide meaningful data to the audience, including proponents of non-network solutions, and is not likely to be misinterpreted or misleading;
- not expose DNSPs to liability from persons seeking to rely on the information; and
- balance the cost (and resource) burden on DNSPs to compile and the likely benefit to the market from publishing the report.

Given this context and criteria Ergon Energy:

- Supports:
 - a 5 year planning horizon. Ergon Energy considers that this provides the right balance between providing the market with information about emerging constraints and providing a realistic forecast of network growth;
 - a 5 year forecast of potential constraints, preliminary estimates of the costs of network solutions and forecast of spare capacity at the zone substation level;
 - a description of major existing and planned reliability improvement programs, including a description of major capital and operating and maintenance expenditure initiatives;
 - a statement of planning policy and qualitative assessment of compliance with policy including a high level summary including the number of cost-benefits analysis performed, and resulting number of network solutions and non-network solutions undertaken; and
 - publishing the reports in a central location, such as the NEMMCO website, to facilitate access by prospective proponents of non-network solutions.
- Does not support:
 - a forecast of distribution loss factors (DLFs) for different points in the network over the planning horizon. Provision of a forecast of DLFs over the planning horizon would result in an enormous burden on DNSPs for a very marginal benefit. Ergon Energy considers that the requirements in relation to publishing DLFs should not exceed those

¹ Allen Consulting Group and NERA Economic Consulting, *A national framework for network development and planning arrangements*, August 2007, p 8.

- currently contained in the Rules² which requires a forecast of DLFs for one year;
- a forecast of areas of substantially under-utilised existing transfer capability. There are a number of factors that determine location for Distributed Generators (DGs), (eg fuel availability and cost, suitable site, potential to receive planning and development consents, environmental approvals, connection and capacity cost), therefore publishing under-utilised transfer capability is unlikely to offer any material benefit to DG proponents, rather it will impose a significant cost on DNSPs. This information is more appropriately and cost-effectively provided as part of the connection process; and
 - a summary of case-by-case applications of the Regulatory Test completed in the previous year and the results of applying a cost-benefit analysis to projects below the threshold for a case-by-case process but that meet the threshold for transparent reporting and the status of the relevant projects (and the status of any projects from previous years). Ergon Energy considers that this obligation provides a disproportionate cost on the business given the number of standard distribution projects that will fall into this category and does not provide any clear benefit to proponents of non-network solutions. Ergon Energy considers that information on cost-benefit analysis undertaken is more appropriately provided to the economic regulator for the purpose of the regulator performing its functions under the National Electricity Law and Rules. Please refer to Ergon Energy's comments on the appropriate thresholds for reporting recommended by NERA under recommendations 3 and 4 (later in this submission).

In summary, Ergon Energy considers that the NERA/Allen proposed information disclosure and planning obligations are overly prescriptive and would be very costly to deliver. It is not clear from the paper, that any assessment of the costs and benefits of providing the information has been undertaken. Such analysis is necessary before imposing significant costs on the industry, and ultimately the customers. Experience in other jurisdictions suggests that widespread provision of detailed information does little to improve prospects of non-network projects being successfully delivered.

Recommendation 1

Ergon Energy agrees with the recommendation that DNSPs undertake an annual planning process and publish a report in a central location that includes a:

- 5 year planning horizon;
- 5 year forecast of potential constraints, preliminary estimates of the costs of network solutions and forecast of spare capacity at the zone substation level;
- description of major existing and planned reliability improvement programs; and
- statement of planning policy and qualitative assessment of compliance with policy including a high level summary including the number of cost-benefits analysis performed, and resulting number of network solutions and non-network solutions undertaken.

² Clause 3.6.3.

Ergon Energy disagrees with the recommendation that the annual planning report includes a:

- forecast of distribution loss factors (DLFs) for different points in the network over the planning horizon;
- forecast of areas of substantially under-utilised existing transfer capability; and
- summary of case-by-case applications of the Regulatory Test completed in the previous year and the results of applying a cost-benefit analysis to projects below the threshold for a case-by-case process but that meet the threshold for transparent reporting and the status of the relevant projects.

Recommendation 2:- The AER should be required to produce a statement of specific requirements that is given effect by the Rules that sets out the standard format and required contents of the annual planning report.

The Rules should set out the matters the AER's statement of specific requirements is permitted to address, which should include:

- ***requiring an accessible summary of where and when constraints are expected to emerge over the planning horizon and of the value of deferring the associated network augmentations (eg in \$/kVA per annum terms);***
- ***requiring an accessible summary of the extent of surplus capacity at different points in the network;***
- ***requiring an accessible summary of the magnitude of current and forecast average and marginal distribution loss factors at different points in the network; and***
- ***requiring a standard format for reporting on applications of the regulatory test.***

Ergon Energy agrees that the AER should be required to produce a statement of specific requirements setting out the standard format and content of the annual planning report, but notes that further consultation on the content will be required. Ergon Energy also agrees that the Rules should set out the matters the AER is permitted to address.

