RULE CHANGE

Australian Energy Market Commission

RULE DETERMINATION

National Electricity Amendment (Network Service Provider Expenditure Objectives) Rule 2013

Rule Proponent

Standing Council on Energy and Resources

19 September 2013

For and on behalf of the Australian Energy Market Commission

Inquiries

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About the AEMC

The Council of Australian Governments (COAG), through its then Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. In June 2011, COAG established the Standing Council on Energy and Resources (SCER) to replace the MCE. The AEMC has two main functions. We make and amend the national electricity, gas and energy retail rules, and we conduct independent reviews of the energy markets for the SCER.

Summary

The Australian Energy Market Commission (AEMC) has made a final determination in relation to the rule change request from the Standing Council on Energy and Resources (SCER or proponent) regarding the operating and capital expenditure objectives (the expenditure objectives) in chapters 6 and 6A of the National Electricity Rules (NER).

SCER's rule change request seeks to clarify the level of reliability to be used by network service providers (NSPs) when submitting their regulatory proposals as part of their regulatory determination processes. SCER's proposed rule would clarify that the amount of expenditure that an NSP includes in its regulatory proposal for reliability must be no more than an amount it considers is required to comply with any relevant regulatory obligation or requirement where these are in place rather than just to maintain current levels of reliability. The SCER also asked whether similar clarification is required with respect to the levels of security, quality and safety used to determine the expenditure allowance.

The Commission has made a more preferable rule that gives effect to the key objectives of SCER's proposed role in relation to reliability, but amends the drafting of the relevant clauses.

The Commission considers that clarification of the objectives is also required in relation to security and quality and the final rule therefore addresses these matters. However, the Commission considers that different issues arise in relation to safety and that the safety component of the expenditure objectives in the NER in effect should remain unchanged.

The Commission's reasons

There are currently four expenditure objectives in the National Electricity Rules (NER) that NSPs' expenditure proposals should meet, which are to:

- meet or manage the expected demand for regulated services over the regulatory control period (expenditure objective 1);
- comply with all applicable regulatory obligations or requirements associated with the provision of regulated services (expenditure objective 2);
- maintain the quality, reliability and security of supply of regulated services (expenditure objective 3); and
- maintain the reliability, safety and security of the transmission or distribution system through the supply of regulated services (expenditure objective 4).

The Commission considers it is currently unclear in the NER how the existing expenditure objectives relating to reliability, security and quality work together.

This uncertainty in the objectives creates a lack of clarity for the NSP when putting together its regulatory proposal, and for the AER in determining an NSP's expenditure allowance in relation to these measures.

The existing expenditure objectives could be interpreted so that the expenditure an NSP includes in its regulatory proposal is to be based on maintaining the NSP's existing levels of reliability, security or quality, even where an NSP is performing above the required standards for these measures, or where required standards for these measures are lowered.

In light of this problem the Commission considers that the expenditure objectives should be clarified in respect of reliability, security and quality. The standards in regulatory obligations or requirements have been set by a body allocated to this role and the Commission considers that the expenditure objectives should give effect to this division of responsibilities.[1]

The final rule amends the four expenditure objectives to allow for NSPs expenditure to:

- meet or manage the expected demand for regulated services over the regulatory control period (expenditure objective 1);
- comply with all applicable regulatory obligations or requirements associated with the provision of regulated services (expenditure objective 2);
- where no applicable regulatory obligations or requirements associated with the provision of regulated services exist, maintain the quality, reliability and security of supply of regulated services (expenditure objective 3); and
- maintain the safety of the transmission or distribution system through the supply of regulated services (expenditure objective 4).

This will provide greater clarity to NSPs in preparing their regulatory proposals and the AER in assessing these proposals. It will also provide greater certainty for the NSP as it will have more confidence as to what its expenditure allowance will be based on in the future. In addition it avoids any inconsistency between the standard that the NSP is required to provide under jurisdictional requirements and the level of expenditure that the AER is required to approve through the regulatory determination process.

The Commission does not consider it appropriate to amend the expenditure objectives for safety. It may be appropriate for there to be safety standards in voluntary industry codes or Australian standards that sit on top of regulated standards. It would therefore not be appropriate to limit the expenditure allowance to the regulated standards for safety.

1 For example, state and territory governments have been allocated the role of setting reliability standards under the Australian Energy Market Agreement (AEMA).

Where there are no regulatory obligations or requirements in relation to reliability, security, quality or safety then the issue of how the existing objectives work together does not arise. This is because there can be no conflict between the regulatory standard and an NSP's existing levels of reliability, security or quality where there is no regulatory standard. The Commission therefore considers that the existing objectives should be retained where there are no regulatory obligations or requirements in place.

The Commission notes that the expenditure objectives determine what expenditure the NSPs must include in their regulatory proposal. The AER must then assess the expenditure in the regulatory proposal against the expenditure criteria in the NER. These require the AER to determine whether the expenditure allowance reasonably reflects:

- the efficient costs of achieving the objectives;
- the costs that a prudent operator would require to achieve the objectives; and
- a realistic expectation of demand and cost inputs required to achieve the objectives.

The AER must also have regard to expenditure factors in the NER in determining the expenditure allowance.

The rule as made commences on 26 September 2013. It will first apply to those NSPs that are due to submit transitional regulatory proposals to the Australian Energy Regulator (AER) by 31 January 2014 and full proposals by 31 May 2014. These NSPs are ActewAGL, the NSW DNSPs, Transend and TransGrid.

Contents

1 Standing Council on Energy and Resources' rule change request

1.1 The rule change request

On 8 October 2012, the Standing Council on Energy and Resources (proponent or SCER) made a request to the Australian Energy Market Commission (AEMC or Commission) to make a rule regarding the operating expenditure (opex) and capital expenditure (capex) objectives in chapters 6 and 6A of the National Electricity Rules (NER or rules).

The aim of the rule change is to clarify the level of reliability to be used for determining the expenditure allowance for network service providers (NSPs) in submitting their regulatory proposals as part of their regulatory determinations.[2] In particular it would clarify that the amount of expenditure that an NSP includes in its regulatory proposal for reliability must be no more than an amount it considers is required to comply with any relevant regulatory obligation or requirement, where these are in place, rather than to maintain current levels of reliability.

The SCER also asked whether similar clarification is required for the security, quality and safety aspects of the expenditure objectives.[3]

1.2 Current arrangements

The setting of standards for reliability, quality, security and safety does not currently rest with the Australian Energy Regulator (AER) but with other bodies. For example, the setting of reliability standards is the responsibility of the state and territory governments under the Australian Energy Market Agreement (AEMA).[4] At the same time some requirements are also set out in the NER. For example there are requirements for quality standards in chapter 5 of the NER.[5]

The NER currently requires NSPs to include in their regulatory proposals the forecast expenditure that they consider is required to achieve the four expenditure objectives:

- meet or manage the expected demand for regulated services over the regulatory control period (expenditure objective 1);

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2 The existing expenditure objectives distinguish between the reliability of supply of regulated services and the reliability of the system through the supply of regulated services. In this final determination, these components are referred to collectively as "reliability".

3 The expenditure objectives distinguish between the security of supply of regulated services and the security of the system through the supply of regulated services. In this final determination, these components are referred to collectively as "security". In addition the expenditure objectives specify quality of supply of regulated services and safety of the system through the supply of regulated services. In this final determination, these components are referred to as "quality" and "safety".

4 Annexure 2 to the Australian Energy Market Agreement, as amended on 2 October 2011, p. 2.

5 See for example NER clause S5.1a.5.

- comply with all applicable regulatory obligations or requirements associated with the provision of regulated services (expenditure objective 2);
- maintain the quality, reliability and security of supply of regulated services (expenditure objective 3); and
- maintain the reliability, safety and security of the transmission or distribution system through the supply of regulated services (expenditure objective 4).[6]

These are known as the capex and opex objectives, which are collectively referred to as the "expenditure objectives" in this paper. When referring to individual objectives in this paper the number given to them in the NER, that is objectives 1, 2, 3 and 4, have been used. A regulatory obligation or requirement as mentioned in objective 2 is defined in section 2D of the National Electricity Law (NEL).

The AER is required to accept an NSP's expenditure proposal where it is satisfied that the expenditure reasonably reflects:

- the efficient costs of achieving the expenditure objectives;
- the costs that a prudent operator in the circumstances of the relevant NSP would require to achieve the expenditure objectives; and
- a realistic expectation of the demand forecast and cost inputs required to achieve the expenditure objectives.[7]

These are known as the capex and opex criteria (expenditure criteria).

If the AER is not satisfied that the proposed forecast expenditure meets these criteria, then it must set out an estimate of the expenditure that it considers does reasonably reflect the expenditure criteria.[8]

1.3 Rationale for rule change request

The SCER claims that an interpretation of the expenditure objectives in the NER could potentially allow NSPs to include expenditure in their regulatory proposal they consider necessary to maintain the level of reliability they achieved in the previous regulatory period. This could particularly be a problem where:

- an NSP is performing above the jurisdictional reliability standards,[9] or where
- the required jurisdictional reliability standards are lowered.

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6 These are provided in NER clauses 6.5.6(a), 6.5.7(a), 6A.6.6(a) and 6A.6.7(a). Reference to "regulated services" means either standard control services or prescribed transmission services.

7 NER clauses 6.5.6(c), 6.5.7(c), 6A.6.6(c) and 6A.6.7(c).

8 NER clause 6.5.6(d), 6.5.7(d), 6A.6.6(d) and 6A.6.7(d).

9 SCER, Rule change request, Attachment A, Section 4.

Consequently, in these scenarios the expenditure allowance could be higher than it should be which means that consumers could pay more than necessary for services provided by NSPs.[10]

The SCER also claims that the reference to the maintenance of reliability under chapters 6 and 6A of the NER creates uncertainty for NSPs in preparing their regulatory proposals and the AER in determining the expenditure allowance. This is because the SCER considers it could conflict with the objective of complying with all applicable regulatory obligations and requirements (which under the NEL definition includes jurisdictional obligations).

