



AFTER MERITS REVIEW – COLLABORATION OR EXPANDED JUDICIAL REVIEW?

LEANNE HANNA

SOME KEY DATES


- 20.06.17 The Federal Government announced that it was taking action “to put downward pressure on power prices and ensure reliable energy for all Australians”.
- 16.10.17 The *Competition and Consumer Act* was amended to remove the ability of the Competition Tribunal to hear applications for merits review of the decisions of the Australian Energy Regulator (from 21 June 2017).
- 08.06.18 Minister Frydenberg warned the electricity industry there would be even more drastic consequences unless power prices come down.
“The government is unambiguously focused on driving energy prices down...”.

KEY FOUNDATIONS OF THE AER'S REGULATORY DECISIONS

- The AER's functions must be performed in a manner that is likely to contribute to the achievement of the national electricity and gas objectives, which are:
 - to promote efficient investment in, and efficient operation and use of, electricity/gas services for the long term interests of consumers of electricity/gas with respect to the price, quality, safety, reliability and security of supply of electricity/gas.
- The AER must take into account the revenue and pricing principles, including that:
 - regulated businesses should have a reasonable opportunity to recover at least the efficient costs incurred in providing the regulated services and complying with the regulatory obligations.

WILL THE ABSENCE OF MERITS REVIEW MEAN:

- A change in the behaviour of the regulated parties, or the regulator?
Or both?
- The energy distribution business in 2018 have a greater incentive to seek to influence, rather than overturn the AER than they did pre-July 2017 (when merits review was still available)?



ARE THE CHANGES THAT ARE LED BY
THE AER OCCURRING BECAUSE OF
THE REMOVAL OF MERITS REVIEW?

AER MEDIA RELEASE (24 MAY 2017)

- The AER's 2015 determinations of the revenue that Ausgrid, Endeavour Energy, Essential Energy, ActewAGL and Jemena Gas Networks (NSW) could collect from customers to operate their networks were the subject of appeal to the Competition Tribunal (by the businesses) and then to the Full Federal Court (by the AER).
- The AER asked the Court to consider whether the grounds of review were properly established by the network businesses and whether these were correctly applied by the Competition Tribunal.
- The Court upheld:
 - the AER's original decision on the cost of corporate income tax;
 - the Competition Tribunal's findings in relation to the networks' operating expenses and the cost of debt.

RATE OF RETURN GUIDELINES – A NEW APPROACH

The Council of Australian Governments (COAG) has recently decided:

- The National Electricity Law and National Gas Law will be changed to implement a binding instrument for the calculation of the rate of return and the value of imputation credits (γ) used in economic regulatory decisions made by the Australian Energy Regulator and the Economic Regulation Authority (Western Australia);
- The new Rate of Return instrument will be binding and will be developed through a single, industry-wide process every four years.

A decorative graphic on the left side of the slide, consisting of white lines and circles on a blue background, resembling a circuit board or a tree structure.

WHAT OTHER CHANGES MIGHT
OCCUR (THAT ARE NOT LED BY
THE AER) ?