As noted above Ergon Energy does not support the inclusion in the Rules or the statement of specific requirements any of the following information:

- the value of deferring network augmentations over the planning horizon. It is not possible to calculate the deferral costs of all projects over the planning horizon as specific solutions may not have been costed at that time. Further, publishing the value of deferring forecast network augments is unlikely to incentivise additional DG or demand management (DM). The value of any deferral from DG or DM is relative to the capacity, duration, firmness and cost of the alternative;
- providing the extent of surplus capacity at different points in the network; and
- calculating the DLFs over the planning horizon. This would place a substantial cost and resource burden on DNSPs with questionable benefits. Ergon Energy considers that a one year forecast is appropriate.

Recommendation 2

Ergon Energy agrees with the recommendation that the AER produce a statement of specific requirements setting out the standard format and content of the annual planning report.

Ergon Energy does not agree with requirements for DNSPs to publish information about the value of deferring network augmentations, extent of surplus capacity at different points in the network, and calculating DLFs over the planning horizon.

Threshold for the case-by-case assessment and reporting

Recommendation 3:- For any project to alleviate a network constraint for which the network solution would require an estimated capitalised expenditure of \$2m or more, DNSPs should be required to perform an economic cost-benefit assessment of that project (see recommendation 6).

As part of this assessment, the DNSP should be required to consult publicly and be required to issue an RFP from potential providers of non-network solutions to the network constraint.

The DNSP should be required to report publicly the results of its assessment immediately after its assessment has been completed, and also to summarise the outcomes of the assessment in its annual planning report (see Recommendation 1).

Ergon Energy disagrees with this recommendation on the grounds it will impose a significant cost on DNSPs with no measurable benefit.

The NERA/Allen paper acknowledges that any planning and evaluation framework should only impose,

...transactions costs on DNSPs that are commensurate with the scale of the projects being evaluated³.

The National Electricity Rules currently provide for a threshold of \$10million for public consultation on options to address network constraints⁴. The consultation paper has not demonstrated that this threshold has acted to limit the uptake of non-network solutions nor has it provided any compelling reasons or evidence to show that a lower threshold is warranted.

In New South Wales and South Australia, where the threshold for public consultation has been lowered, Ergon Energy understands that this has not resulted in any measurable increase in the uptake of non-network solutions but has imposed a significant cost on the industry. The NERA/Allen paper itself states:

we note at the outset that the direct evidence on the success of the jurisdictional arrangements to date is limited. While ESCOSA has placed requirements on ETSA Utilities to seek out non-network solutions for a number of years – and has accepted that ETSA Utilities has complied with

³ Allen Consulting Group and NERA Economic Consulting, *A national framework for network development and planning arrangements*, August 2007, p 10.

⁴ National Electricity Rules, clause 5.6.2(f).

these requirements – a DG or DSR option has not as yet been selected in preference to a network solution⁵.

Ergon Energy draws attention to the fact that the thresholds in the Rules have not been escalated since the inception of the Regulatory Test. This is despite clear recognition by all parties, including the regulators, that DNSPs (and TNSPs) costs have escalated over time and have provided commensurate revenue uplifts.

In 2006-07 Ergon Energy undertook approximately 47 projects with an estimated capitalised expenditure of \$2 million or more. Ergon Energy submits that the additional burden of performing an economic cost-benefit analysis with a public consultation process would be excessive.

In the absence of any evidence, the NERA/Allen paper supports imposing more onerous obligations on the basis that '*...if experience later demonstrates this belief to be in error, then the Rules (and AER statements of specific requirements issues there under) can be modified or removed in an expeditious manner from that time onwards⁶.*

Ergon Energy does not consider this to be a solid basis on which to impose considerable costs on distributors and ultimately on end-use customers. Furthermore, changing the Rules would need to occur through the Rule change process, which in itself is a legally intensive and lengthy exercise.

Recommendation 3

Ergon Energy considers that it is appropriate to fix a threshold above which public consultation of a cost-benefit analysis is appropriate. It seems that there may need to be at least 3, and possibly 4, categories of projects:

Level 1 - the level below which cost/analysis is not required.

Level 2 - a level at which cost-benefit analysis is done, and information is provided to the AER (if it is necessary to do so for the regulator to exercise its powers under the Rules).

Level 3 – a level at which cost-benefit analysis is done, and expressions of interest and RFPs are sought.

Level 4 – a level at which cost-benefit analysis is done, and full public consultation is undertaken.

