

Summary of issues raised in submissions on the draft rule determination

Part I	Summary of issues about rate of return	2
Part II	Summary of issues about capex/opex allowances	8
Part III	Summary of issues about capex incentives (and related issues)	11
Part IV	Summary of issues about regulatory determination process	15
Part V	Summary of diverse issues	19
Part VI	Summary of issues raised about transitional arrangements in response to draft rule determination	23

Note: Definitions of abbreviations can be found in the final position paper. Also, to the extent that a submission reflects a position that is already summarised in respect of another submission, that first submission has not necessarily been included in this table.

Part I Summary of issues about rate of return

Organisation	Issue	Substantive point being made	Page ref
AER	CAPM / nominal post tax prescription	The use of a nominal post-tax should be mandated in the rules as part of a common rate of return framework across the NER and the NGR. These revenue differences identified by the ERA are driven by the adoption of specific modelling assumptions rather than whether a nominal rate of return or real rate of return framework is applied. The nominal rate of return is directly comparable with financial benchmarks for other investments and the calculation of depreciation in a nominal framework is transparent regarding the extent of revenue recovery.	Main submission - 17 Supplementary submission - 1-2
AER	Level of prescription	The overall objective for the rate of return is better achieved by removing the requirements for how the rate of return is determined from the rules. Such requirements are better cast as criteria that the AER must have regard to.	17
APA Group	Level of prescription	The draft rule has the consequential effect of removing access to merits review on cost of capital matters as issuance of guideline would not be a "reviewable regulatory decision" under s71A NEL or s244 NGL. It is critical that the regulator be required to provide full explanation of reasoning and finding in guideline as scope for merits review is limited to reasonableness of decision whether or not to depart from the guidelines.	4-5
APA Group	Rate of return guidelines	It is important for first guidelines to be finalised before any gas service provider is required to submit an Access Arrangement revisions under it.	4
APIA	Level of prescription	There should be a reinstatement of the requirement that the rate of return be "commensurate with the prevailing conditions in the market for funds" as part of the overarching objective for the rate of return in rule 87(2). It should be clarified that multiple models, methods etc are to be weighed up in determining the rate of return. It is desirable that it be made clear that there should be no "locking-in" of specific parameter values. Some of the terms used in the draft rule should be clarified as to their intended meaning.	1
ATA	Level of prescription	The AER's concern that it has not had sufficient discretion cannot be sustained. Greater discretion, though desirable, has not influenced its WACC determinations in the past and may not do so in the future.	7-8
ATCO Gas	CAPM / nominal post tax prescription	There should not be a requirement to use a nominal post-tax approach.	1
ATCO Gas	Level of prescription	The rate of return objective should be made clear to be a mandatory requirement, rather than an aspirational goal. It should also be more specific and refer to regulatory and commercial risks (e.g. s24(5) NGL). Benchmarking should reflect realities of the regulated entity.	1
Consumer	Level of prescription	Providing further discretion to the regulator may mean little without a constraint on the NSPs'	3

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Action Law Centre		abilities to appeal.	
DBP	Return on debt criteria	A trailing average approach may result in hedges being broken to align with new methodology which may cause breaches of loan covenants. There are likely to be significant transitional costs (such as the payment of break costs for any ineffective hedges) for service providers who will not have the opportunity to align their debt portfolio to match a decision by the regulator to (1) move to a trailing average approach or (2) change the assumptions in any trailing average approach or (3) move from the trailing average approach in one re-set to a more traditional cost of debt approach in a subsequent reset.	4-5
ENA	Level of prescription	The rate of return objective should use terminology consistent with the NEL. There needs to be clarification in relation to post-tax requirement. It is not clear what the intention is with regard to the proposed requirement regarding the consistent application of estimates of financial parameters. It may be unnecessary, as internal consistency may be achieved through the draft rule clause on recognition of interrelationships between parameters.	9-11
ENA	Rate of return - general comments	Disagrees that amendments to 6.12.3(f) and 6A.14.3(b) are required for AEMC to achieve its intention of allowing the AER to determine a methodology. Carve outs for opex and capex are appropriate to discourage strategic behaviour, but rate of return is of an entirely different nature. There is no information asymmetry in rate of return determinations. Consequently, there is nothing to gain from ambit claims. Further, Tribunal interpretation of the current provision already allows the AER to substitute.	19-21
ENA	Rate of return guidelines	The removal of a "persuasive evidence test" means that the appropriate balance between flexibility and transparency (evidence-based decisions) is no longer met. All material decisions should be made via a transparent and understandable process and based on sound theoretical arguments and verifiable market evidence. Therefore it is important that decisions clearly set out which models and evidence are being relied on and how they are being used. There should be a requirement that any party proposing to depart from the guideline must state its reasons and evidence for departure. This should also apply to changes in the guideline (and this extends to departures from the 2009 SORI). There should be a requirement for the AER to provide any data that it relies on.	11-13
ENA	Rate of return guidelines	The effectiveness of stakeholder engagement allowed for in the development of guidelines is of concern. For engagement on substantive issues, the AER needs to be required to provide estimates or indicative values for the key elements (at least, gearing level, return on equity, return on debt, and gamma) in addition to being required to articulate the financial models and datasets used and how they would be assessed. Similarly, 30 business days are insufficient and at least 60 are required, for responding to consultation papers or draft decisions. The AEMC should clarify that it is not trying to prevent the consideration of historical or realised returns. A three year review cycle is too short and should be changed to four years.	14-16
ENA	Return on debt - benchmark	Return on debt should allow for recovery of the benchmark expected cost of debt financing over the service life of the assets. Methodology should reflect the efficient financing costs of a prudent operator in the circumstances of the service provider. The appropriate role for the AER is to	23-24

