

ETSA Utilities' Application For Review – Part I

Essential Services Commission Act, s31

19 April 2005

1. Definitions

In this Application for Review:

- (a) 'Commission' means the "Essential Services Commission of South Australia";
- (b) 'CAPM' means the Capital Asset Pricing Model referred to in Schedule 10 of the EPO;
- (c) 'Determination' means the 2005 – 2010 Electricity Distribution Price Determination published by the Commission on 5 April 2005;
- (d) 'ETSA Utilities' means CKI Utilities Development Limited (ARBN 090 718 880), HEI Utilities Development Limited (ARBN 090 718 951), CKI Utilities Holdings Limited (ARBN 091 142 380), HEI Utilities Holdings Limited (ARBN 091 142 362) and CKI/HEI Utilities Distribution Limited (ARBN 091 143 038) trading as ETSA Utilities;
- (e) 'Electricity Act' means the Electricity Act 1996 (SA);
- (f) 'EPO' means the Electricity Pricing Order made under section 35B of the Electricity Act notified in the Government Gazette on 11 October 1999 (at page 1471) as varied in accordance with section 35B(10a) of the Electricity Act;
- (g) 'ESC Act' means the Essential Services Commission Act 2002 (SA);

- (h) 'NEC' means The National Electricity Code referred to in the National Electricity (South Australia) Act 1996;
- (i) 'WACC' means the Weighted Average Cost of Capital model specified for use in the CAPM.

2. Application

ETSA Utilities, a regulated entity to which the Determination applies, hereby makes application under section 31 of the ESC Act to the Commission for review of the following aspects of the Determination, namely the Commission's decisions:

- (a) that easements should be included in the Regulatory Asset Base at a value of \$6million;¹
- (b) equity β should, for the purposes of the CAPM, be 0.8,

together with:

- (c) any provisions of the Schedules to Part B of the Determination which depend upon or relate to those decisions, referred to in sub-paragraphs (a) and (b) above; and
- (d) the provisions of Part B of the Determination referred to in ETSA Utilities' letter to the Commission of 13 April 2005.

3. Decisions sought on this review

ETSA Utilities seeks that the Commission remedy its errors and determine that:

¹ Where this figure is used in this Application for Review, it refers to the figure applied for the purposes of determining the initial tariffs (which was based on the figure of \$5.719m appropriately indexed).

- (a) the value for easements to be included in the Regulatory Asset Base should be the deprival value of those assets, namely \$224.45 million as at 1 July 1999 and then indexed to 1 July 2005;²
- (b) equity β , for the purposes of the CAPM, should be not less than 1,

and make appropriate amendments to Part B of the Determination, flowing from the variations referred to in sub-paragraphs (a) and (b) above or from the matters raised by ETSA Utilities in its letter to the Commission of 13 April 2005.

4. Grounds of Review

The grounds of review relied upon are set out in summary below and they are developed in detail in the attached Part II - Detailed Grounds of Review.

The Commission has made fundamental legal and factual errors which have led to the portions of the Determination and decisions identified above being incorrect and unreasonable. In outline, the errors are as set out below but the comprehensive statement of the grounds of review are set out in Part II – Detailed Grounds of Review:

4.1 Easements

- (a) The Commission is in error in adopting a value for inclusion in the RAB in respect of easements in existence and in service as at 1 July 1999 of \$6 million.
- (b) In order to comply with the requirements of clause 7.2(e)(iv) of the EPO and clause 6.10.3(e)(5) of the NEC, easements in existence and in service as at 1 July 1999 must be valued at their deprival value (consistent with the NEC and the valuation of the other infrastructure assets that make up ETSA Utilities fixed asset base) and be included in the RAB at \$224.45 million.

² Where this figure is used in this Application for Review, the figure refers to the deprival value of those assets, being

4.2 Equity β

- (a) The Commission is in error in determining that ETSA Utilities' equity β for the purposes of calculating the WACC should be 0.8, assuming a gearing level of 60%.
- (b) In its consideration of equity β , the Commission has:
 - (i) failed to consider and analyse market data correctly or adequately;
 - (ii) failed to deal with or appropriately take account of the statistical and other unreliability of mechanical, historical equity beta proxy data;
 - (iii) failed to apply appropriate qualitative tests and considerations;
 - (iv) failed to have regard to its own consultants' reasoning and relevant conclusions;
 - (v) failed to consider the nature and effect of other regulatory decisions;
 - (vi) failed to give adequate and proper consideration to international benchmarks; and
 - (vii) has made factual errors.
- (c) Properly determined, ETSA Utilities' equity β for the purposes of calculating the WACC is not less than 1, assuming a gearing level of 60%.

4.3 The Matters raised in ETSA Utilities' Letter of 13 April 2005 to the Commission

In relation to the form and contents of Part B of the Determination, ETSA Utilities has identified drafting and other errors in its letter of 13 April 2005. Those errors should be corrected in the manner set out in that letter.

\$224.45 million as at 1 July 1999 which should then be indexed to 1 July 2005.

5. Information To be Taken into Account

The information that ETSA Utilities considers should be taken into account includes the information set out in the analysis in Part II and the information and evidence contained in the Documents numbered 1 to 84 which accompany this application. Part III to this application is an index of the material contained in the Document Volumes.

19 April 2005



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Basil Scarsella
Chief Executive Officer
ETSA Utilities