However we recommend that thresholds and obligations only be fixed after, and as part of, a holistic review and consultation about an appropriate 'test' for DNSPs and that the AEMC is the more appropriate party to conduct this review (because it is currently doing a review and amendment to the Regulatory Test for TNSPs, and is able to leverage off this work and utilise a full consultation process).

Further, Ergon Energy recommends that any dollar figures considered in determining thresholds (categories of Projects) should be indexed annually to accurately reflect changes associated in the costs of the construction of the network assets.

⁵ Allen Consulting Group and NERA Economic Consulting, *A national framework for network development and planning arrangements*, August 2007, p 20.

⁶ Allen Consulting Group and NERA Economic Consulting, *A National Framework for Network Development and Planning Arrangements*, August 2007, p 20.

Ergon Energy considers it inappropriate to change the existing Regulatory Test analysis and consultation thresholds downwards as part of this package of legislative change.

Recommendation 4:- For any network constraints for which the network solution would require an estimated capitalised expenditure of \$0.5-2m, DNSPs should be required to undertake an economic cost-benefit assessment of the project and publish the results in the annual planning report, without being required to issue an RFP or consult on the options.

We observe that for network constraints for which the network solution would required an estimated capitalised expenditure of less than \$0.5m, there would be no formal ex-post reporting requirement: DNSPs would not be required to undertake an economic cost-benefit assessment of the project, to issue an RFP or to consult on the options. The ex-ante requirement to identify emerging constraints in the annual planning report would, however, apply to projects of this magnitude.

The thresholds recommended by NERA/Allen for undertaking the Regulatory Test and publishing the results in the annual planning report will impose a significant cost and resource burden on DNSPs and will adversely impact the time taken to complete projects given the volume of projects undertaken at this level.

In 2006-07, Ergon Energy had approximately 74 projects with a capital expenditure of between \$500,000 and \$2 million, 57 of which were on its grid-connected network.

The scale of projects captured by this threshold is very small, for example, \$500,000 represents one kilometre of 66kV line. It should be recognised, that at this level the vast majority of projects are highly specific to the affected area, making non-network solutions unsuitable.

That said, Ergon Energy accepts the need for transparency in its planning and network expansion arrangements and the ability for other parties to offer non-network solutions where these are feasible. Ergon Energy believes these objectives can be achieved by:

- for projects with an estimated capital expenditure at (our suggested) Level 3:
 - identify projects where non-network alternatives may be feasible in the Annual Planning Report;
 - invite expressions of interest from interested parties in providing non-network solutions in respect of these projects;
 - issue a RFP in response to any expression of interest;
 - provide details of any cost-benefit analysis undertaken to the regulator upon request (if it is necessary to do so for the regulator to exercise its powers under the Rules); and
 - provide a high level summary of the number of cost-benefits analysis performed, and resulting number of network solutions and non-network solutions undertaken in the Annual Planning Report.

- for projects with an estimated capital expenditure at (our suggested) Level 2:
 - undertake an economic cost-benefit assessment of projects; and

- provide details of any cost-benefit assessment to the regulator upon request (if it is necessary to do so for the regulator to exercise its powers under the Rules).

Recommendation 4

Ergon Energy recommends:

- that the NERA/Allen's recommended threshold (\$0.5-\$2M) for conducting a cost-benefit analysis should be determined as part of a holistic review and consultation about an appropriate 'test' for DNSPs and that the AEMC is the more appropriate party to conduct this review (because it is currently doing a review and amendment to the Regulatory Test for TNSPs, and is able to leverage off this work and utilise a full consultation process);
- for (our suggested) Level 3 projects, only a high level summary of cost-benefit analysis should be provided in the Annual Planning Report (ie including the number of cost-benefits analysis performed, and resulting number of network solutions and non-network solutions) and further information to be provided to the regulator on request (if it is necessary to do so for the regulator to exercise its powers under the Rules); and
- that any dollar figures considered in determining thresholds (categories of Projects) should be indexed annually to accurately reflect changes associated in the costs of the construction of the network assets.

Design of the Request for Proposal Process

Recommendation 5:- The Rules should require the AER to issue a statement of specific requirements that sets out the contents of a Request for Proposals for non-network solutions to address an emerging network constraint and that sets out the process to be followed in issuing such requests.

The Rules should require the AER statement to require the RFP to include, at a minimum:

- ***the technical requirements that the non-network solution would need to meet;***
- ***the estimated range of costs for network solutions and an indication of the resulting annual cost that a non-network solution would need to better in order to be selected; and***
- ***an indication of whether the DNSP considers non-network alternatives to be a feasible solution for the project.***

The Rules should require the AER statement to require the RFP process at a minimum to:

- ***provide sufficient time for proponents of non-network solutions to prepare their cases while allowing the DNSP, in the absence of a committed non-network project, to implement a network solution after a cut-off date; and***
- ***ensure that the RFP process is be capable of being brought to closure, with the non-network solution either committed (and bound) to deliver in a reasonable period of time, or the DNSP free to select an alternative option.***

The Rules should require all RFPs to be published in the same central location as the annual planning reports.