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		assess the return on debt methodology. It is important that the existing methodology be retained as default should the NSP and AER be unable to agree on an alternative.	
ENA	Return on debt - criteria	Return on debt "factors" do not provide adequate guidance to the AER and are unlikely to be consistent with the NEO / NGO / RPPs. Factors are ambiguous and AEMC's stated intention has not translated to the rules. Factors appear to be conflicting and do not provide any guidance as to how conflicts should be resolved. Absence of any measures to ensure businesses are afforded a reasonable opportunity to recover benchmark debt costs over the long term. Factors do not require the AER to take into account legitimate business interests around transition and changes in methodology after transition. Clearer rules-based guidance is essential.	22-23
ENA	Return on debt – general comments	It needs to be clarified that some factors are to be addressed in the AER rate of return guideline: benchmark gearing, credit rating and new issue maturity, and basis on which market evidence as to DRP will be gathered. Also needs to be clarified that 'methodology' in 6.5.2(f) refers only to which return on debt approach (opportunity cost vs. historical average) used and whether it is applied at the start of the period or annually updated. It is critical that the NSP's proposal be the starting point as methodologies are highly business specific. "Real world" market realities must be taken into account.	25-26
Energex	Rate of return - general comments	The "best" estimate of the rate of return is that which best promotes the NEO. This may not be the best statistical estimate (a mean) and the framework should explicitly require the quality of estimates to be a factor in determining the preferred methods of setting the return.	1
EnergyAustralia	Single framework proposal	Supports the proposed common framework that enables the regulator to make the best possible estimate of the rate of return.	2
ERA	CAPM / nominal post tax prescription	The best form of post-tax model remains an open question and consequently it is better to allow a post-tax rate of return rather than specifying that it be nominal also.	1-5
ERA	Level of prescription	Not specifying a rule like the current NGR rule 87(2) would lead to a prolonged debate through the process of appeal to the ACT. Risk exists of NSPs expecting weight to be given to all estimates and data regardless of how extreme they are.	5-6
Ergon Energy	Level of prescription	The AER needs more accountability demanded of it, as past decisions reflect choices of data sources and approaches to give the lowest estimate of rate of return.	4
Ergon Energy	Return on debt criteria	NSPs are responsible for managing debt and interest rate risk and are in a far better position than the AER to judge appropriate debt management processes.	5-6
ESAA	Rate of return - general comments	The AER should follow example of other regulators overseas who employ various methods to "sense-check" the theoretically derived result with real-world expectations. This sort of approach needs to be part of the cultural attitude of the regulator	2
Ethnic Communities' Council of NSW	Level of prescription	The discretion afforded the AER to determine the allowed rate of return is not significant as the AER was not previously significantly constrained in this area. This can be seen through WACC decisions being similar for the more unconstrained sectors (gas) and those for the more constrained (electricity). Therefore additional discretion will not necessarily alter the level of the WACC.	2
EUAA	Cost of debt for state-owned vs. privately-	The AEMC reasoning in concluding that ownership should not determine allowed rates of return is flawed.	8-12

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	owned NSPs		
EUAA	Level of prescription	Although it is generally good that greater discretion is afforded the AER, it may not mean any changes in WACC given its past record.	6-7
Financial Investor Group	Rate of return - general comments	<p>There is nothing in the draft rule that prevents the regulators from continuing their reliance on CAPM. The rules must give effect to the AEMC policy intention that the estimate of return on equity should not be formulaic and should not be driven by a single model or estimation method.</p> <p>The rate of return objective does not give appropriate weighting to market data and market evidence (and no mention of competitive markets in objective). Draft Rule should provide more specific direction on the content of the guideline and require the regulators to explain their reasoning.</p> <p>Return on equity should be commensurate with the prevailing conditions in the market for funds. This should apply to the overall estimate of cost of equity (not simply the individual parameters).</p>	2, 18-19
Financial Investor Group	Return on debt benchmark	The rules should make it much clearer that the requirement is to set a benchmark cost of debt for an efficient firm.	20-21
Grid Australia	Level of prescription	There should be retention of some form of persuasive evidence test and the level of guidance in the rules should be increased.	3
IPART	Level of prescription	The current provisions in the NER are too prescriptive and limit discretion of regulator to respond to changing circumstances. Support proposed amendments, particularly the overall objective focus, the improved flexibility for the regulator, and the encouragement of a consultative approach.	6
Jemena	Return on debt – general comments	By letting the estimation method switch from a prevailing method to a trailing average method (and vice versa) without safeguards, the rules create the risk of opportunism by NSPs or the regulator.	26
Major Employers Group	Rate of return - general comments	Broadly agrees with the draft rule. The WACC used previously was too often in excess of the risk profile of NSPs.	1
MEU	Return on debt for state-owned vs. privately-owned NSPs	There need to be rules implemented to prevent state-owned networks from exploiting a lower cost of capital. Ownership structure should determine the benchmark.	5, 12
MEU	Level of prescription	There is a tension between the NEO/NGO (least costs for consumers over the long term) and the RPP (minimum requirements for NSPs). The rules should provide guidance as to how these tensions are managed. The rules should be designed to ensure that the NSP is granted recovery of its efficient costs but no more, and the rate of return should reflect the risks inherent in providing the services, but if risks are transferred to consumers (or taxpayers) then the rate of return should reflect the lower risks faced by the NSP.	10
MEU	Rate of return - general comments	The rules need to define what is considered to be a benchmark efficient entity and the basis on which this is to be defined. Regulator should be required to benchmark against a wider basis than energy NSPs.	11-12
MEU	Return on debt – general comments	Allowing the NSPs to seek a different debt allowance methodology, rather than having it imposed unilaterally by the regulator, allows for "gaming" by NSPs. There is a risk transfer from NSPs to	18-19

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		consumers if allowing prices to change annually to reflect interest rate changes.	
NSW Treasury	Rate of return - general comments	Supports proposed draft rule changes.	1
QTC	Level of prescription	The regulator should be required to assign weights to the financial models that it intends to use and explain its rationale for them. This will improve the transparency and predictability of decision making.	1-2
QTC	Return on debt – general comments	It is essential that the choice of methodology be at the discretion of the NSP and that their proposal be afforded primacy. Regulator should be required to accept proposal if it is consistent with the factors listed in the rules and the allow rate of return objective. The draft rule provides broad discretion to regulator in specifying the characteristics of the debt benchmark - this should be balanced by requiring the regulator to have regard to the characteristics of efficient debt financing and risk management strategies for highly geared infrastructure providers. Regulator should be required to demonstrate that its preferred benchmark does not constrain the NSP in these aspects.	1-2
RARE Infrastructure	Rate of return - general comments	The approach to rate of return should employ multiple models and financial analysis and focus on market data and conditions.	1
SA Minister for Mineral Resources and Energy	Rate of return - general comments	Generally supportive of the draft rule. Regulator to have sufficient discretion to provide regulatory determinations that are consistent with the NEO and the NGO.	1
SA Power Networks, CitiPower and Powercor	Level of prescription	The AEMC has previously recognised that insufficient specification in the rules can lead to uncertainty and inconsistency, which can adversely impact long term investment - the proposed changes dramatically increase the AER's discretion without adequate guidance to ensure regulatory certainty and predictability. The draft rule significantly increases discretion while removing all evidentiary thresholds.	8-9, 11
SA Power Networks, CitiPower and Powercor	Rate of return guidelines	It is not clear which guidelines will apply to the AER's assessment of an NSP's regulatory proposal (given their high frequency of review). As regulatory proposals are prepared on the basis of the framework and approach paper, the applicable guidelines should be those in force at the time the framework and approach paper is published. If evidence dictates a departure from them, it would be simple for the AER to set out the reasons and evidence to justify a departure.	13
SA Power Networks, CitiPower and Powercor	Rate of return guidelines	The rules should set out with greater precision what must be included in the guidelines. The rules should require the methodologies to be used to be set out including how they will produce results consistent with the objective, as well as the estimation methods, financial models, market data and other evidence the AER proposes to take into account.	13-14
SA Power Networks, CitiPower and Powercor	Return on debt benchmark	There should be a higher level of prescription as to the return of debt in the rules. They should set out the form of debt (BBB+ 10-year Australian corporate bonds) and should include more directly relevant criteria against which to assess the proposed methodology.	4
SP AusNet	Rate of return - general comments	Objective should be modified to ensure consistency with other objectives across the broader regulatory framework. Clarify how "efficient" should be applied. Recognize in objective that rate of	2-3