The SCER also suggests that there is a possibility that similar issues could occur in relation to the quality, safety and security aspects of the expenditure objectives. It requests the AEMC to examine whether there is a similar need for clarification for these aspects of the objectives.[11] However, it states that any such clarification should not compromise the security or quality of supply of regulated services or the safety of the electricity system through the supply of regulated services.[12]

The AER in its network regulation rule change request and the AEMC in our review of distribution reliability outcomes in NSW have previously raised this potential issue in relation to reliability.[13]

1.4 Solution proposed in the rule change request

The rule change request proposes to amend the expenditure objectives in the NER. The amendments would have the effect of only allowing NSPs to include in their regulatory proposals sufficient expenditure to comply with applicable regulatory obligations or requirements relating to reliability.[14]

The proponent's rule change request includes a proposed rule.[15] The proposed rule inserts new clauses to put the interpretation of the existing expenditure objectives beyond doubt where an NSP is required to comply with a regulatory obligation or requirement relating to reliability. In such circumstances, the amount an NSP includes in its regulatory proposal for reliability must be no more than an amount it considers is required to comply with that regulatory obligation or requirement. With the exception of the new clauses, the existing provisions would remain unchanged.

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10 Ibid.

11 Ibid.

12 Ibid.

13 AEMC, *Economic Regulation of Network Service Providers, and Price and Revenue Regulation of Gas Services*, Directions paper, 2 March 2012, p. 30; AEMC, *Review of distribution reliability outcomes and standards - New South Wales workstream*, Final report, 31 August 2012, pp. 108, 118.

14 The relevant NER clauses that would be affected include 6.5.6(a)(3), 6.5.6(a)(4), 6.5.7(a)(3), 6.5.7(a)(4), 6A.6.6(a)(3), 6A.6.6(a)(4), 6A.6.7(a)(3) and 6A.6.7(a)(4).

15 SCER, Rule change request, Attachment B.

The proponent seeks for the rule to commence operation no later than the anticipated date that the New South Wales distribution network service providers (DNSPs) are to submit their next regulatory proposals.[16] Under Chapter 6 of the NER, as amended by the *Economic Regulation of Network Service Providers* rule change request which commenced operation on 29 November 2012, the New South Wales DNSPs are required to submit their next full regulatory proposals by 31 May 2014.[17]

1.5 Relevant strategic priority

This final rule determination falls within the AEMC's proposed strategic priorities for energy market development as it relates to market arrangements that encourage efficient investment and flexibility.[18]

1.6 Commencement of rule making process

On 7 February 2013, the Commission published a notice under section 95 of the NEL advising of its intention to commence the rule making process and the first round of consultation in respect of the rule change request. A consultation paper to facilitate public consultation on the rule change request was also published with the rule change request. Submissions closed on 7 March 2013.

The Commission received nine submissions on the rule change request as part of the first round of consultation. They are available on the AEMC website.[19] A summary of the issues raised in submissions is contained in Appendix A.

1.7 Extension of time

On 16 May 2013 the AEMC published a notice under section 107 of the NEL to extend the period of time for publication of the draft determination on this rule change request to 4 July 2013. The extension of time was to allow for further policy analysis to address issues raised in the rule change request and submissions. The issues were of sufficient complexity and difficulty such that it was necessary to extend the period of time for making a draft determination.

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16 SCER, Rule change request, Attachment A, Section 9.

17 Clause 11.55.2 of the NER in effect requires New South Wales DNSPs to submit their transitional regulatory proposals by 31 January 2014 for the transitional regulatory period of 12 months commencing on 1 July 2014. After that transitional regulatory period, under clause 6.8.2(a) of the NER, New South Wales DNSPs are required to submit their regulatory proposal by 31 May 2014.

18 Australian Energy Market Commission, Strategic priorities for energy market development, Discussion paper, 2013.

19 www.aemc.gov.au

1.8 Publication of draft rule determination and draft rule

On 27 June 2013 the Commission published a notice under section 99 of the NEL and a draft rule determination in relation to the rule change request (draft rule determination). The draft rule determination included a draft rule.

Submissions on the draft rule determination closed on 8 August 2013. The Commission received six submissions on the draft rule determination. They are available on the AEMC website.[20] A summary of the issues raised in submissions, and the Commission's response to each issue, is contained in Appendix A.2.

20 www.aemc.gov.au

2 Final rule determination

2.1 Commission's determination

In accordance with section 102 of the NEL the Commission has made this final rule determination in relation to the rule proposed by the SCER. In accordance with section 103 of the NEL the Commission has determined not to make the rule proposed by the rule proponent and to make a more preferable rule.[21]

The Commission's reasons for making this final rule determination are set out in section 3.1.

The *National Electricity Amendment (Network Service Provider Expenditure Objectives) Rule 2013 No 5* (rule as made) is published with this final rule determination. The rule as made commences on 26 September 2013. Its key features are described in section 6.4.

2.2 Commission's considerations

In assessing the rule change request the Commission considered:

- the Commission's powers under the NEL to make the rule;
- the rule change request;
- the revenue and pricing principles;[22]
- submissions received during first and second rounds of consultation; and
- the Commission's analysis as to the ways in which the rule will or is likely to, contribute to the National Electricity Objective (NEO).

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles.[23]

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21 Under section 91A of the NEL the AEMC may make a rule that is different (including materially different) from a market initiated proposed rule (a more preferable rule) if the AEMC is satisfied that having regard to the issue or issues that were raised by the market initiated proposed rule (to which the more preferable rule relates), the more preferable rule will or is likely to better contribute to the achievement of the National Electricity Objective.

22 Under section 7A of the NEL, the AEMC must have regard to the revenue and pricing principles.

23 Under section 33 of the NEL, the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. In September 2011, the Council of Australian Governments created the Standing Council of Energy and Resources, which includes Ministers responsible for energy. These Ministers comprise the membership of the legally enduring MCE.

2.3 Commission's power to make the rule

The Commission is satisfied that the rule falls within the subject matter about which the Commission may make rules. The rule falls within section 34 of the NEL as it relates to regulating:

> "(iii) the activities of persons (including Registered Participants) participating in the national electricity market or involved in the operation of the national electricity system."

Further, the rule falls within the matters set out in Schedule 1 to the NEL as it relates to items 15, 17, 18, 25, 26A and 26B. This is because it relates to the regulation of revenues earned by network service providers through the consideration of expenditure objectives in the NER which are used to determine network service providers' expenditure allowances under the regulatory determination process.

2.4 Rule making test

Under section 88(1) of the NEL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NEO. This is the decision making framework that the Commission must apply.

The NEO is set out in section 7 of the NEL as follows:

> "The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:
>
> (a) price, quality, safety, reliability and security of supply of electricity; and
>
> (b) the reliability, safety and security of the national electricity system."

For the rule change request, the Commission considers that the relevant aspect of the NEO is to promote efficient investment in, and the efficient operation of, network services for the long term interests of consumers of electricity.[24]

The Commission considers that the rule as made is likely to promote efficient investment in, and operation of, network services for the following reasons:

- It will provide clarity on the level of reliability, security and quality that NSPs should use in their proposed expenditure for the regulatory control period. In the same way it will also provide clarity to the AER about the level of reliability, quality and security that it should use in assessing the NSPs' proposals and determining the expenditure allowance. The rule provides this clarity by

24 Under section 88(2), for the purposes of section 88(1) the AEMC may give such weight to any aspect of the NEO as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.

allowing the decision of the body with the responsibility for setting the standard to be given effect to as part of the regulatory determination process. This should result in a more efficient outcome, as this body has been chosen as best placed to make the decision.

- In providing for clarity the rule as made will also provide certainty for the NSP as it will have confidence about what level of reliability, security and quality its expenditure allowance will be based on in the future. This certainty will promote productive and dynamic efficiency.
- The rule avoids duplication of roles by clarifying that the jurisdiction is responsible for setting standards, providing for administrative efficiency and should lead to a better and more efficient outcome for consumers.
- The rule avoids inconsistency between the standard that the NSP is required to meet under jurisdictional requirements and the level of expenditure that the AER is required to approve through the regulatory determination process.

Overall the Commission considers that the rule as made is likely to lead to more confidence that investment and expenditure levels reflect efficient costs in the long term because it gives effect to the decision of the organisation responsible for setting reliability, security and quality standards.

The Commission has also taken into account the revenue and pricing principles as required under section 88B of the NEL. The rule as made provides NSPs with a reasonable opportunity to recover at least the efficient costs in providing direct control network services and complying with a regulatory obligation or requirement or making a regulatory payment.[25] It does this by making it clear that the levels of performance for reliability, security and quality that the NSPs are required to meet under legislative instruments are reflected in the expenditure objectives. That is, the rule as made gives effect to the decision of the relevant standard setting body. The rule also provides effective incentives in order to promote economic efficiency.[26] This is because it will provide NSPs with greater certainty as to its expenditure allowance.

2.5 More preferable rule

Under section 91A of the NEL, the AEMC may make a rule that is different (including materially different) from a market initiated proposed rule (a more preferable rule) if the AEMC is satisfied that, having regard to the issues or issues that were raised by the market initiated proposed rule (to which the more preferable rule relates), the more preferable rule will or is likely to better contribute to the achievement of the NEO.