Ergon Energy agrees with the recommendation, in part, and only as it relates to projects that require full public consultation (i.e. projects we refer to above as Level 4 projects). It is Ergon Energy's view that the AER should be issuing "Guidelines" (rather than a 'statement') about the application of whatever is ultimately decided to be the appropriate cost-benefit analysis (i.e. the 'test') and the associated consultation.

We do not agree that the AER and/or proponents of non-network solutions should determine any timeframes. It is essential that all timeframes for any RFP are determined by the DNSP as the licensed entity responsible for the reliability and security of the system. Further, the Statement should not require a DNSP to provide an estimate of the range of costs associated in augmenting the network as this would be very time intensive and could delay a project's start date and thereby exacerbate the effect of the identified network constraint.

Ergon Energy considers that the Rules and AER Guidelines would only be able to set high level criteria to enable enough flexibility to cover the wide range of circumstances faced by a DNSP in issuing a RFP. These circumstances include project specifications, availability of particular resources required to undertake the works, weather conditions, geographic locations and accessibility issues affecting different parts of the network (particularly in Ergon Energy's geographically diverse area).

Recommendation 5

Ergon Energy recommends that the Rules require the AER to issue Guidelines that set only high level criteria for the content of RFPs for projects over the Level 4 threshold.

However before any such Guidelines should/could be prepared, there should firstly be a holistic review of an appropriate 'test' for DNSPs – refer above to our response to Recommendation 3.

Form of cost-benefit test for distribution augmentations

Recommendation 6:- DNSPs should be required to apply the standard regulatory test (rule 5.6.5A) when undertaking a cost-benefit assessment of alternative projects (requiring amendment to clause 5.6.2(g)) so long as it continues to provide the flexibility for the test to be applied in a manner that is proportionate to the size and scale of the project.

In May 2005, the MCE engaged NERA and Gilbert + Tobin (G&T) to prepare a document entitled “Public Consultation on a National Framework for Energy Distribution and Retail Regulation”⁷. This document stated that:

*The formal application of the regulatory test for electricity distributors is an onerous requirement, given the relative size of the majority of distribution investments. Allowing the AER to take into account the extent to which the distributor has considered alternatives to network augmentation as part of the AER’s assessment of the prudence of the investment, represents a more appropriate means of ensuring that non-network alternatives are considered where relevant.*⁸

The MCE (NERA and G&T) public consultation document also stated that the then provisions of the National Electricity Code relating to:

- the form of regulation (i.e. clauses 6.10.3 and 6.10.5) and the Regulatory Test (i.e. clause 5.6.2) “*will be replaced with the new proposed Rules relating to the form of regulation*”⁹; and
- the distribution network expansion rules will be revised and “*will replace the regulatory test for distributors*”¹⁰.

While the public consultation document did “not represent a settled view of SCO or the MCE”, it is clear that it was intended to inform the early development of the framework for the new Chapter 6 of the Rules. The result of its application would be the removal of the requirement for DNSPs to comply with the requirements of the Regulatory Test under Chapter 5 of the Rules. This would result in the regulatory test only applying to TNSPs in the future.

In October 2005, the MCE made a Rule change application to the AEMC to implement new Regulatory Test Principles. Following public consultation, the AEMC issued a Final Determination in November 2006¹¹, which was reflected into a new Clause 5.6.5A of the Rules. This determination imposed obligations on the AER to develop a new Regulatory Test by 31 December 2007.

The AEMC did not accept the arguments put forward in the consultation to abolish the Regulatory Test for DNSPs on the basis that “*the MCE has not finalised its review of distribution and retail regulation*” and any action by the AEMC “*would duplicate other workstreams that the MCE is currently progressing*”. The AEMC stated that “*The Commission notes that the most appropriate process would be for the MCE to finalise its views on distribution and retail regulation, at which point it would be appropriate to amend the relevant elements of clause 5.6.5A to take account of the MCE’s decisions*”.¹²

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<http://www.aemc.gov.au/pdfs/reviews/Reform%20of%20the%20Regulatory%20Test%20Principles/aemcdocs/008Final%20Rule%20Determination.pdf>

⁸ Refer page 23

⁹ Refer pages 23 and 24

¹⁰ Refer pages 41 and 42

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<http://www.aemc.gov.au/pdfs/reviews/Reform%20of%20the%20Regulatory%20Test%20Principles/aemcdocs/008Final%20Rule%20Determination.pdf>

¹² Refer page 90

It is therefore clear that the AEMC understood that the MCE intended addressing the future application of the Regulatory Test for DNSPs in the context of the development of the revised Chapter 6. Once this work has been completed, it was envisaged that consequent changes could be made to Chapter 5 of the Rules so that the Regulatory Test would in the future only apply to TNSPs and not to DNSPs.