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		return is an estimate (not a value that can be determined with precision). Important to clarify that use of long run average real equity returns is not precluded by references to "prevailing conditions".	
UE and MG	Rate of return - general comments	The rate of return objective should explicitly reference competitive markets. The return on equity reflecting the prevailing conditions for funds should be strengthened to a requirement rather than just being "taken into account".	7-8
UE and MG	Rate of return guidelines	The draft rule could be improved by requiring the guideline to satisfy a number of principles that reflect the Commission's determination. The guidelines should be subject to merits review.	10
UnitingCare Australia	Rate of return - general comments	Agrees with the submission of the EUAA.	1-14

Part II Summary of issues about capex/opex allowances

Organisation	Issue	Substantive point being made	Page ref
AER	Capex/opex discretion	Clear improvement but some improvements should be made to better reflect policy intent. Supports reasons for 6.12.3(f) amendments, but state still restricts the AER from making overall decisions. Proposes for clause to be removed entirely (as well as 6A.13.2(a)) and notes that no strong arguments have been put forward to support the retention of the remaining restrictions. Without the clause, the AER would still be required under administrative law and other clauses to take into account NSP's proposal and all relevant information. Including some limits could restrict the AER's ability to undertake a holistic assessment. Supports changes on forecast methodologies, will support benchmarking and ability to determine an efficient estimate of forecast costs. Support changes in relation to benchmarking.	Main submission 10 -13 Supplementary submission 8-9
ATA	Capex/opex discretion	Supports amendments to 6.12.3(f) and removal of 'circumstances of the relevant NSP'.	1
Consumer Action Law Centre	Capex/opex discretion	Agrees that regulator not 'at large' but should not be constrained if less than reasonable - agree with amendments to 6.12.3(f) and considers that the rules should go further to put onus on NSP to justify proposal. Agrees with removal of "circumstances of the relevant NSP".	2
ENA	Capex/opex discretion	States that the policy goal behind the forecasting methodology to bring forward a shared understanding of the methodology adopted can be more appropriately achieved by requiring NSPs to provide an informal briefing to the AER at the framework and approach stage. NSPs should maintain responsibility for their revenue proposals - their approach is expected to provide the best information as consistent with business planning and operation and signoff requirements. It does not agree that reference to 'individual circumstances' constrains benchmarking and so opposes the removal of it as recognition of individual circumstances for assessment of forecasts is needed. The rules should be absolutely clear that the AER is required to consider the circumstances of the NSP and this should be a fundamental element of its decision making.	19-21, 29-36
Energex	Capex/opex discretion	Similar views to the ENA.	2
Energex	Capex/opex factors/criteria	Concern with the weight placed on the annual benchmarking reports and so rules should refer to benchmarking material more generally.	2
EnergyAustralia	Capex/opex discretion	Supports proposals to clarify and remove ambiguities regarding the AER's powers to amend expenditure proposals. Also supports the proposal to amend the NER so that it does not place any restriction on the analytical techniques that the AER can use to scrutinise and, if necessary, amend or substitute the NSP's expenditure forecasts.	2
Ergon Energy	Capex/opex discretion	Supports the ENA position on forecasting methodology and consideration of individual circumstances. Notes that consideration should be given to the costs of collection of additional information for benchmarking. Differences in networks mean benchmarking techniques do not have the necessary precision of analysis to guide assessment of efficient expenditure. As a result, the AER should have discretion not to publish an annual report if it comes to a similar conclusion. If required to publish one, it should not be directed to have regard to the last one as there will be a lag with the data and as a result publication of such a report is likely to mislead less informed market participants.	6-7

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ESAA	Capex/opex discretion	More discretion to the AER increases risk that overall revenue will be inadequate. Effectiveness of rules will depend on the AER's interpretation and application of them in practice. For example, NSPs have tried to demonstrate consideration of customers' preferences under previous state-based regimes and had evidence rejected. Need to understand how the AER will evaluate supporting evidence. Consumer consultation is costly and consideration of cost recovery for such activity must also be taken into account.	3
Ethnic Communities' Council of NSW	Capex/opex discretion	Supports changes to remove ambiguity to help the AER feel less constrained in setting allowances. Does not expect that the elimination of ambiguities in relation to benchmarking will make much difference. The rules already say the AER must have regard to benchmarks in setting expenditure allowances.	2
EUAA	Capex/opex discretion	The extent to which clause 6.12.3(f) has constrained the AER is debateable, but agrees that it does not serve a useful purpose. AER should be able to determine allowances subject to general requirements. Adjustments based on NSP's proposal were the origin of significant concern. Agrees with the change as it is important. Debateable whether the AER was impeded by "circumstances of the relevant NSP" for benchmarking, however removing this constraint will avoid wasteful arguments and may embolden the AER in developing and using benchmarks.	15
Grid Australia	Capex/opex factors/criteria	Concerned with expectations on role of benchmarking. It refers to the TFP review findings which were that it is not be appropriate to apply to transmission. It also stated that it is appropriate for the AER to have regard to the individual circumstances of the NSP and is not in rules as a limitation - disagree with removal.	11
IPART	Capex/opex discretion	Supports the proposed amendments to clarify the regulator's rights and obligations in determining allowances, including benchmarking and other tools to assess efficiency. Best outcomes would be achieved if regulator is provided with flexibility and discretion. Regulator should determine a substitute amount on basis of information received but not restricted to adjusting for minimum extent necessary.	5-6
Jemena	Capex/opex discretion	Forecast methodology inconsistent with findings that there is no evidence that the rules resulted in inefficient expenditure and that the AER should be given unfettered discretion - only clarifications required for rules. Also that NSPs' proposal should be basis of forecast. Standard expenditure methodology cannot be consistent with current sign-off requirements for regulatory proposals where the NSP must declare that it has provided its own best forecast. It will also duplicate work where a NSP still needs to provide its own best forecast and the AER must evaluate both. Supports the ENA suggestion that NSPs should be required to advise of approach at framework and approach stage.	10-14
MEU	Capex/opex discretion	Agrees with the proposed changes.	20
Origin	Capex/opex discretion	Supports changes to clarify and remove ambiguities. Strongly supports greater use of benchmarking.	1
SA Minister for Mineral Resources and Energy	Capex/opex discretion	The Government questions whether the phrase "must accept" is too restrictive on the AER and whether it should be replaced by a requirement that the AER have regard to those forecasts.	2