25 NEL section 7A(2)(a)-(b).

26 NEL section 7A(3).

Having regard to the issues raised by the proposed rule, the Commission is satisfied that the rule as made will, or is likely to, better contribute to the NEO for the following reasons:

- the rule clarifies the security and quality aspects of the objectives as well as reliability; and
- the rule has been drafted to provide greater clarity to NSPs and the AER regarding the interpretation of the expenditure objectives.

3 Commission's reasons

The Commission has analysed the rule change request and assessed the issues arising out of this rule change request. For the reasons set out below, the Commission has determined that a rule should be made. Its analysis of the rule proposed by the rule proponent is also set out below.

3.1 Summary of assessment of issue

The Commission considers that, under the previous rules, it was not clear how the existing expenditure objectives worked together. This was because expenditure objective 2 required an NSP, in developing its regulatory proposal, to base its expenditure on *complying* with regulatory obligations or requirements for reliability, security, quality and safety. On the other hand expenditure objectives 3 and 4 could be interpreted such that they required this expenditure to be based on *maintaining* existing levels of reliability, security, quality and safety. This created a lack of clarity for the NSP when putting together its regulatory proposal and for the AER in determining an NSP's expenditure allowance in relation to these measures.

In addition, the previous expenditure objectives could have been interpreted to require the expenditure in an NSP's regulatory proposal to be based on maintaining existing levels of reliability, security quality or safety, even where:

- an NSP was performing above the required standards for these measures, or where
- the required standards for these measures were lowered.

The same issue arose when the AER determined the expenditure allowance.

In light of this problem the Commission considers that the expenditure objectives should be clarified in respect of reliability, security and quality. Complying with standards in regulatory obligations or requirements is the appropriate objective for these measures. The standards in regulatory obligations or requirements have been set by a body allocated to this role and the expenditure objectives should give effect to this division of responsibilities. There is a risk of inefficiency if the decision of the standard setter is not given effect to in the regulatory process and one standard is used to assess compliance with regulatory obligations but a different standard is used to assess regulatory proposals.

Giving effect to the standards set by the allocated body will provide greater clarity to NSPs in preparing their regulatory proposals and the AER in assessing these proposals. It will also provide certainty for the NSP as it will have more confidence as to what its expenditure allowance will be based on in the future.

However, the Commission does not consider it appropriate to amend the expenditure objectives for safety. Current levels of safety may appropriately have been influenced by safety standards in voluntary industry codes or Australian standards in addition to regulated standards. It would therefore not be appropriate to limit the expenditure allowance to the regulated standards for safety rather than the current obligation to maintain safety. Doing so could risk inadvertently reducing the level of safety delivered by NSPs. Alternatively it could require those existing non-regulated standards to be moved to regulation to avoid any unintended reduction in safety levels.

In addition no specific issues have been raised in relation to the current NER provisions related to safety and there is no evidence that the current level of safety being delivered by NSPs is inappropriate.[27]

The Commission considers that where there are no regulatory obligations or requirements in relation to reliability, security, quality or safety then the issue of how the existing objectives work together does not arise. This is because there is only one relevant objective for a particular aspect of performance which is covered by the existing expenditure objectives 3 and 4 relating to maintaining performance. That is, in the absence of standards being set by the jurisdiction, the objective will be to maintain previous performance. Further, the body allocated to the role can introduce required standards if it is not satisfied with the current level of performance. In this way the rule as made will give primacy to any reliability obligation or requirement where it exists.

27 For clarification, retaining the effect of the current NER provisions in respect of safety would not permit NSPs to increase the level of expenditure they may seek by increasing the safety standard set out in a voluntary industry code. It would only allow expenditure sufficient for safety standards to be maintained.

4 Commission's assessment approach

This chapter describes the analytical framework that the Commission has applied to assess the rule change request in accordance with the requirements set out in the NEL (and explained in Chapter 2).

As explained in section 1.2, the setting of these standards does not currently rest with the AER but with other bodies. For example, the setting of reliability standards is the responsibility of the state and territory governments under the AEMA. Some requirements are also set out in the NER, for example requirements for quality standards in chapter 5 of the NER.

In assessing this rule change request, the Commission has considered the following issues:

- the benefits of ensuring that the allocation of the roles of different bodies are given effect to in the regulatory determination process. A more efficient outcome should arise if the decision of the body that is responsible for setting standards is given effect to in the regulatory determination as this body has been designated as the body best placed to make the decision. This also means that duplication of roles is avoided which could promote administrative efficiency;
- the benefits of providing clarity and consistency as to the required level of reliability, security, quality and safety which would lead to regulatory certainty for the NSP in proposing expenditure and the AER in assessing the expenditure against an appropriate level of performance. Additional certainty could promote productive and dynamic efficiency.

An approach that maximises these benefits is likely to lead to more confidence that investment and expenditure levels reflect efficient costs in the long term.

This rule change does not consider whether the existing levels of performance standards with respect to reliability, security, quality or safety are appropriate or whether the approaches taken to develop these standards is appropriate. This is a matter that is outside the scope of this rule change. However, the AEMC is currently undertaking separate reviews of transmission and distribution reliability standards with a view to developing a national framework for setting these standards.[28]

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28 See AEMC website, www.aemc.gov.au.

5 Existence of a problem

5.1 Stakeholder views

5.1.1 Stakeholder views on the consultation paper

All stakeholders (except for CitiPower and Powercor) agreed that the objectives in relation to reliability could be clarified, although they differed on how this should be done.

There was no explicit support for including the other aspects of performance as part of the rule change, although the preferred drafting solutions of some NSPs and the AER did incorporate some or all of these measures.

Where explicitly commented on, NSPs considered security to be closely linked to reliability.[29]

Jemena specifically opposed extending the rule change to include the quality element of the expenditure objectives.[30] It suggested that customers expect NSPs to maintain the quality of supply to the current levels because a lowering of such levels may adversely impact on performance of customer appliances and equipment and cause damage to them.[31]

CitiPower, Powercor and Jemena did not support extending the scope of the rule change to include the safety element of the expenditure objectives.[32] CitiPower and Powercor considered that if safety was included, the rule change proposal would mandate an approach under which the AER could disregard the true costs associated with safety related issues in conducting its assessment of expenditure allowances, thereby enshrining the approach that was criticised by the Victorian Bushfire Royal Commission in relation to the February 2009 bushfires.[33]

Grid Australia stated that the need to clarify other aspects of network performance was not clearly established, noting that these are not subject to fluctuation like reliability, and could result in confusion with other parts of the rules.[34]

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29 See for example, Jemena, Submission on consultation paper, 7 March 2013, p. 2.

30 Jemena, Submission on consultation paper, 7 March 2013, p. 5.

31 Jemena, Submission on consultation paper, 7 March 2013, p. 5.

32 CitiPower and Powercor, Submission on consultation paper, 7 March 2013, pp. 3-4; Jemena, Submission on consultation paper, 7 March 2013, pp. 5-6.

33 CitiPower and Powercor, Submission on consultation paper, 7 March 2013, pp. 3-4; Jemena, Submission on consultation paper, 7 March 2013, p. 5.

34 Grid Australia, Submission on consultation paper, 7 March 2013, p. 3.

5.2 Commission's analysis and conclusions

5.2.1 Reliability

Reliability refers to the continuity of supply. Interruptions to the supply to customers either occur when:

- there is insufficient generation available to a region, including imports from other regions, to meet the load in that region (reliability of the power system); or
- the load exceeds the capacity of the network that is available to supply that load (reliability of supply).

Reliability standards are usually specified in state or territory government instruments such as licence conditions. Reliability standards can be input based which specify the level of redundancy required within the network or output based which specify a required level of reliability to consumers. The transmission and distribution network businesses within the state or territory are required to apply these standards when planning and operating their networks.

The Commission considers that it is not clear how the existing expenditure objectives with respect to reliability work together. This is because:

- expenditure objective 2 requires expenditure in an NSP's regulatory proposal to be based on complying with regulatory obligations or requirements which would include reliability standards in jurisdictional instruments; whereas
- expenditure objectives 3 and 4 could be interpreted as requiring expenditure in an NSP's regulatory proposal to be based on maintaining existing levels of reliability.

This creates a lack of clarity for the NSP when putting together its regulatory proposal and for the AER in determining an NSP's expenditure allowance in relation to reliability.

In addition the NER could be interpreted such that expenditure in an NSP's regulatory proposal should be set at a level required to maintain existing levels of reliability where:

- where an NSP has been performing above the required jurisdictional reliability standards, or where
- the required jurisdictional reliability standards are lowered.

These scenarios are illustrated in Figure 5.1 and Figure 5.2.