On 10 February 2006, the Energy Reform Implementation Group (ERIG) was established by the Council of Australian Governments (COAG) “to review certain elements of the operation of Australia’s energy sector and to suggest further reforms, where there is a case for them supporting more efficient energy markets”. ERIG issued its final report to COAG entitled “Energy Reform – The Way Forward for Australia” in January 2007.

Amongst other things, ERIG’s report found that:

ERIG considers that the original role of the Regulatory Test is inconsistent with the emerging regulatory regime and both its form and function needs to be changed as a result.

It went on to find that:

ERIG considers that the current form of the Regulatory Test is inappropriate as:

- *a project by project assessment cannot be expected to deliver efficient, long term development of the national network; and*
- *a two limb approach attempts to artificially identify and justify an individual project as either providing reliability or market benefits where in reality any network augmentation is part of a total network which delivers both (i.e. reliable and efficient supply).*

ERIG recommended in its report that:

....the Regulatory Test should be replaced with a two step process to guide efficient transmission investment as follows:

- *a National Transmission Network Development Plan should be developed which aims to deliver an integrated, national plan for the longer term efficient development of the transmission network which is consistent with the efficient development of the overall power system, and;*
- *the Plan would be designed to inform the setting of the revenue allowance provided for TNSPs for a regulatory period. Within that period, each project would be subject to a Project Assessment and Consultation process prior to being constructed.*¹³

In its discussion of the regulatory test ERIG focused exclusively on its application to TNSPs and did not refer at all to the Regulatory Test’s application to DNSPs. Indeed, the recommendations that it made do not appear to contemplate that amending the Regulatory Test in Chapter 5 of the Rules would have any implications for DNSPs.

¹³ http://www.erig.gov.au/assets/documents/erig/ERIG_main_report20070413114259.pdf

COAG considered ERIG's recommendations at its meeting on 13 April 2007. Its Communiqué stated that:

*COAG has also agreed to a revised network planning and consultation process, replacing the current 'Regulatory Test'. The AEMC will be tasked with advising on amalgamating the Regulatory Test criteria of reliability and market benefits and broadening the latter's definition to include national market benefits. This will allow proposed transmission projects to be assessed against meeting both local reliability standards and their ability to maximise benefits to the national market. This is intended to recognise the broader national benefits which may be achievable from investment opportunities whilst encouraging and ensuring those justified solely on reliability grounds are delivered in an efficient and timely manner.*¹⁴

On the basis of COAG's decision, the MCE wrote to the AEMC on 13 July 2007 requesting that it undertake a review of the National Transmission Planning Arrangements. This included a request to develop a revised network planning and consultation process, which would replace the current Regulatory Test. Again, this request only referred to the transmission network planning and did not reference distribution networks in any way.¹⁵

The AEMC issued a Scoping Paper in August 2007 that, amongst other things, sought interested parties' comments on alternative approaches to amalgamating the reliability and market benefits criteria under the regulatory test and broadening the definition of market benefits to include national benefits. This Scoping Paper also referred only to the Regulatory Test as it applies to TNSPs and made no reference to DNSPs. Submissions on this Scoping Paper closed on 7 September 2007 and the AEMC is required to provide its final report on National Transmission Planning Arrangements to the MCE by no later than 30 June 2008.¹⁶

The costs of DNSPs applying the Regulatory Test have been previously debated. NERA and G&T in their May 2005 Public Consultation Report stated that the formal application of the Regulatory Test for electricity distributors is an onerous requirement, given the relative size of the majority of distribution investments.

Ergon Energy is also of the view that the current form of the Regulatory Test is not scaleable and its application can not easily or meaningfully be made 'proportionate' to the scale of project involved.

The current NERA/Allen paper does not take into account these previous positions and makes an assumption that the Regulatory Test, which has undergone significant recent consultation through the ERIG process in respect to its application to the transmission sector, can be directly carried over to distribution.

¹⁴ http://www.coag.gov.au/meetings/130407/docs/coag_nra_competition_reforms.pdf

¹⁵ <http://www.coag.gov.au/meetings/130407/index.htm>

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<http://www.aemc.gov.au/pdfs/reviews/National%20Transmission%20Planner/aemcdocs/000National%20Transmission%20Planning%20Arrangements%20Scoping%20Paper.pdf>

Ergon Energy submits that the NERA/Allen assumption is not valid, particularly in light of the fact that the final form of the Regulatory Test is yet to be determined (after the AEMC completes its work), and the appropriateness of its application to the distribution sector can therefore not be assumed.