Organisation	Issue	Substantive point being made	Page ref
SA Power Networks, CitiPower and Powercor	Capex/opex discretion	Support the proposal to establish standard forecasting, which should encourage forecasting issues to be discussed upfront at framework and approach stage. However, the intention that NSPs are free to submit their own forecast based on methodologies other than the framework and approach ones is not sufficiently clear in the drafting and should be clarified. No objection to preparation of benchmarking report but considers guidance useful, such as having regard to the relevant circumstances. The AER been shown to not consider in Tribunal cases before. Disagrees with proposed amendments to 6.12.3(f) - should retain existing drafting that amendments are made with regard to proposal only to extent necessary.	17-18
SA Power Networks, CitiPower and Powercor	Capex/opex factors/criteria	Any other factor should be identified at the framework and approach stage. This will ensure appropriate consultation, parties other than NSP will be aware and process would be integrated into the existing review process, improving administrative certainty and simplicity.	19
SP AusNet	Capex/opex discretion	Forecasting methodology conflicts with the NSP's responsibility for preparing and submitting expenditure forecasts in its regulatory proposal. Imposing another methodology would result in duplication. At the framework and approach stage it is necessary for the AER to set out how it plans to assess expenditure and this will include templates. Considers that in a cooperative approach it is incumbent on the NSP and AER meeting early in the process to discuss the relevant matters including the form of outputs.	3-4
UE and MG	Capex/opex discretion	Support changes to clarify and amend rules to set allowances as well as benchmarking. Do not support the AER's ability to define a forecasting methodology. The AER is not best placed to determine forecasting methodology and there were issues with its repex model during the Victorian determinations since it is not developed with regard to each company's operational experience. Disagree with amendment to remove 'circumstances of relevant NSP' - assessment of prudent and efficient requires consideration of the particular circumstances, sends a message to the AER that individual circumstances should be ignored.	3-4, 11-14
UnitingCare Australia	Capex/opex discretion	Similar comments to the EUAA.	15
Victorian DPI	Capex/opex discretion	Generally supportive of the changes. To the extent there is any legal uncertainty regarding the extent of the AER's discretion, it is preferable that the rules put the matter beyond doubt. Sought advice on the AEMC's power to make rules which would address information gathering powers of the AER. Appropriate data is clearly of key concern to support benchmarking. Given that the TFP rule change suggestions have not yet returned from SCER, the AEMC should make substantially similar rules to support the AER's role in assessing efficient network expenditure.	1-2

Part III Capex incentives (and related issues)

Organisation	Issue	Substantive point being made	Page ref
Consumer Action Law Centre	Reviews of efficiency of past capex	Concerned that NSPs will demand higher returns on equity to account for higher risk as a result of the introduction of capex reviews. Suggests that such risks could be dealt with by providing further guidance in the NER on the reviews.	3
ENA	Actual/forecast depreciation	Drafting amendment to replace principle that take into account extent NSP has overspent allowance in the past with reference to decisions under review of past capex.	54
ENA	Capex sharing incentive schemes	The principle that NSPs be rewarded for undertaking efficient expenditure and penalised for inefficient expenditure suggests a level of precision that is not possible and would be difficult to turn into an effective scheme. A more appropriate principle would be to focus on providing rewards and penalties for improvements or declines in efficiency. This would be consistent with the current EBSS and the draft rule for small scale incentive schemes.	55
ENA	Capex sharing incentive schemes	The principles should direct the AER to consider the desirability of a continuous and symmetrical incentive.	55
ENA	Capex sharing incentive schemes	The draft rule should require the AER to allow for appropriate compensation for NSPs when an asymmetric capex sharing scheme is applied.	54-58
ENA	Depreciation	The capex incentive guidelines that were in operation at the time the framework and approach paper was published should apply in regards to whether depreciation will be based on actual or forecast expenditure.	54
ENA	Overall approach	Given the AEMC's finding that there is no incentive in the NER for NSPs to spend more than their allowances it is concerned that the draft rules appear to go further than an incremental strengthening of incentives.	50
ENA	Overall approach	A capex incentive objective is not necessary given the NEO and RPP, and in any event, the objective in the draft rule is inconsistent with the NEO and RPP. The requirement in the objective for the AER to "ensure" that "only capex that meets the capex criteria is included in the RAB is requiring the AER to ensure that "no more than" efficient cost is recovered. This is not consistent with the RPP to provide NSPs with a reasonable opportunity to recover at least efficiency cost. In addition, the objective is backward looking - instead it should be focussed on providing efficient expenditure into the future. Further, the objective would invite the application of benchmarking techniques to test the efficiency of the expenditure which would mean considering information that was not available at the time of the expenditure decision.	51-52
ENA	Overall approach	The capex incentive guidelines should be required to include the criteria that the AER will apply to select the mechanisms to apply to individual NSPs.	52
ENA	Related party margins and capitalisation policy changes	The AER should be required to take into account the capex incentive guidelines in place when the arrangements that gave rise to the margin being paid or payable by the NSP (not those that were in place at the time it undertakes a review of efficiency).	53-54
ENA	Related party margins and capitalisation policy changes	The AER should be required to set out the manner in which it proposes to make determinations on the capitalisation of operating expenditure in the capex incentive guidelines.	53