Figure 5.1 Scenario where an NSP has been performing above the required reliability standards

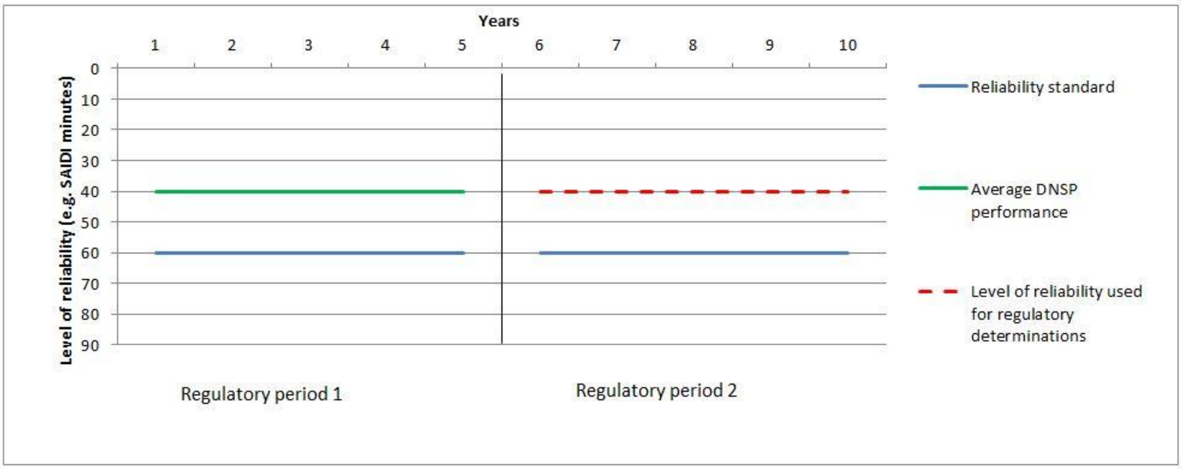
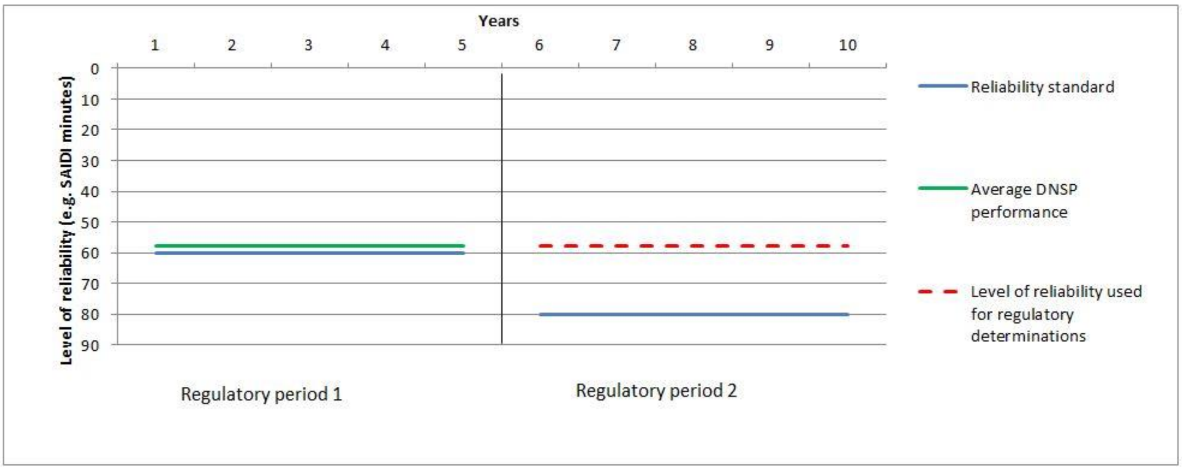


Figure 5.2 Scenario where jurisdictional reliability standards are lowered



If the expenditure objectives are interpreted in this way the expenditure allowance could be higher than required by the jurisdictional standard. This means that consumers may be paying more than necessary, based on the determined standard, for services provided by NSPs.

There is also a potential inconsistency between the level of reliability that is used to determine the expenditure allowance, and that which is required by jurisdictional obligations and requirements in these scenarios.

The Commission also notes that there was general agreement from stakeholders that the objectives in relation to reliability could be clarified.[35]

35 See, for example, Australian Energy Regulator, Submission on the consultation paper, 7 March 2013 at p.1, Aurora Energy, Submission on the consultation paper, 7 March 2013 at p.1, NSW DNSPs, Submission on the consultation paper, 7 March 2013 at p.1.

In addition, there is some evidence that some NSPs are currently outperforming against the existing reliability standards. By way of illustration, Table 5.1 shows the System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) targets as specified in the NSW DNSPs' licence conditions against the performance achieved by the DNSPs in 2011-12. The table shows that the NSW DNSPs outperformed the standards for 2011-12 for all feeder types.[36]

Table 5.1 Performance of the New South Wales DNSPs for 2011-2012[37]

DNSP	Feeder	SAIDI (minutes)		SAIFI	
		Target	Actual	Target	Actual
Essential Energy	Urban	125	80	1.8	1.16
	Short rural	300	238	3.0	2.21
	Long rural	700	478	4.5	3.28
Ausgrid	CBD	45	5.55	0.3	0.04
	Urban	80	72.42	1.2	0.83
	Short rural	300	156.12	3.2	1.74
	Long rural	700	527.33	6.0	4.64
Endeavour Energy	Urban	80	60.9	1.2	0.8
	Short rural	300	183.4	2.80	1.84
	Long rural	n/a	322.3	n/a	3.1

Source: AEMC Reliability Panel, *Annual Market Performance Review*, *Final Report*, pp. 75-76.

In light of the evidence provided it should be made clear in the NER that where the jurisdiction determines a regulated standard for reliability it is this level of reliability that expenditure in an NSP's regulatory proposal should be based on and not any other level. In practice this means that the NSP should propose no more expenditure than is

36 It is noted that the NSW licence conditions require DNSPs to meet each standard every year, with a failure to do so being a breach of the licence that could result in licence revocation. This structure potentially provides incentives for DNSPs to outperform the standards on average over a regulatory period to reduce their risk of failing to meet a standard in any one year, for example due to extreme weather conditions. The *Review of distribution reliability outcomes and standards - NSW workstream* proposed amendments for this aspect of the licence conditions - see the AEMC's website, www.aemc.gov.au.

37 The data in this table is based on the NSW Reliability Licence conditions criteria and methodology that differs from that used by, and reported to, the AER by the NSPs.

necessary to comply with the reliability standard, and for the AER not to approve any more expenditure than required by the standard.[38]

Given that the NER could be interpreted such that it requires expenditure in an NSP's regulatory proposal to be based on maintaining existing levels of reliability, the same interpretation could occur for the security, quality and safety aspects of the expenditure objectives. Following on from this, the Commission considers that there is a potential problem if the required standards for these measures are lowered or where an NSP is performing above the required standard. The question then becomes whether it would contribute to the achievement of the NEO to clarify these aspects of the objectives in the same way as reliability. Each of these aspects of the objectives are now discussed.

5.2.2 Security

Security of supply and security of the power system relate to the way that the power system is operated. The Australian Energy Market Operator is responsible for maintaining the security of the power system as a whole and the NSPs are responsible for security within their networks. There are standards for security that NSPs must comply with in schedule 5.1 of the NER. There may also be standards in jurisdictional legislative instruments that may be regarded as security requirements.

Importantly, security is closely linked to reliability. Relaxing the standards for power system security would increase the utilisation of the network assets and hence the reliability of supply to consumers, but this would be at the expense of an increased risk of prolonged interruptions to consumers or even equipment damage following a contingency event. This was a view made by some NSPs in their submissions to the consultation paper, as identified in section 5.1.1.

Given this direct relationship, the Commission considers that reliability and security should be treated in the same manner in the expenditure objectives. It is also appropriate that expenditure in an NSP's regulatory proposal should be based on those standards contained in regulatory obligations or requirements such as the security standards in the relevant parts of the NER and any jurisdictional instruments where these apply. This will assist in providing greater certainty to NSPs and the AER in determining the expenditure allowance. It will also help to ensure that the roles allocated to the appropriate bodies are reflected in the expenditure objectives and avoids inconsistency.

The definition of regulatory obligation or requirement in section 2D of the NEL will capture security standards set out in chapter 5 of the NER or in jurisdictional instruments.

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38 Although in practice, NSPs are unlikely to be able to achieve the exact standard set in any given year since reliability levels, especially for DNSPs, can vary due to a number of uncontrollable factors, such the occurrence of storms and other external incidents.

The NER should be clarified such that expenditure in an NSP's regulatory proposal and the expenditure allowance determined by the AER are based on regulatory obligations or requirements for security where these apply.

5.2.3 Quality of supply

Quality of supply relates to variations to frequency and voltage magnitude, and imperfections to the sinusoidal voltage waveform.[39] The relevant standards for different aspects of quality of supply include the:

- AEMC Reliability Panel frequency operating standards;[40] and
- AS/NZS 61000, which specifies the allowable voltage fluctuation and harmonic voltage distortion.

NSPs are required to comply with these standards under chapter 5 of the NER.[41]

There is not such a strong link between quality of supply and the other aspects of service provided by NSPs. Quality of supply issues are normally associated with disturbances from one network users' equipment (a consumer's load or a generating unit) propagating in the network and affecting other network users.[42] The issue may be managed by the connection agreement (or guidelines for connections) and costs to partially or wholly address the affected quality of supply may be recovered from the network user causing the deficit in the quality of supply.

However, similar to reliability and security, the appropriate level of quality of supply that should be used by an NSP in developing its regulatory proposal and by the AER to determine the expenditure allowance is that required by chapter 5 of the NER and any jurisdictional requirements. The Commission therefore considers that it should be clear in the NER that the expenditure in an NSP's regulatory proposal and the expenditure allowance determined by the AER is to be based on the quality of supply standards. This removes the risk of an inefficient expenditure allowance caused by the existing expenditure objective related to maintaining the quality of supply where maintaining existing levels would be greater than the regulated standard.

As with security, the definition of regulatory obligation or requirement in section 2D of the NEL will capture quality of supply standards.

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39 In Australia the electricity is specified as a 50 Hz sinusoidal waveform at the nominal voltage which 230 V for small businesses and domestic residences. A more detailed description of quality of supply can be found in Energy Networks Association, *ENA Customer Guide to Electricity Supply,* August 2008.

40 See AEMC website, http://www.aemc.gov.au/panels-and-committees/reliability-panel/guidelines-and-standards.html.

41 See NER clauses S5.1a.2, S5.1a.5 and S5.1a.6.

42 In this determination a network user could be a generator including an embedded generator or an end use consumer.

5.2.4 Safety

Under a narrow definition maintaining the security of the power system could be considered as maintaining a 'safe' power system to meet the requirements for safety in general. A broader definition of safety could include issues that are not directly related to the operation of transmission or distribution networks, i.e. public safety issues, and may include many such things as:

- substation fencing;
- power line to ground clearances;
- environment issues such as the management of transformer oil leaks and audible noise abatement; and
- occupational health and safety (OHS) issues.