Given the level of analysis in the current NERA/Allen paper, Ergon Energy would be concerned if this was deemed to constitute a review of the application of the Regulatory Test in respect of distribution.

As foreshadowed by the AEMC in November 2006, Ergon Energy strongly supports a separate consultation process on the appropriate economic cost-benefit analysis test to apply to the distribution sector. Such consultation should be undertaken with reference to the current consultation being undertaken by the AEMC in relation to the Regulatory Test in respect of its application to the transmission sector.

Recommendation 6

Ergon Energy disagrees with this recommendation. Ergon Energy considers that the appropriate cost-benefit analysis test to apply to the distribution environment is a matter that requires specific detailed analysis and consultation by the AEMC.

It is Ergon Energy's view that:

- there should be a holistic review of the Regulatory Test from the perspective of distribution;
- MCE SCO should clearly articulate the party and process for undertaking the review – and we recommend that it is the AEMC because it can leverage on its work (currently underway) for determining the Regulatory Test for TNSPs, and it is able to utilise the full consultation process;
- for distribution, the existing Regulatory Test should be replaced with a new distribution-specific cost-benefit test that is commensurate with distribution projects and the distribution regulatory regime; and
- as part of the work to establish a distribution cost-benefit test, appropriate thresholds and obligations with regard to analysis and consultation for each threshold should be determined and fixed in the Rules and AER Guidelines.

Regulatory Oversight of the planning requirements

Recommendation 7:- The DNSP's obligations to undertake the annual planning and reporting activities, and to undertake project evaluations, should be Rules obligations and able to be enforced through standard Rules-enforcement processes.

Recommendation 7

Ergon Energy agrees with this recommendation provided that similar and duplicating jurisdictional requirements are removed from state-based legislation and codes.

Recommendation 8:- A dispute resolution regime based on rules 5.6.6(j)-(n) should exist in relation to the DNSP's conduct of a cost-benefit assessment (and associated RFP for non-network options) for particular distribution projects, which should have the following features:

- **threshold – should be limited to projects that are new large distribution assets (currently projects whose total capitalised cost is \$10m and above);**
- **parties to the dispute – extend to parties directly affected, which would include proponents of non-network options, end-users and agents on their behalf;**
- **scope of the dispute – should not be significantly limited;**
- **dispute resolution process – the AER should have the role of hearing the dispute and adopt a low cost process for this; and**
- **effect of the dispute – the current effect of the mechanism, whereby the DNSP cannot be directed in its activities, should be maintained.**

Ergon Energy agrees that a dispute resolution regime should exist in relation to the DNSPs conduct of a cost-benefit assessment. Ergon Energy agrees that:

- the threshold should be limited to Level 4 projects (i.e. the largest projects. Refer Ergon Energy's comments in Recommendation 3);
- parties to the disputes should be limited to only those directly affected by the cost-benefit analysis of projects; and
- the AER should have the role of hearing the dispute and adopt low cost process.

Ergon Energy submits that the scope of matters to be heard should be directly relevant to the conduct of the cost-benefit analysis and should be limited to issues of process or errors of fact. The AER, as 'arbiter', should not be involved in other project details such as acquisition of land, substation site selection or EMF debate.

Recommendation 8

Ergon Energy agrees with the recommendation that there should be a AER dispute process for the largest projects, subject to the scope of matters to be heard being directly relevant to the conduct of the cost-benefit analysis and limited to issues of process or errors of fact.

Overcoming 'cultural barriers' to DSR/DG

Recommendation 9:- The Rules should ensure that DSR/DG trials and risk sharing arrangements are encouraged in order to build trust and communication between DNSPs and proponents of non-network alternatives.

In addition, the regulatory framework should be reviewed to determine whether insufficient incentives are provided to DNSPs to invest efficiently in research and development, warranting the development of a specific incentive mechanism in the Rules.

Ergon Energy agrees with the recommendation that the Rules should be amended to allow DNSPs to recover the costs of 'learning by doing' through trials and demonstrations of DG and DSR. Further a similar approach should be taken with regard to research and development activities as the adoption of innovation will enable DNSPs to achieve step changes in costs and performance.

Ergon Energy also notes that the paper focuses on DG/DSR undertaken by external parties. This bias fails to recognise the role of a DNSP in the provision of DG and DSR. It is Ergon Energy's experience that DNSPs are well suited (because they are capable and are long-term electricity industry Participants) to provide and own DG/DSR assets and solutions. We note however, that Ring-Fencing rules are one of the most significant barriers to DNSPs being more active in the DSR/DG space.

The paper also fails to address the issue of liability were a third party DGs' equipment fails. In these circumstances, the DNSP must not be liable to claims, as this would act as a strong disincentive to the uptake of DG.