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ENA	Related party margins and capitalisation policy changes	The draft rule would remove the inappropriately classified expenditure from the RAB without acknowledging it is as opex.	63-65
ENA	Reviews of efficiency of past capex	Does not support reviews of efficiency of past capex due to their regulatory risk and administrative costs. In addition, the risk associated with a review of the efficiency of past capex may drive NSPs to inefficiently defer or avoid expenditure to ensure expenditure is under forecast amounts. The risk of such an outcome would be pronounced should the AER set an artificially low expenditure forecast.	50, 59
ENA	Reviews of efficiency of past capex	If reviews of efficiency of past capex are included, the guidance should be improved. The AER should be required to take a proportionate approach having full regard to other capex incentives and measures that might exist. The review should be based on whether expenditure was prudent at the time the relevant decisions were taken (not "best-practice" or "efficiency"). It should be limited to large investments that are materially above forecast or not included in the forecast at all. The onus of proof should be on the AER to prove that expenditure was imprudent. The existing criteria in the rules in relation to the prudency and efficiency of capex should also be considered.	59-60, 126-130
ENA	Reviews of efficiency of past capex	The framework needs to allow for any disallowed capex to be carried forward where capex is subsequently used and useful.	60
ENA	Reviews of efficiency of past capex	The costs of imposing an obligation on the AER to review and make a statement on the efficiency of all capex incurred in the previous period are unlikely to outweigh the benefits. This proposal ignores the effectiveness of ex-ante incentives. In addition, testing the previous efficiency of past capex does not provide much information about forecast capex. Further, NSPs are already required to report on past capex and give reasons for any variances between actual and forecast.	62-63
ENA	Reviews of efficiency of past capex	The AER should be required to apply the reviews of efficiency element of the capex incentive guidelines in place at the beginning of the regulatory control period in which the capex being assessed was incurred (not those that were in place at the time it undertakes a review of efficiency).	53-54
ENA	Small scale incentive schemes	The AER should have regard to the overall balance of incentive schemes. The AER should be required to compensate NSPs for the expected liability under the scheme where a scheme is asymmetric scheme. NSPs should have certainty on applicable schemes at the framework and approach stage.	36-38
EUA	Reviews of efficiency of past capex	Ex-post reviews are an idle threat because they ask a lot of the regulator. In addition NSPs will be able to claim that they increase investment uncertainty and therefore need higher rates of return.	13-14
Grid Australia	Depreciation	Supports the AER having flexibility on application of either actual or forecast depreciation. The AER should be able to consider the necessity of the incentive in the face of all the other possible capex incentives.	10
Grid Australia	Capex sharing incentive schemes	The AEMC should put beyond doubt that the AER has the flexibility to implement different schemes between transmission and distribution.	9
Grid Australia	Capex sharing incentive schemes	The AER should have regard to the risks created by such a scheme. This is particularly relevant for transmission in view of the lumpiness of projects, greater exposure to exogenous factors, different service obligations and the role of the RIT-T.	9

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IPART	Reviews of efficiency of past capex	Review of the efficiency of capex should not be limited to excluding only inefficient capex from the RAB that is above the original allowance. Concerns about investment certainty and regulatory risk could be better addressed through guidelines.	1-4
Jemena	Capex sharing incentive schemes	An incentive scheme should oblige the regulator to carry incentives continuously into the future to align with the long term return on the investment. If the reward is not commensurate with the level of financial risk arising from the penalty this may lead the NSP to defer efficient investment decisions.	20
Jemena	Capex sharing incentive schemes	Guidance should reflect capex sharing schemes in the UK which include broad symmetry and expenditure caps and floors.	21
Jemena	Capex sharing incentive schemes	An asymmetric scheme of the design set out in the draft determination would be unlikely to be consistent with the NEO and it is more likely to lead to NSPs opting against efficient investment decisions.	21
Jemena	Related party margins and capitalisation policy changes	The test should focus on prudence and efficiency, not simply whether the arrangement was "arm's length".	15
Jemena	Reviews of efficiency of past capex	There should be provision for any disallowed capex to be held in an account and uplifted at an appropriate rate, to be included in the RAB when/if it later becomes efficient (see NGR, s.84).	20
MEU	Capex sharing incentive schemes	Concerned that capex sharing scheme principles do not reflect the fact that the NSP is already being rewarded for efficient investment. The aim of the incentive scheme should be to ensure that the NSP minimises inefficiency.	24
MEU	Capex sharing incentive schemes	The AEMC's proposals do not provide any protection for consumers from the NSP gaming the capex program and gaining benefit by deferring capex to later in the regulatory control period.	25
MEU	Reviews of efficiency of past capex	To not allow the AER to exclude capex from entering the RAB where a NSP has spent less than the allowance is not in the best interests of consumers.	4, 21-23
SA Minister for Mineral Resources and Energy	Reviews of efficiency of past capex	The AER should also be able to reduce the amount of capex to go into the RAB when a NSP has spent within its allowance to ensure that the AER has the ability to scrutinise major projects.	1-2
SA Power Networks, CitiPower and Powercor	Overall approach	The AER should be required to make a final decision on the application of capex sharing schemes and whether depreciation will be based on actual or forecast expenditure at the framework and approach paper stage. This is so that the NSPs can ensure appropriate information is included in a regulatory proposal.	25
SA Power Networks, CitiPower and Powercor	Related party margins and capitalisation policy changes	The AER should be required to set out the manner in which it will determine whether a margin is referable to arrangements that do not reflect arm's length terms, and if it determines margins are referable to arrangements that do not reflect arms-length terms how the expenditure will be assessed in the capex incentive guidelines.	25
SA Power Networks, CitiPower and Powercor	Related party margins and capitalisation policy changes	NSPs should be required to report on "margins paid to related parties" and not "margins paid to related parties that are referable to arrangements that do not reflect arm's length terms."	25

Organisation	Issue	Substantive point being made	Page ref
SA Power Networks, CitiPower and Powercor	Related party margins and capitalisation policy changes	The AER should be required to apply the capex incentive guidelines in place at the beginning of the review period in relation to related party margins.	25
SA Power Networks, CitiPower and Powercor	Small scale incentive schemes	The AER and NSPs should be allowed to agree on a "revenue at risk" higher than currently provided for to allow for incentive properties of proposed schemes to be properly tested.	7, 29-30
SP AusNet	Reviews of efficiency of past capex	Expenditure for reliability improvement may reasonably and efficiently lead to a higher level of capex than the allowance due to incentives under the STPIS. The NER should carve out this potential impact.	5
UE and MG	Capex sharing incentive schemes	"Efficient" and "inefficient" capex should be defined as the difference between the actual and allowed expenditure for the purposes of the capex sharing scheme. The absence of these definitions will re-open a debate that was resolved by the Office of the Regulator General of Victoria in 2000.	15-16
UE and MG	Reviews of efficiency of past capex	The AEMC appears concerned that inefficient expenditure never takes place. Note that regulation is an imperfect substitute for competition and that even firms in competitive markets incur some level of inefficient expenditure.	16
UnitingCare Australia	Reviews of efficiency of past capex	As per comments from EUAA.	13-14
Victorian DPI	Related party margins and capitalisation policy changes	The approach set out in the capex incentive guidelines is critical to ensuring that the issue of related party margins is addressed.	2-3