The Commission notes that a new electricity network safety management systems standard has been developed by Standards Australia.[43] The purpose of the standard is to provide nationally consistent requirements for an NSP's electricity network safety management system.[44] The standard covers issues such as the maintenance of network asset integrity, vegetation management and bush fire risk mitigation.[45] The intention is that each of the jurisdictions adopts this standard such that NSPs have to comply with it.

However, there is currently no obligation in the NER to comply with Australian Standards related to safety. This approach differs from quality where aspects of relevant Australian Standards are referred to in the NER.

In addition, it is evident that there may be standards for safety in non-regulatory instruments such as voluntary industry codes or company rules to reflect custom and practice. These may sit in addition to regulated standards. For example, it is understood that NSPs have electricity safety rules which all persons working on their network must follow. As an example, a summary of Ausgrid's Electricity Safety Rules is set out in Box 5.1.

43 Standards Australia, *AS 5577-2013, Electricity network safety management systems*, 12 April 2013.

44 I.d., p. 2.

45 I.d., p. 4.

Box 5.1: Ausgrid's Electrical Safety Rules[46]

- Ausgrid issues Electricity Safety Rules (rules).
- These rules prescribe the manner in which work is carried out on the electrical network and on certain other electrical equipment and installations.
- The rules are designed to conform to the Electricity Supply (Safety and Network Management) Regulation 2008.
- However, they are based on industry codes of practice with suitable inclusions to meet the special needs of Ausgrid's Network Management Plan.
- The Rules apply to all persons carrying out work defined in the Network Management Plan.
- Everyone must ensure that they comply with the requirements of the Electrical Safety Rules and have a copy readily available at the work site.

Many of the existing industry standards related to safety do not fall within the definition of regulatory obligation and requirement in the NEL because they are not made under the NER or a jurisdictional Act or instrument.

Given that it would be difficult to identify all of the safety standards that NSPs are currently complying with it would also be difficult to develop a specific definition to capture all safety requirements. Developing a definition for safety creates a risk that something will be missed, which the Commission believes could be more problematic. This is unlike reliability, security and quality standards which are generally captured by the definition of a regulatory obligation or requirement in the NEL.

Further, no stakeholders have identified practical evidence of a problem in respect of safety at the current time. Indeed, some NSPs explicitly commented in submissions to the consultation paper that the expenditure objective for safety should not be clarified, as identified in section 5.1.1.[47]

For these reasons there is no proposal to amend the expenditure objectives in relation to safety.

46 Ausgrid, *Electrical Safety Rules*, April 2012

47 See, for example, CitiPower/Powercor, Submission on the consultation paper, 7 March 2013, Jemena, Submission on the consultation paper, 7 March 2013.

5.2.5 Summary

The Commission considers that the NER could be interpreted such that it requires the expenditure in an NSP's regulatory proposal and the expenditure allowance determined by the AER to be based on maintaining existing levels of reliability, security quality or safety. At the same time the NER also requires this expenditure to be based on regulated standards relating to these measures. It is therefore unclear how the existing expenditure objectives work together. In particular, there is a lack of clarity in the NER where an NSP is performing above the standard or where the regulated standards are lowered. In this scenario there may be an inconsistency between the level of performance that the NSP is legally required to provide and that which the AER is required to fund in a regulatory determination.

In light of this problem the Commission considers that the expenditure objectives should be clarified in respect of reliability, security and quality. For these aspects of performance it is appropriate that the objectives refer to the standards required under jurisdictional instruments or the NER. These standards have been set by a body allocated to this role. This clarity will provide greater clarity to NSPs in preparing their regulatory proposals and the AER in assessing these proposals.

However, this does not extend to the amending of the expenditure objectives in relation to safety. It is not appropriate to limit the expenditure allowance to the regulated safety standards as the relevant standards are more likely to be found in Australian Standards, voluntary industry codes or company rules. The Commission therefore does not propose to change the expenditure objectives for safety.

5.2.6 Other matters

Arrangements where there are no regulated standards

The Commission notes that there may not always be regulated standards in place for reliability, quality or security.

In general, where no regulated standards are in place then the issue of how the existing objectives work together does not arise. This is because the existing objective 2, which requires the expenditure allowance to be based on regulatory obligations or requirements, does not have any effect: in the absence of standards being set by the jurisdiction, the objective will be to maintain performance. The Commission does not consider that there is an issue with the current NER when there are no regulated standards.

If there is no current regulatory obligation or requirement but the jurisdiction does not consider it appropriate for the current levels of performance to be maintained for any reason, then the jurisdiction has the power to create new regulatory obligations or requirements that address its concerns.

In summary, the Commission considers that the issue of how the existing objectives work together does not arise as there is only one relevant objective in this scenario. Further, a jurisdiction can mandate standards if it does not consider it appropriate for the current performance levels to be maintained.

Application of the expenditure objectives

In its submission to the consultation paper CitiPower and Powercor suggested that the rule change proposal removed all discretion on the AER to approve expenditure providing for reliability in excess of jurisdictional standards, even where the AER considers the expenditure to be prudent and efficient.[48] Similarly it suggested that DNSPs would have limited scope to respond to consumer preferences, contrary to the recently introduced consumer expenditure factor in the NER.[49]

The Commission considers that it is the body allocated to the role that decides on the level of reliability to be provided, and not the AER as economic regulator. The AER should not be able to substitute a regulatory obligation or requirement with its own views on the appropriate level of reliability. This would undermine the role of the standard setting body and create uncertainty and duplication of roles. It is also the responsibility of the standard setting body to decide in what way it seeks consumer preferences or other information when determining a standard.

However, the AER must assess proposals against all of the objectives. In doing so it will assess overall efficiency to meet all of the objectives. It must also consider whether the expenditure reasonably reflects the expenditure criteria in the NER. In particular it must assess whether the costs are efficient and that which a prudent operator would incur. Further, in assessing whether the expenditure was prudent and efficient the AER would take into account the extent to which the NSP had engaged with consumers in the process.

In addition, when building new network infrastructure or augmenting existing infrastructure, it is often efficient or practical to build for additional capacity at that time as opposed to waiting for when it is immediately required. This is because network investment is "lumpy" in nature. That is, it is often difficult to expand the network in small increments. In practice this means that the expenditure allowance could provide for a higher level of reliability in the short-term if this is a consequence of incurring efficient expenditure to meet longer term demand.

Similar to this issue, Jemena considered that the expenditure objectives should allow for opex for maintaining assets that become under-utilised as a result of changes to the regulated requirements.[50] It is unlikely that a lowering of reliability standards will remove the requirement of individual assets entirely such that opex would reduce

48 CitiPower and Powercor, Consultation paper submission, 7 March 2013, p. 1.

49 Ibid. The consumer expenditure factor requires the AER to have regard to consumers' views in determining the expenditure allowance. See AEMC, *Economic Regulation of Network Service Providers and Price and Revenue Regulation of Gas Services* , 29 November 2012, p. 115.

50 Jemena, Submission on consultation paper, 7 March 2013, p. 7.

significantly as a result of a relaxing of reliability standards. If that does occur the AER would take the factors discussed above into account in making an overall decision on the appropriate level of opex.

For the avoidance of doubt, if a regulated performance standard is lowered and as a result capex previously undertaken is no longer required to meet the new standard, then the NSP would still be able to recover the cost of that capex under the NER subject to a review of the efficiency of the past capex as provided for in the NER. Moreover, the AER sets a total expenditure allowance for capex and opex separately, not a project-by-project expenditure allowance.

The Commission notes that this discussion contemplates that the standards will continue to be set by jurisdictions. Under the *Review of the national frameworks for transmission and distribution reliability*[51] currently being undertaken by the AEMC, part of the proposed framework includes the option for jurisdictions to delegate this function to the AER.[52] If the AER were to be delegated the role to set reliability standards, the Commission does not consider that it would create any difficulty with the interpretation or application of the rule. This is because the AER's role in the setting of standards would occur prior to, and be clearly distinct from, the role that the AER undertakes in the determination of expenditure in accordance with the rules.

Interaction of the expenditure objectives with the service target performance incentive scheme

As a balance to the incentive regulation regime where the NSP is encouraged to achieve efficiencies with respect to its expenditure, the objective of the service target performance incentive scheme (STPIS) in the NER is to provide incentives for NSPs to maintain and improve performance.

The Commission has noted concerns in a number of submissions to the consultation paper that the proposed rule would conflict with the objective and current design of the STPIS.[53] This is because the objective requires the STPIS to provide incentives to maintain and improve performance. It does not contemplate a lowering of standards. Further, NSPs appear to be concerned that they could be penalised under the current STPIS for not meeting levels of reliability that have not been provided for in the expenditure allowance. Although submissions generally made reference to chapter 6 and the STPIS for DNSPs, the issues are also relevant under chapter 6A in relation to the STPIS for transmission network service providers (TNSPs).

51 This review is currently under consultation. For further information see the AEMC's website: www.aemc.gov.au.

52 See, for example, chapter 5.2 of the *Review of the national frameworks for transmission and distribution reliability*, Consultation paper, 12 July 2013 at pages 32-24.

53 ActewAGL Distribution, Submission on consultation paper, 8 March 2013, p. 1; Aurora Energy, Submission on consultation paper, 7 March 2013, p. 2; Energex, Submission on consultation paper, 7 March 2013, p. 1; Ergon Energy, Submission on consultation paper, 8 March 2013, p. 1; Jemena, Submission on consultation paper, 7 March 2013, p. 4.

On this issue, the STPIS represents an adjustment that is made after the AER has determined an appropriate base amount of expenditure to meet the expenditure objectives. The broad objective of the STPIS is still considered to be relevant.