Recommendation 9

Ergon Energy agrees with the recommendation. We also recommend that the removal of DNSP Ring-Fencing barriers would provide a significant enabler for DSR/DG development.

3. A National Framework for Distribution Network Connection

Ergon Energy supports, in principle, a common framework for connection. Ergon Energy submits, however, that the NERA/Allen paper is not clear regarding the arrangements to apply to:

- small customers versus large customers;
- micro DG versus small, medium and large DGs; and
- pre-connection phase versus the connection phase.

Pre-connection

The pre-connection phase refers to those circumstances where the load and/or generator does not have an existing connection to the network and the DNSP has to undertake information exchange and works to provide a physical connection.

Ergon Energy supports a requirement in the Rules for a:

- 'non-Standard' contract or letter of offer for pre-connection for micro DG and small customer loads to be developed by DNSPs and approved by the AER. A pre-connection contract/letter non-price terms will necessarily be highly dependent upon each customer's physical location and circumstances but not subject to negotiation. Negotiation on price will depend on whether the services are classified as direct control services or negotiated services. The price for services that are direct control services will be regulated and not subject to negotiation; and
- For all other (usually larger) loads and generation, the pre-connection process may or may not include a negotiation on technical and operational matters, and co-ordination of the parties during the construction phase. The price for connection services that are Direct Control Services will be regulated and not subject to negotiation. In this key respect the process will differ from the Negotiation Framework provisions in Chapter 6 of the Rules.

Connection

The connection phase refers to those circumstances where there is an existing physical connection to the network, or the pre-connection works have been completed, and the load and/or generator is seeking access to the network.

Ergon Energy supports a requirement in the Rules for a:

- 'standard' contract for micro DG and small customers as currently operates under a standard connection contract for small loads (as prescribed by the Queensland Electricity Industry Code) and a standard network consent agreement for micro DG. We understand this standard contract to be the contract that is part of the Retail Policy Working Groups' package of work; and
- A 'non-standard' contract for other (usually larger) loads and generation which recognises there are significant differences in technical specifications and ongoing operational interactions between large loads and generation and DNSPs. As noted above, the price for connection services that are Direct Control Services will be regulated and not subject to negotiation.

In respect of any Negotiating Framework to apply, Ergon Energy strongly disagrees with the NERA/Allen proposal to adopt the Negotiating Framework in Chapter 6 of the Draft Rules. To apply the Negotiating Framework in draft Chapter 6 of the Rules:

- Pre-supposes that the DNSP will propose, and the AER will accept, the categorisation of connection services as negotiated services; or
- Potentially requires a DNSP to develop a negotiating framework under Chapter 6 of the Rules even though none of its distribution services were classified as 'negotiated' services.

Furthermore, the MCE-SCO policy position is that if there are no services classified as Negotiated Services, then a Negotiating Framework does not need to be developed by DNSPs and the National Electricity Rules' Chapter 6 Part D does not apply.

Structural features – Obligation to connect

Recommendation 10:-Specify in the Rules the connection requirements that must be met by a user which include the requirement for users to:

- ***pay the DNSP for the construction of any dedicated connection assets (where the construction of these assets is not contestable) and any extension works to the distribution system required to effect the connection; and***
- ***comply with technical and safety requirements in relation to the customer's installation or equipment, ie, payment for extension assets, dedicated connection assets and compliance with technical and safety matters.***

Recommendation 10

Ergon Energy agrees in principle with this recommendation (refer comments regarding comments on recovery of connection costs below).

Structural features – Technical Requirements

Recommendation 11:- Schedules to Chapter 5 of the NER should be amended to include a definition of the technical requirements for small load, large load, micro, small and medium DGs.

Recommendation 11

Ergon Energy agrees, subject to consultation about the detail, with the recommendation that a definition of the minimum technical requirements for small load, large load, micro, small and medium DGs should be incorporated in the Schedule to Chapter 5 of the NER.

We note however, that technical obligations for large generators and loads already exist in Chapter 5.

Structural features – Standard connection contracts

Recommendation 12:- The NER should define the standard connection services to apply to micro DGs.

Recommendation 12

Ergon Energy agrees with this recommendation.

Minimum content for standard applications

Recommendation 13:- The NER should set out the minimum content for standard applications in a schedule to Chapter 5.

Ergon Energy agrees in principle, with this recommendation. In respect of the pre-connection phase, Ergon Energy does not agree that the standard application forms should specify the:

- length of time it will take for the standard connection to be completed; or
- time it will take to process the application.

In Ergon Energy's area, the timeframes for completing connections can vary significantly. While the technical specifications may be 'standard' the geography and level of access to the relevant part of the network varies. It would be unrealistic and potentially misleading, at the application stage, to provide a timeframe for completing the connection.