Part IV Summary of issues about regulatory determination process

Organisation	Issue	Substantive point being made	Page ref
AER	Confidential information	Considers the confidentiality guidelines may provide a useful opportunity for AER to outline what is required in confidentiality claims	18
AER	Cross-submissions	Agrees that cross-submissions stage is at the AER's discretion for consulting on specific issues which may not have been subject to consultation. This avoids NSPs and other stakeholders using the stage to address issues that should have been dealt with earlier.	18
AER	Frameworks and approach paper – general comments	The draft rule provides a more effective framework and approach stage for both transmission and distribution. The optional stage avoids the need for reconsideration of issues if they do not change from the previous framework and approach paper.	18
AER	Overall process	Welcomes the additional time for an issues paper stage and early consultation, and a cross submissions stage if required.	18
AER	Overview paper	Consumer engagement initiatives in the draft rule are a significant improvement. Supports an overview paper, and requirement for NSPs to outline in their proposals on engaging consumers in their proposals.	17
ATA	Consumer engagement	Consumers may be better informed on regulatory issues and decision making, such as through the overview paper and issues paper, but not empowered to materially influence the process. To be empowered, consumers should be driving the consultation such as preparing issues papers and other reports for NSPs to respond to. Consumers should be given more power to influence efficient and fair outcomes. Seeks the AEMC to raise the energy market power imbalance issues with SCER and other bodies where possible to improve this consumer issue.	3-6
ATA	Timing of the process	Supports the additional six months to the process, but this will not prevent the power imbalance between NSPs and consumers in the regulatory process.	8
Consumer Action Law Centre	Confidential information	Broadly supports the approach to confidentiality claims in regulatory proposals. However, more can be done such as developing protocols in which consumer groups can participate in reviewing confidential material.	4
Consumer Action Law Centre	Consumer engagement	Does not consider that consumer engagement will improve i.e. overview paper will provide minimal changes. More research should be done into NSP engagement with consumers to understand consumer concerns. Consumer engagement to develop effective rules is not appropriate.	4
ENA	Cross-submissions	The scope of the cross-submissions stage can be limited so that the NSP may only address new matters raised by stakeholders in submissions made on the revised regulatory proposal, submission on the draft determination, or the AER's draft regulatory determination not previously addressed, and allow stakeholders to address new matters raised in submissions on the draft regulatory determination, revised regulatory proposal or NSP's submission on the draft regulatory determination. Considers this would incentivise NSPs to submit early given the limited scope of the cross-submissions stage. Alternatively, if the AER is given discretion to invite submissions on the revised regulatory	67

Organisation	Issue	Substantive point being made	Page ref
		proposal, then the cross-submissions stage must occur. This allows for procedural fairness so the NSP may address new stakeholder matters not previously submitted upon.	
ENA	Frameworks and approach paper – general comments	<p>Given the AER is being given the expanded discretion (and not the NSP) to determine whether there should be an amended or replacement framework and approach paper, the framework and approach paper should be made mandatory. This is also due to the fact that it will not apply to TNSPs and simplicity in drafting.</p> <p>Otherwise, if it is to be an optional stage, the NSP should be given the ability to trigger the process when it notifies the AER. This allows the NSP to meaningful prepare for new incentive schemes and other aspects to be considered in the framework and approach paper.</p>	73-74
ENA	Frameworks and approach paper - threshold for departing	Maintains the view that “unforeseen circumstances” is not appropriate. Development of competition in providing alternative control services may be foreseeable but its impact on the market may not crystallise until after the framework and approach paper e.g. new market entrant. Where a contingent trigger event occurs, service classification may be altered and the unforeseen test could not apply. Therefore, the threshold should be based on evidence of new material provided from the NSP which is only available after the publication of the framework and approach paper and justifies departure.	74-75
ENA	Overall process	Broadly supports the overall changes to the regulatory determination process, however proposes minor changes to improve the process.	3-4
ENA	Timing of the process	Proposes that the making of the final distribution regulatory determination is completed 10 days earlier than currently to address the shortness in time for DNSPs to submit their pricing proposals and extend time for submitting the pricing proposals by an additional five days.	68
ENA	Timing of the process	NSPs should be able to submit any revised regulatory proposal and their submissions on the draft regulatory determination no later than 45 business days after the draft regulatory determination. 55 business days after the draft regulatory determination, stakeholders can then submit on the NSP's revised regulatory proposal and NSP's submission on the draft regulatory determination. This should address any suggestion that NSPs defer their revised regulatory proposal via a submission on the draft regulatory determination.	66-67
ENA	Timing of the process	The rules should hardwire mandatory steps with respect to providing meaningful and full consultation, including on submissions on stakeholder and NSP submissions on the draft regulatory determination and revised regulatory proposal, and cross-submission stage.	67
EnergyAustralia	Overall process	Supports overall changes to the process, including lengthening time by commencing earlier, optional framework and approach paper, requiring reasons for confidentiality claims, allowing more time for submissions on uncertainty regime applications, and consideration of financial and operational impacts on other stakeholders during the regulatory determination process.	2-3
Ergon Energy	Confidential information	Proposes replacement of "personal affairs" with "personal information". This aligns with other legislation terminology relating to "personal information" and "information privacy". "Personal information" should not be considered confidential information because it is covered under other legislation.	9
Ergon Energy	Frameworks and	See ENA comments. Correct a typographical error on the note to clause 6.8.1(b)(1) and reference	8