Further, the NER allow the AER to design and implement a scheme which allows STPIS targets to reflect any step changes in the level of reliability used to determine the expenditure allowance from one regulatory period to the next. This may require the AER to amend the STPIS which it is able to do under the NER.

6 The drafting solution

This section identifies drafting principles based on the conclusions from the considerations discussed in chapter 5 and then considers drafting option solutions against these principles.

6.1 Stakeholder views

6.1.1 Stakeholder views on the consultation paper

There were comments made on possible drafting solutions put forward in the rule change request. Jemena, CitiPower and Powercor broadly supported the drafting solution proposed by SCER if the NER is to be changed.[54] Other stakeholders did not support this solution. They considered it would:

- remove the AER's discretion to approve expenditure providing for reliability in excess of forecast, even if prudent and efficient;[55]
- give rise to other issues such as a potential inconsistency with the STPIS;[56] and
- give rise to uncertainty where there are no jurisdictional standards.[57]

The AER supported the removal of expenditure objectives 3 and 4 which it considered would address any potential misinterpretation, and considered that the NEL and NEO would provide adequate guidance in the absence of these objectives.[58] NSPs did not support this option. They considered that each objective has a purpose and has been designed in accordance with the NEO.[59] In addition, Jemena said that these objectives are required where there are no standards, especially for reliability standards of distribution systems in Victoria.[60]

As an alternative drafting solution some NSPs proposed changes to the existing objectives. In particular, Grid Australia proposed an amendment to objective 3 only because it considered this is the only objective which would give rise to a conflict with jurisdictional reliability standards.[61] On the other hand, the NSW DNSPs (supported

54 CitiPower and Powercor, Submission on consultation paper, 7 March 2013, p. 5; Jemena, Submission on consultation paper, 7 March 2013, pp. 1, 2, 7.

55 The NSW DNSPs, Submission on consultation paper, 7 March 2013, p. 2.

56 For example Energex, Submission on consultation paper, 7 March 2013, p.1; Jemena, Submission on consultation paper, 7 March 2013, p. 7.

57 For example CitiPower and Powercor, Submission on consultation paper, 7 March 2013, p. 2.

58 AER, Submission on consultation paper, 7 March 2013, p. 2.

59 For example, The NSW DNSPs, Submission on consultation paper, 7 March 2013, p. 3; Grid Australia, Submission on consultation paper, 7 March 2013, pp. 3-4.

60 Jemena, Submission on consultation paper, 7 March 2013, p. 7.

61 Grid Australia, Submission on consultation paper, 7 March 2013, pp. 3-4.

by Ergon Energy) proposed minor amendments to objectives 3 and 4.[62] The drafting solution options considered by the Commission, including Grid Australia and the NSW DNSPs' proposals, are discussed further in section 6.2.1.

6.1.2 Stakeholder views on the draft determination

Six written submissions were received to the draft determination. All of these submissions generally supported the Commission's decision to make a more preferable rule. In particular, the submissions of the AER, Grid Australia and Jemena raised no further issues with the draft rule.

The submission from the AER considered that the draft rule clarified that:

- the amount of expenditure that an NSP includes in its regulatory proposal must be no more than is required to comply with the relevant regulatory obligations and requirements, as well as addressing situations where there are no pre-established regulatory obligations, and
- the maintenance of current delivered outcomes is appropriate where there are no pre-established regulatory obligations.[63]

Despite the general support for the approach taken in the draft determination, some NSPs had some residual concerns in relation to the interpretation and application of the draft rule.

The submission from CitiPower/Powercor expressed concern that the draft rule does not match the policy intent and its operation could, in practice, both preclude Victorian businesses from properly relying on clauses 6.5.6(a)(3) and 6.5.7(a)(3), and lead to uncertainties in how the AER would make its expenditure assessments:

- Even where there is no mandatory reliability standard imposed, as in Victoria, it could be argued that a regulatory obligation or requirement in relation to reliability still exists, due to broad definition given to the phrase "regulatory obligation or requirement" in chapter 10 of the NER and section 2D of the NEL. Such an interpretation would mean that Victorian DNSPs would be required to propose, and the AER required to approve, expenditure to comply with the regulatory obligation or requirement, rather than maintain reliability.[64]
- In circumstances where, as in Victoria, DNSPs are required to set their own standards and use best endeavours to meet them, there is uncertainty as to how the AER would go about assessing the appropriate level of expenditure.[65]

62 The NSW DNSPs, Submission on consultation paper, 7 March 2013, p. 4.

63 AER, Submission to the draft determination, 15 August 2013, p.2.

64 CitiPower/Powercor, Submission to the draft determination, 7 August 2013, p.2.

65 CitiPower/Powercor, Submission to the draft determination, 7 August 2013, p.2.

In relation to these concerns, the CitiPower/Powercor submission proposed some amendments to the provisions to clarify any ambiguity around the Victorian DNSPs' ability to rely on clauses 6.5.6(a)(3) and 6.5.7(a)(3). In contrast, Jemena considered that the draft rule modifying the existing objectives 3 and 4 is workable under the Victorian arrangements.[66]

The CitiPower/Powercor submission also expressed concern that the draft rule would mean that AER would not be permitted to approve expenditure higher than historical expenditure, even if it considers it to be prudent and efficient and would promote the NEO.[67] This would appear to constrain standards to historical standards which, according to the submission, is contrary to AEMC's approach in its consultation paper on the *Review of national frameworks for transmission and distribution reliability*.[68]

Ergon Energy indicated that the drafting might lead to the exclusion of legitimately incurred costs associated with support functions necessary for the provision of standard control services from the determination.[69] The opposite view was expressed by NSW DNSPs, which suggested that this would not be an issue in practice.[70]

Both the Grid Australia and the NSW DNSP submissions expressed support for the Commission’s approach to the treatment of safety. However the NSW DNSPs noted that the decision to limit the expenditure allowed to the regulated standards would effectively limit expenditure to the maintenance of safety standards only. They indicated some concern that this situation would not permit NSPs to seek incur additional expenditure responding to safety issues as, and when, they perceived them to arise in their individual networks.[71]

Ergon Energy commented that the AEMC should consider the need of NSPs for regulatory certainty though harmonisation of other rule changes, reviews and jurisdictional instruments.[72]

6.2 Commission's analysis

The Commission considers that the rule should meet the following principles:

- where there is a regulatory obligation or requirement for reliability, security or quality then the expenditure objectives should be clear that the expenditure allowance is based on this level of performance and not a level of performance higher or lower than this;

66 Jemena, Submission to the draft determination, 8 August 2013, p.2.

67 CitiPower/Powercor, Submission to the draft determination, 7 August 2013, p.3.

68 See the AEMC website for further information on these reviews: www.aemc.gov.au.

69 Ergon Energy, Submission to the draft determination, 8 August 2013, p.1.

70 NSW DNSPs, Submission to the draft determination, 8 August 2013, p.2.

71 NSW DNSPs, Submission to the draft determination, 8 August 2013, p.2.

72 Ergon Energy, Submission to the draft determination, 8 August 2013, p.1.

- the existing objectives should be retained for safety; and
- where there are no regulatory obligations or requirements the application of the existing rules should be retained.

6.2.1 Drafting solution options

In coming to its decision on a drafting solution, the Commission considered the proposed rule as well as other drafting proposals provided in submissions. The drafting solutions considered were:

- the proposed rule from the SCER, which added a new clause to the existing expenditure objectives. This clause required that where an NSP is required to comply with a regulatory obligation or requirement for reliability then the NSP must include in its expenditure proposal an amount that is no more than what is required to comply with that regulatory obligation or requirement for the purpose of objectives 3 and 4;
- removing expenditure objectives 3 and 4 entirely which was the preferred option of the AER;
- Grid Australia's solution, which inserted the words "...to applicable standards" at the end of existing expenditure objective 3; and
- NSW DNSPs' solution which replaced the word "maintain" with "meet any applicable standards for ..." in existing expenditure objectives 3 and 4.

The remainder of this section sets out the Commission's assessment of each of these options. In particular the Commission assessed the options against the principles set out above, in section 6.2.

Option 1: The proposed rule from the SCER

This option deals with the issue in relation to reliability. That is, where there is a regulated requirement for reliability then it is clear that expenditure in an NSP's regulatory proposal for reliability is to be based on this level of performance and not a level of performance higher than this. In addition, it retains the existing rules where there are no regulatory obligations or requirements and in relation to safety. Although not included in the proposed rule, security and quality could be incorporated into this solution.

The Commission considers that a key disadvantage with this solution is that the drafting is prescriptive and complex. A number of stakeholders also commented on the complexity of the proposed rule.[73]

73 See for example NSW DNSPs, Submission on consultation paper, 7 March 2013, p. 1 and AER, Submission on consultation paper, p. i-ii.

Noticeably, this option explicitly addresses instances where there may be part of an NSP's network that are subject to a regulatory obligation or requirement but not others. Although this issue should be allowed for, it is not considered necessary to prescribe this outcome in detail in the NER.

Option 2: Remove expenditure objectives 3 and 4

This option would make it clear that the expenditure in an NSP's regulatory proposal and the expenditure allowance determined by the AER for reliability, security and quality should be based on what is required under regulatory obligations and requirements. Further the drafting of this option is very simple. However, it would not be clear under this approach what the objective should be where there are no standards in place. This was a point made by Jemena in its submission.[74] This solution would also need to be adjusted to reflect the fact that safety should be treated differently to the other aspects of service.

Option 3: Grid Australia's solution[75]

While this drafting solution is simple, it is not considered to provide additional clarity. This is because it retains the word 'maintain' and because it is not clear what the term 'applicable standards' captures. This would need to be a new defined term under the NER to avoid ambiguity. Similarly it is not clear what the objective would be where there are no standards in place under this option.