In relation to timeframes for processing the application, this is highly dependent on the customer providing adequate information in the application form and responding to any further information requests from the DNSP. Ergon Energy would support, however, an indicative timeframe which DNSPs must use reasonable endeavours to meet and is subject to full information being provided by the customer.

In respect of the connection phase, Ergon Energy notes that reference to the work currently being undertaken by the RPWG is appropriate in establishing minimum content for applications.

Recommendation 13

Ergon Energy agrees with the recommendation that the Rules set minimum content for applications but should **not** specify timeframes.

Minimum content for standard contracts

Recommendation 14:- The NER should:

- ***set out the minimum content for standard connection contracts in a schedule to Chapter 5 including a requirement for the DNSP to specify the number of days after the finalisation of the agreement that the standard connection will be effected;***

- **require the AER to approve the content of the standard application form and the terms and conditions specified in the standard contract and require the AER to apply the ‘fair and reasonable’ test when determining whether to approve the proposed standard contracts.**

Ergon Energy agrees with this recommendation in principle, and supports the AER applying a ‘fair and reasonable’ test in approving the application form and contract. Ergon Energy notes however, that it is not clear in relation to the standard contract whether this recommendation covers both the pre-connection phase and the connection phase. Ergon Energy supports a requirement for minimum content for both phases in respect of micro DG but these must recognise the ‘non-standard’ nature of pre-connections.

Ergon Energy has different due dates for connecting customers depending on where they are located in the network (urban, short rural, long rural feeders). Any commitments to connect customers within a time limitation would need to accommodate this arrangement.

Recommendation 14

Ergon Energy agrees that the Rules should set minimum content for terms and conditions for connection application forms and contracts. The Rules should **not** stipulate timeframes.

Streamlining the negotiation process

Recommendation 15:- The NER should state that the negotiation framework developed in accordance with Draft Rule 6.7.5 and as modified should apply in the negotiated connection application process.

Rule 6.7.5(c) should be modified to include the following additional provisions which would require the DNSP to specify:

- ***a requirement for the exchange of technical as well as commercial information between the two parties;***
- ***a requirement that when considering a connection application the DNSP is to use its reasonable endeavours to provide the user with the service it requires in accordance with the reasonable requirements of the user, including without limitation, the location of the proposed connection point and the level and standard of power transfer capability that the network will provide (currently Rule 5.3.6(d));***
- ***any offer pertaining to a negotiated distribution service to be fair and reasonable and consistent with the safe and reliable operation of the power system in accordance with the NER and consistent with the technical requirement schedules contained in Chapter 5 (as applicable) and must not impose conditions on the user that are more onerous than those contemplated in these technical schedules (currently Rule 5.3.6(c));***

- ***the cooling off period that will apply to any contract negotiated with vulnerable users;***
- ***a requirement that when considering a connection application the DNSP must consult with any affected Distribution Network Users and NEMMCO (where relevant) if the DNSP believes, in its reasonable opinion, that compliance with the terms and conditions of those connection agreements will be affected, in order to assess the application to connect and determine:***
 - ***the technical requirements for the equipment to be connected;***
 - ***the extent and cost of augmentations and changes to all affected networks;***
 - ***any consequent change in network service charges; and***
 - ***any possible material effect of this new connection on the network power transfer capability including that of other networks (currently Rule 5.3.5(d)); and***
- ***the time periods for the commencement and finalisation of negotiations relating to negotiated connections once a completed application form is submitted to the DNSP for the alternative types of users and connection requirements.***

Ergon Energy supports in principle, the adoption of a standard information exchange process for establishing non-standard connections (that is, arrangements for large load and small, medium and large DG) covering the pre-connection and connection phase.

Ergon Energy strongly opposes any recommendation that a 'negotiation' process apply to connection services for small loads and micro-DGs as it is:

- unworkable in practice given the large number of connections undertaken each year; and
- unnecessary given the standardised nature of services and the previous recommendation that the application form and contract for these services would be subject to approval by the AER.

While supporting the principle of a standard information exchange process, Ergon Energy considers that the NERA/Allens recommendation to adopt the Negotiation Framework in Chapter 6 of the Rules fundamentally misunderstands the new architecture of the Rules.

The Negotiation Framework in Chapter 6 of the Rules is specifically designed to be applied to Negotiated Distribution Services and including the price of access to these services. Adopting this framework for connection services pre-supposes that connection services will be classified as Negotiated Services. The Rules specifically provide that the DNSP may propose which Distribution Services are Direct Control Services and which are Negotiated Services. The AER must consider any such proposal and either accept or reject the DNSP's proposed categorisation.

Where connection services are categorised as Direct Control Services, the price of these services will be regulated and not subject to negotiation.