Organisation	Issue	Substantive point being made	Page ref
	approach paper - threshold for departing	should be to clause 6.25(b).	
ESAA	Consumer engagement	For NSPs to effectively engage with consumers, NSPs need to understand how the AER will evaluate the NSPs' information. Previous state regulators have rejected NSPs evidence of considering customer preferences. Cost recovery of customer consultation should be taken into account.	3
Ethic Communities' Council of NSW	Consumer engagement	See comment by EUAA.	2-3
Ethic Communities' Council of NSW	Timing of the process	See comment by EUAA.	2
EUAA	Consumer engagement	The AEMC's proposal will not empower consumers, but rather they may be better engaged in the regulatory determination process. Requiring NSPs to report of consumer engagement and the AER to account for this may be meaningful - refers to the US/Canadian approach to negotiated settlements. Supports this proposal if the AEMC's approach is to better inform consumers so that resulting AER decisions receive greater acceptance by consumers. However, rather than "assisting" consumers via the AER issues paper, the AER should demonstrate it has sought to understand consumer preferences and willingness to pay. Empowering consumers would be better achieved through the policy makers.	4, 17-18
EUAA	Overall process	Overall regulatory determination process changes may address some concerns, but have no great value in effecting future regulatory outcomes.	16
EUAA	Timing of the process	Lengthening the regulatory decision processes will not simplify and lead to better decisions.	4
Grid Australia	Frameworks and approach paper – general comments	Given the limited amount of decisions in transmission, the framework and approach paper stage is unnecessary. This is because of the homogenous nature of transmission services, and maturity and national consistency in the transmission arrangements. The current arrangements allow for individual business circumstances such as STPIS and EBSS. New schemes can be treated in a similar fashion as is currently done for the existing schemes. In contrast, for distribution this was introduced to harmonise different forms of regulation for various distribution services and form of price control for standard control services.	3, 12-13
Grid Australia	Other comments on process	Removing the submission guidelines from transmission arrangements in order to harmonise chapters 6 and 6A are not sufficient reasons for doing so, given that the existing framework is effective and no added benefits in harmonising. These changes will create administrative costs for the TNSP to comply with.	3, 12, 14
Grid Australia	Timing of the process	Seeks an additional minimum of two weeks after the draft determination for TNSPs to submit their revised regulatory proposals.	3, 12, 14
IPART	Timing of the process	The determination process should be completed earlier so that the annual network prices are approved at least two months before they commence operation. Notes their rule change request to improve the pricing proposal process.	1, 4-5
Jemena	Overall process	Supports more time in the regulatory determination process, including for greater consultation and	9

Organisation	Issue	Substantive point being made	Page ref
		consumer engagement.	
MEU	Overall process	Supports the overall regulatory determination process changes to improve quality of regulatory outcomes and consumer engagement. However, concerned that the AER and consumer groups may not have adequate resources to handle the additional processes.	27-28
MEU	Overall process	Supports alignment of the regulatory determination process between electricity distribution and transmission.	28
Origin	Confidential information	The draft rule should not result in less confidentiality claims. Seeks more stringent and specific requirements to address confidentiality claims.	2
SA Power Networks, CitiPower and Powercor	Cross-submissions	Cross-submissions should be mandatory and the AER should not be able to drive the scope for making submissions. NSPs will not treat this as another opportunity for a late revised regulatory proposal as the proposal is currently constrained from doing so under the rules, the AEMC's proposed reporting of out of scope revisions would discourage this, and the AER may not consider information that is not raised. Giving the AER such discretion assumes the AER can identify the issues that are important to parties. The purpose of cross-submissions is to provide stakeholders with an opportunity to comment on matters significant to them. A more appropriate constraint on the cross-submissions stage is to limit it to matters raised in submissions on the draft determination or revised regulatory proposal.	7, 30-31
SA Power Networks, CitiPower and Powercor	Overall process	Supports the overall regulatory determination process changes including the six month extension, overview paper, and cross-submissions.	30
SP AusNet	Overall process	Supports the issues paper, cross-submissions, and extended revised regulatory proposal submission to increase consumer representative's engagement.	6
SP AusNet	Timing of the process	Considers the earlier commencement of the regulatory determination process will: result in out of date information in the regulatory proposal; the forecasts submitted will not be as accurate; reduced amount of actuals being provided (based on only the first 3 years) resulting in lower confidence in the outturn performance; and increased administrative resources over the extended time. Seeks the period to be more contained as practicably possible to improve regulatory certainty, including consideration of concurrent or overlapping activities.	6-7
UnitingCare Australia	Consumer engagement	See EUAA comments	5, 17
UnitingCare Australia	Timing of the process	See EUAA comments	5, 16
Victorian DPI	Timing of the process	Supports the inclusion of an issues paper, but does not support the earlier commencement of the process by an additional six months. Otherwise, this will create resource and cost burden on all parties involved. Proposes shortening the timeframe to align with the previous state-based regulatory processes, noting that ESC's timeframe was 12 months.	3-4

PART V Summary of diverse issues

Organisation	Issue	Substantive point being made	Page ref
AER	Cost pass through materiality threshold	1% of the annual revenue requirement for the materiality threshold for cost pass through applications may be too low and capture immaterial variations. Proposes that this threshold now be treated as necessary but not a sufficient condition.	14-15
AER	Uncertainty regime – general comments	Supports introducing the capex reopeners and contingent projects regimes as it provides additional options and implementation costs would be low.	14
AER	Uncertainty regime timeframe	Supports the timeframes for the uncertainty regime.	18
ENA	Contingent projects	<p>Maintains previous objection to contingent projects regime for electricity distribution: increased administrative burden from large number of triggered contingent projects; prudent and efficient capex would not be recovered as the AER would have to be satisfied that it is a trigger event and the monetary threshold needs to be met; the AER would micro-manage distribution networks leading to impact on CPI-X regime incentives; and contingent projects are not subject to merits review.</p> <p>If contingent projects become mandatory for distribution then the AER should not be able to micro-manage distribution networks (by not having regard to whether proposed expenditure should be included as contingent project; and proposing its own contingent projects by transferring expenditure to a contingent project). Instead, the AER should apply the capex criteria to determine whether it is satisfied or substitute with its own forecast if it is not.</p>	41-44
ENA	Contingent projects threshold	If contingent projects become mandatory for distribution then the threshold should only apply to very large individual projects and only capex related to an individual project i.e. the greater of \$30 million or 5% of a DNSP's annual revenue requirement. This ensures projects only apply in a similar fashion as for transmission, which are large in size, small in number, require a well-defined trigger event, proportionate to the business network size and value. Linking to the RIT-D threshold for distribution contingent project threshold is not suitable for distribution like in transmission where the contingent project threshold is linked with the RIT-T. The RIT-D is related to network augmentations which are low in threshold. The contingent projects regime cover very large individual projects and a broader range of projects which the RIT-D does not cover (RIT-D excludes connection assets, maintenance, replacement and refurbishment).	41-44
ENA	Cost pass through materiality threshold	The materiality threshold should be expressed cumulatively i.e. multiple events should be included as part of that one per cent annual revenue requirement materiality threshold. Otherwise this would be illogical, unfair and inconsistent with the RPP in not allowing NSPs a reasonable opportunity to recover at least the efficient costs. No evidence to show the AER has unreasonable administrative burden in assessing pass through events. Seek clarification on whether the one per cent threshold is based on the value of the revenue impact or cash flow impact - the original intent for costs incurred was related to cash flow impact otherwise it would have been referred to as impact on revenue (as opposed to increase/decrease in costs which should be based on actual	44-46