In addition this solution amends objective 3 but not objective 4. Reliability and security of the system under existing objective 4 should be treated the same as reliability and security of supply in existing expenditure objective 3. It is not practical to distinguish the two measures for the purpose of the expenditure allowance.

Option 4: The NSW DNSPs' solution[76]

While this drafting solution is simple it is unclear whether it provides additional clarity because, as with Grid Australia's solution, it is not clear what the term 'applicable standards' captures. Further it is not clear what the objective would be where there are no standards in place under this option.

6.2.2 Conclusion on drafting solutions

Although the Commission has not adopted any of these particular solutions outright, the assessment of these options provided assistance in drafting the rule. In particular the proposed solutions provided some aid in determining the appropriate structure and prescriptiveness of the final rule. The rule as made is considered to be less

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74 Jemena, Submission on consultation paper, 7 March 2013, p. 2.

75 Grid Australia, Submission on consultation paper, 7 March 2013, pp. 3, 4.

76 NSW DNSPs, Submission on consultation paper, 7 March 2013, p. 2.

prescriptive than the SCER solution, but more prescriptive than the other drafting solutions put forward. Prescription can assist clarity, but too much prescription can potentially unduly restrict the AER's discretion.

6.3 Response to issues raised by stakeholders to the draft determination

There is general support expressed by stakeholders to the draft determination and draft rule.[77] Where concerns remain, these tend to relate to the implications of the rule to Victorian NSPs, and varying views of interpretation. Further, there is not necessarily agreement between stakeholders as to these views with some inconsistency between submissions.

In relation to the Victorian situation for the setting of reliability standards, the CitiPower/Powercor submission states that the draft rule does not match the policy intent and could preclude Victorian businesses from relying on 6.5.6(a)(3) and 6.5.7(a)(3) due to the broad definition given to the phrase "regulatory obligation or requirement" under section 2D of the NEL.

Whilst the Commission notes that the term "regulatory obligation or requirement" as defined in the NEL may be open to different interpretations, it does not believe that there is any issue to address in practice. This is because Victorian NSPs set their standards in line with their historical performance, a practice which in effect maintains the current levels of service. This is confirmed in the submission provided by Jemena.[78] Therefore the Commission is of the view that the outcome in Victoria is the same whether or not the Victorian arrangements represent a "regulatory obligation or requirement". Further amendments to 'clarify' clauses 6.5.6(a)(3) and 6.5.7(a)(3), in the manner proposed by CitiPower/Powercor, could potentially lead to consequential drafting complications and are, for the reason set out above, unnecessary.[79]

Remaining stakeholder concerns focussed on the application of the draft rule by the AER and consequential outcomes for NSPs.

The CitiPower/Powercor submission raised a concern about the intention to constrain standards, and therefore expenditure levels, to historical standards.[80] The purpose of the rule change request is to clarify that operating and capital expenditure allowances for NSPs should be no more than the level considered necessary to comply with a relevant regulatory obligation or requirement, where these have been set by the body allocated that role. Expenditure by NSPs to achieve standards above these levels should be unnecessary, as they are only required to deliver to the standards set. It

77 See, for example, Australian Energy Regulator, Submission on the draft determination, 15 August 2013, NSW DNSPs, Submission on the draft determination, 8 August 2013, Jemena, Submission on the draft determination, 8 August 2013, Grid Australia, Submission on the draft determination, 8 August 2013.

78 Jemena, Submission to the draft determination, 8 August 2013, p.1.

79 CitiPower/Powercor, Submission to the draft determination, 7 August 2013, pp.2-3.

80 CitiPower/Powercor, Submission to the draft determination, 7 August 2013, pp.3.

would also amount to the AER substituting a regulatory obligation or requirement with its own views on the appropriate level of reliability, which would undermine the role of the standard setting body, and create uncertainty and duplication of roles.

NSPs are still free to make incremental improvements over and above the regulatory requirements at their own discretion. Such additional expenditure will not generally be recoverable, through forecast capital and operating expenditure. However, DNSPs are also provided with annual financial incentives to improve reliability performance under the STPIS.

The Commission does not agree that the intention to constrain standards to historical standards is contrary to the approach of the *Review of the national frameworks for transmission and distribution reliability*.[81] The purpose of that review is to propose more efficient ways of setting transmission and distribution reliability standards which may be applied by jurisdictions. It does not propose that NSPs should be able to base their expenditure forecasts on a level of performance that exceeds those standards. The rule made under this rule change request should apply regardless of whether the frameworks are adopted by a jurisdiction.

In relation to the specific concern about safety raised by the NSW NSPs[82] the Commission accepts that this is the practical outcome of its decision not to amend or clarify the expenditure objectives in relation to safety. However the decision also avoids the risk of creating subsequent definitional problems, and is wholly within the Commission's view that there is a current lack of practical evidence of a problem in respect of safety. Moreover it does not preclude changes to legislated safety standards and expenditure in line with this.

The Commission does not agree that the rule as made will lead the AER to automatically exclude consideration of support costs that are incurred necessarily in the delivery of specific objectives, such as IT and transport costs, from the determination.[83] It is for the AER to determine the appropriate interpretation of the relevant provision, and the Commission notes the alternative view expressed by the NSW DNSPs:[84]

> "Whilst it may be difficult to separately attribute support costs to specific objectives...this is not necessary so long as the AER is satisfied that the support costs are required to meet the objectives as a whole and meet its overall assessment of efficiency."

81 CitiPower/Powercor, Submission to the draft determination, 7 August 2013, pp.3. For details of this review, see the AEMC website: www.aemc.gov.au.

82 NSW DNSPs, Submission to the draft determination, 8 August 2013, p.2.

83 Ergon Energy, Submission to the draft determination, 8 August 2013, p.1.

84 NSW DNSPs, Submission to the draft determination, 8 August 2013, p.2.

6.4 Final determination

The rule as made amends the four expenditure objectives to provide that NSPs:

- meet or manage the expected demand for regulated services over the regulatory control period (expenditure objective 1);
- comply with all applicable regulatory obligations or requirements associated with the provision of regulated services (expenditure objective 2);
- where no applicable regulatory obligations or requirements associated with the provision of regulated services exist, maintain the quality, reliability and security of supply of regulated services (expenditure objective 3); and
- maintain the safety of the transmission or distribution system through the supply of regulated services (expenditure objective 4).[85]

It provides that where there is a regulatory obligation or requirement associated with reliability, security or quality of supply of regulated services, then the expenditure in the NSP's regulatory proposal for the relevant aspect of performance must be based on the regulatory obligation or requirement. Similarly it provides that the expenditure allowance determined by the AER would be based on regulatory obligations or requirements for these measures. The rule will also apply where the regulatory obligation or requirement applies only to part of the electricity system.

Where there is no regulatory obligation or requirement for the reliability, security or quality of supply of services or the reliability or security of the system then the existing rules are retained, on the basis that there is no conflict between objectives where there is no regulated standard. Similarly, the existing rules are retained for safety.

The Commission considers that if part of an NSP's network is subject to a regulatory obligation or requirement for reliability, security or quality and another part is not then the rule as made allows for a different benchmark to be assigned to each of these parts.

As discussed in section 5.2.6, when applied the expenditure objectives should be considered as a whole and not in isolation. For example, a temporary consequence of approving efficient investment to meet demand could be that performance on a measure of performance is better than required for a period of time. Meeting or managing expected demand is set out in expenditure objective 1.

85 These are provided in NER clauses 6.5.6(a), 6.5.7(a), 6A.6.6(a) and 6A.6.7(a). Reference to "regulated services" means either standard control services or prescribed transmission services.

7 Commencement of the rule as made and consequential jurisdictional impacts

7.1 Commencement of the rule as made

The rule as made will commence on 26 September 2013, but it will not have a practical impact on NSPs until their next regulatory determinations. As the rule change relates to the expenditure allowance, a key part of an NSP's regulatory determination, the rule as made will also not apply to NSPs which have submitted a regulatory proposal and are already part way through the regulatory process. NSPs also need time to prepare their regulatory proposals.

The rule as made will first apply to those NSPs that are due to submit transitional regulatory proposals to the AER by 31 January 2014 and full proposals by 31 May 2014. These NSPs are ActewAGL, the NSW DNSPs, Transend and TransGrid. In order to reflect this position, a transitional rule has been made to amend the transitional rules made as part of the National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012 No.9.

SP AusNet (transmission) will have its determination made by the AER on 1 April 2014. However, this determination will be subject to the existing rules as SP AusNet has already submitted its regulatory proposals for this period.

The Commission notes that the AER might need to amend the STPIS for DNSPs and TNSPs in light of the rule as made. It might not be able to do this in time for the first NSPs that the rule as made would apply to. However, AER has some flexibility under these schemes. For example, it can choose which parameters apply and the revenue at risk under the schemes. In addition it can choose not to apply the schemes.

7.2 Consequential jurisdictional impacts

The Commission is not aware of any consequential impacts on any jurisdictional instruments. The existing jurisdictional instruments relating to reliability, security, quality and safety will continue. The expenditure objectives will be clear that it is the levels of performance set out in these instruments that should provide the basis on which the expenditure allowance is determined.

