

Amendments to national energy laws to make rate of return guidelines under economic regulatory framework binding

On 14 July 2017, the Council of Australian Governments (COAG) Energy Council agreed to implement a binding guideline for the rate of return components of the Australian Energy Regulator's (AER) regulatory determinations for electricity and gas and the Western Australian Economic Regulation Authority's (WA ERA) regulatory determinations for gas network businesses.

Objectives of the change

The AER and WA ERA's existing rate of return guidelines are non-binding. This means they can use separate processes for and a different approach to calculating the rate of return for each business.

Under new arrangements, an industry-wide process will be conducted every four years by each regulator to determine the binding rate of return methodologies which will be applied to individual electricity and gas network businesses at the time of their regulatory determinations.

This move to a binding rate of return guideline, developed through an industry-wide process, will improve the transparency and certainty of the regulators' decisions, reduce the regulatory burden for all stakeholders, and provide a more robust process for the development of the rate of return.

Proposed legislative amendments

On 22 September 2017 the COAG Energy Council's Senior Committee of Officials (SCO) approved the policy framework to inform consultation and to underpin development of proposed amendments to the national energy laws.

The legislative amendments will:

- Give the AER and WA ERA the power to make a legislative instrument that specifies a

mechanistic approach for the AER and WA ERA to use to determine the rate of return and the value of imputation credits (i.e. gamma) for economic regulatory determinations;

- Make the legislative instrument binding on the AER, WA ERA and electricity and gas network businesses;
- Require the AER and WA ERA to seek input through three processes to develop the legislative instrument: (1) a specially appointed consumer reference group, (2) a range of experts and (3) other stakeholders;
- Specify transitional arrangements for the development of the first legislative instrument (see below); and
- Specify that the new guideline will be binding on all determinations delivered by the regulators following the passage of the legislation (excepting remittals from appeal processes) regardless of when the determination process commenced.

Bills will be developed to make the above amendments to the national energy laws.

Implementation process

Stakeholders will have an opportunity to provide feedback on draft amendment Bills before they are finalized. At this stage, SCO anticipates consultation will be conducted over a 6 week period, commencing in early December 2017. Final dates will be communicated via a further bulletin when available.

Final Bills are expected to be considered by the COAG Energy Council in early 2018.

Timeline and interaction with current regulator processes

As required under the rules, the AER and WA ERA are currently undertaking a review of their non-binding guidelines for use during upcoming regulatory determinations. The revised guidelines must be completed in December 2018 (AER) and mid-2018 (WA ERA).

Under the proposed transitional arrangements, and subject to passage of the relevant Bills, the current guideline development process, including consultation processes, will be taken to satisfy the process requirements for the first binding guideline. That is, the guidelines developed out of the current regulators' processes will be the first binding guideline under the amended energy laws.

In addition, under the transitional arrangements, the AER's current review process will only satisfy the process requirements if it included a review of the draft guideline by an independent panel of at least three members. The WA ERA will also be subject to minimum process requirements but will not be required to convene an expert panel for this purpose given its timeline.

The intention is to ensure all stakeholders benefit from the enhanced guideline process and to avoid delays and uncertainty involved in running separate, overlapping processes for the initially affected businesses in NSW/ACT, TAS, NT and WA.