Organisation	Issue	Substantive point being made	Page ref
		total expenditure incurred).	
ENA	Material errors	Maintains its previous position that material errors should not be changed except for minor amendments. This is because: there is no deficiency in the existing rules for amending material errors in Chapter 6A; the AER's discretion is yet to be tested; and no risks and benefits assessment on changing this has been done.	73
ENA	Shared assets	<p>Considers that the shared assets mechanism should be allocating assets rather than capex between prescribed or standard control activities with additional commercial activities. This accounts for intense use of the asset which can change over time.</p> <p>Proposes improvements to the mechanism by extending it to other classes of regulated services, and not just standard control services for distribution and prescribed transmission services for transmission. The rules should be changed so that any expenditure that may be used for providing standard control or prescribed services are included in the RAB to create a "gross figure" RAB. Allocation can then be made between the services from this initial RAB. The Cost Allocation Principles would have to change so that it relates to the allocation of assets rather than capex.</p> <p>The "gross figure" RAB would also deal with the situation where past capex has been allocated to other services. There may be double allocation for this scenario and the rules would need to prevent this possibility.</p> <p>Does not agree with the principle that a shared asset cost reduction not being contingent on NSPs deriving a commercial outcome. NSPs should at least be left whole with respect to cost recovery.</p> <p>Without these proposed changes, the shared asset mechanism would not ensure that revenue received from shared assets can be dealt through a revenue requirement adjustment. Proposes a workshop to address any drafting issues associated towards effecting this.</p>	46-49
Energex	Shared assets	Supports the shared asset cost adjustment mechanism to provide non-standard control services, but more drafting to the rules required to give effect to the AEMC's intent for use of shared assets for non-standard control services.	2
Ergon Energy	Cost pass through materiality threshold	See ENA comments.	7
Ergon Energy	Shared assets	See ENA comments. Considers that the AEMC's intention that shared assets mechanism can apply where an asset is shared between standard and alternative control services is not reflected in the draft rules and seeks further amendment to achieve this.	7-8
Grid Australia	Material errors	No demonstration of a problem for changing the treatment of material errors for transmission, except amending to the extent necessary. However, "amending" a determination would lower the threshold for changing a determination.	3, 12, 14-15
Grid Australia	Shared assets	Supports the intention of the shared assets mechanism, including applying to where the asset may provide both prescribed transmission services and unregulated services, and allocating assets	3, 11-12

Organisation	Issue	Substantive point being made	Page ref
		<p>between different activities (and not capex at the point it enters the RAB). However, this should not be extended further than necessary and to recognise the specific aspects of transmission.</p> <p>Supports ENA position that shared assets should be extended to allow allocation between classes of regulated services.</p> <p>However, in transmission, assets that are only constructed solely for negotiated and non-regulated transmission services will not require to be subjected to the shared assets arrangement and included in the RAB. If they are later provided as prescribed transmission services, schedule 6A.2 already accommodates for this scenario.</p>	
MEU	Shared assets	Supports a shared assets mechanism. Where any additional revenue earned by the NSP that is fully funded by consumers, those consumers should receive a commercial benefit.	28
SA Power Networks, CitiPower and Powercor	Capex reopener	Supports the proposed capex reopener in distribution where unforeseen events require significant capex to ensure reliability and security.	7, 27
SA Power Networks, CitiPower and Powercor	Contingent projects	Maintains objection to a distribution contingent projects regime. See ENA comments.	7, 27-29
SA Power Networks, CitiPower and Powercor	Contingent projects threshold	Clarifies that it did not propose for the distribution contingent projects regime threshold to be set at \$5 million. Instead, it was pointing out the AER's inconsistency of a proposed \$10 million based on the regulatory test for transmission in 2006 compared to the proposed RIT-D threshold of \$5 million.	29
SA Power Networks, CitiPower and Powercor	Cost pass through materiality threshold	The materiality threshold for cost pass throughs of one per cent of the annual revenue requirement is excessive and should be \$1 million instead for certainty and avoid the AER needing to determine its materiality. If the one per cent of the annual revenue requirement is still to proceed, then the culmination of multiple events and the total impact (including cost and revenue impacts) should be considered as part of that threshold. Otherwise, the NSP would not be able to recover at least efficient and prudent costs under the RPP, and the process would be overly onerous, increase risk of DNSPs costs associated to unanticipated events, and increase risk related to quality, safety and reliability under the NEO.	6-7, 26-27
SA Power Networks, CitiPower and Powercor	Uncertainty regime timeframe	Supports the extended timeframe for cost pass through applications.	6, 26
SP AusNet	Contingent projects	Does not support the proposed distribution contingent projects regime. Under transmission, it was introduced to address uncertainty in relation to very large and separable customer driven projects and have a significant impact on capex. This has not been the case for distribution, there has been no clear need and benefit for this, and will only result in increased uncertainty and reduced	5

Organisation	Issue	Substantive point being made	Page ref
		efficiency.	

PART VI Summary of issues raised about transitional arrangements in response to draft rule determination

Organisation	Issue	Substantive point being made	Page ref
APIA	CAPM / nominal post tax prescription	There should be transitional provisions for businesses that have had a basis other than nominal post-tax approach to WACC.	1
Energex	Reviews of efficiency of past capex	Reviews of efficiency of past capex should only be applied prospectively.	2
Jemena	Reviews of efficiency of past capex	To be fair and equitable the review of efficiency of past capex mechanism should not operate retrospectively. This would be poor in principle and contrary to section 33 of schedule 2 of the NEL.	19-20
SA Power Networks, CitiPower and Powercor	Reviews of efficiency of past capex	Any power to conduct a review of the efficiency of capex should only exist where the relevant rules are in force for the entire period over which the review is to be conducted. This would maintain investor confidence in the stability of regulation, be consistent with good regulatory practice, and consistent with the NEL (section 33(1) of Schedule 2).	22-23