Abbreviations

AEMA	Australian Energy Market Agreement
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Commission	See AEMC
DNSP	distribution network service provider
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
NSP	network service provider
OHS	occupational health and safety
proponent	Standing Council on Energy and Resources
rules	See NER
SAIDI	System Average Interruption Duration Index
SAIFI	System Average Interruption Frequency Index
SCER	See proponent
STPIS	service target performance incentive scheme
TNSP	transmission network service provider

A Summary of issues raised in submissions

A.1 First round of consultation

Stakeholder	Issue	AEMC Response
ActewAGL Distribution	Concerned that the service target performance incentive scheme (STPIS) targets may not be symmetrically adjusted to reflect changes in service levels used for expenditure forecasts under the rule change request.[86]	See section 5.2.6 on the interaction of the rule change request with the STPIS.
AER	Agrees with the problem identified but considers the solution proposed by SCER could give rise to unnecessary complexity. Considers objectives 3 and 4 should be removed noting that the NEL requires the AER to take into account particular aspects of an NSP's performance. [87]	See section 6 on the proposed drafting solution.

86 ActewAGL, Submission on consultation paper, 8 March 2013, p. 1.

87 AER, Submission on consultation paper, 7 March 2013, p. 1 and 2.

Stakeholder	Issue	AEMC Response
Aurora Energy	Agrees that expenditure objectives permit NSPs to include expenditure forecasts to maintain reliability at historical levels. However, it does not see this as an issue because the AER has the power to reject expenditure forecast and substitute its own if it does not meet the expenditure objectives.[88] Note that the STPIS targets are based on historical performance. an NSP might face a penalty under the STPIS for decreasing performance due to a lowering in standards.[89]	The Commission notes that the AER can reject an NSP's forecast if it does not consider that the expenditure meets the expenditure criteria in the NER. However, as set out in section 5.2.5, the Commission considers that there is a lack of clarity as to how the expenditure objectives work together which creates a problem for the both the NSP when submitting its regulatory proposal and the AER when assessing that proposal and determining the expenditure allowance. See section 5.2.6 on the interaction of the rule change request with the STPIS.

88 Aurora Energy, Submission on consultation paper, 7 March 2013, p. 1.

89 Aurora Energy, Submission on consultation paper, 7 March 2013, p. 2.

Stakeholder	Issue	AEMC Response
CitiPower and Powercor Australia	Safety should not be treated in the same manner as the other provisions. It would require the AER to disregard the true costs associated with safety related issues in conducting its cost benefit analysis of expenditure allowances.[90] No issues to suggest why quality and security should not be treated in the same was as reliability. However, similar issues as reliability and safety could arise.[91] Rule change would remove all AER discretion to approve expenditure for providing reliability above the jurisdictional standards even if the expenditure is prudent and efficient and consistent with the NEO. In addition DNSPs would have limited scope in responding to consumer preferences which creates an inconsistency with the consumer expenditure factor.[92]	See section 5.2 on the existence of a problem with respect to the different aspects of the objectives. The Commission considers it appropriate that the AER only be able to approve expenditure for reliability up to the jurisdictional standard and no more than this. See section 5.2.6 and section 6.4 on the AER's discretion under the draft rule.
Energex	Supports clarification of rules that NSPs only able to seek sufficient expenditure for reliability rather than maintain level in previous regulatory period. However, there is potential conflict between proposed rule change and the STPIS.[93]	See section 5.2.6 on the interaction of the rule change request with the STPIS.

90 CitiPower and Powercor, Submission on consultation paper, 7 March 2013, pp. 3-5.

91 Ibid.

92 CitiPower and Powercor, Submission on consultation paper, 7 March 2013, pp. 1-2.

93 Energex, Submission on consultation paper, 7 March 2013, p. 1.

Stakeholder	Issue	AEMC Response
Ergon Energy	Supports in-principle intent to clarify that NSPs should be able to seek sufficient expenditure for reliability to comply with their jurisdictional reliability standards as opposed to maintain the level of reliability from the previous regulatory period. However, do not support proposed rule. Support alternative rule proposed by NSW DNSPs. Also suggest there is a conflict between the proposed rule and the objective and operation of the reliability parameters of the STPIS.[94]	See section 6 on the drafting solution and section 5.2.6 on the interaction of the rule change request with the STPIS.

94 Ergon Energy, Submission on consultation paper, 8 March 2013, p. 1.

Stakeholder	Issue	AEMC Response
Grid Australia	NSPs would not interpret "maintaining" reliability in terms of historical performance but in terms of maintaining service to the standards. However, agree that clarification of the objectives would improve certainty.[95] Rules should be able to accommodate different approaches. For example, in Victoria reliability standards are not specified.[96] Does not consider clarification is required in relation to other aspects of the expenditure objectives i.e. security, quality and safety. None of these are subject to potential fluctuation that may be envisaged for reliability standards subject to reassessment against economic criteria so the need to clarify not clearly established. Nevertheless it proposes an amendment to the expenditure objectives which would equally apply to quality and security of supply.[97] Proposes minor amendments to existing objective 3 only.[98]	The Commission considers that the expenditure objectives could be interpreted as requiring an NSP to maintain existing levels of performance even where reliability standards or lowered or where an NSP is performing above the required standards as set out in section 5.2. The final rule provides for where standards are not specified as set out in section 5.2.6. See section 5.2.6 on the existence of a problem with respect to the security, quality and safety aspects of the expenditure objectives.

95 Grid Australia, Submission on consultation paper, 7 March 2013, pp. 2 -3.

96 Ibid.

97 I.d., p. 3.

98 I.d., p. 4.

Stakeholder	Issue	AEMC Response
Jemena	Supports extending rule change to include security but not quality of supply or safety. Security is related to reliability of supply. However, lowering quality or safety standards in Victoria is a controversial issue as lowering those standards could impact on the performance of, or cause damage to, customer appliance and equipment. [99] Supports inserting new clauses to clarify objectives 3 and 4 as per the SCER proposed rule. Does not support removing objectives 3 and 4.[100] To avoid doubt, forecast opex should be clarified to include opex of under-utilised assets as a result of changes to jurisdictional requirements. No equivalent changes are required for forecast capex.[101] Any changes to rules must ensure that a business should be funded to at least maintain historical performance under STPIS in the absence of a jurisdictional reliability standard. Otherwise, the NSP may not have sufficient revenues to fund historical performance and choosing between making under investments or incurring penalties under STPIS, which would be inconsistent with recovery of efficient costs.[102]	See section 5.2 on the existence of a problem with respect to the security, quality and safety aspects of the expenditure objectives. See section 6 on the proposed drafting solution. See section 5.2.6 on the application of the expenditure objectives in relation to the issue on opex for under-utilised assets. See section 5.2.6 on the interaction of the rule change request with the STPIS.

99 Jemena, Submission on consultation paper, 7 March 2013, p. 2.

100 I.d., p. 1-2.

101 I.d., Annexure 1, Response to question 9.

102 I.d., Annexure 1, response to question 2.

Stakeholder	Issue	AEMC Response
NSW DNSPs	Supports intent of rule change request.[103] Does not support rule proposed by SCER.[104] Propose to retain existing provisions, with some amendments to the drafting of expenditure objectives 3 and 4.[105]	See section 6 on the proposed drafting solution.

A.2 Second round of consultation

Stakeholder	Issue	AEMC response
Australian Energy Regulator (p.2)	Draft rule determination: • clarifies that the amount of expenditure that an NSP includes in its regulatory proposal for reliability must be no more than what it considers is required to comply with the relevant regulatory obligations and requirements, and • addresses situations where there are no pre-established regulatory obligations, where the maintenance of current delivered outcomes would remain appropriate.	The Commission notes this response.
CitiPower and Powercor (p.1)	Consider that the AEMC's policy intent, with respect to the draft rule, is sound and correct.	The Commission notes this response.

103 NSW DNSPs, Submission on consultation paper, p. 1.

104 I.d., pp. 1-2.

105 I.d., p. 2.

Stakeholder	Issue	AEMC response
CitiPower and Powercor (pp. 1-2)	Draft rule does not match the policy intent and could preclude Victorian businesses from relying on 6.5.6(a)(3) and 6.5.7(a)(3). This is because even where there is no mandatory reliability standard imposed, as in Victoria, it is arguable that a regulatory obligation or requirement in relation to reliability exists due to broad definition of the phrase "regulatory obligation or requirement" This could mean that Vic DNSPs required to propose, and the AER required to approve, expenditure to comply with the regulatory obligation or requirement, rather than maintain reliability. Application of the draft rule could also cause practical difficulties for businesses and the AER. Vic DNSPs required to set their own standards and use best endeavours to meet them, but there is uncertainty as to how the AER would assess the expenditure. Submission proposes some wording amendments to the provisions to make it clear that Vic DNSPs can rely on 6.5.6(a)(3) and 6.5.7(a)(3).	The Commission acknowledges that the phrase may be open to different interpretations, but does not believe that there is any practical issue to address. This is because NSPs set their standards in accordance with their historical performance, which in effect maintains the current level of service. See section 6.3.
CitiPower and Powercor (p.3)	Draft rule means that AER would not be permitted to approve expenditure higher than historical expenditure, even if it considers is to be prudent and efficient and would promote the NEO: this appears to constrain standards to historical standards, which is contrary to AEMC's approach in the reliability standards consultation paper.	The Commission agrees that the AER would not be permitted to approve expenditure greater than that permitted by the expenditure objectives. This is in line with the purpose of the rule change request. See section 6.3.
Ergon Energy (p.1)	In principle support given for the intent to make a more preferable rule.	The Commission notes this response.

Stakeholder	Issue	AEMC response
Ergon Energy (p.1)	Drafting may narrow the objectives to the extent that costs legitimately incurred in providing standard control services may be excluded by the AER, e.g. transport, IT costs.	The Commission does not agree that the rule as made will lead the AER to automatically exclude consideration of support costs that are incurred necessarily in the delivery of specific objectives. See section 6.3.
Ergon Energy (p.1)	DNSPs require regulatory certainty through harmonisation of rule change/review outcomes and jurisdictional instruments.	The Commission acknowledges the overlap of this rule change request with the *Review of national frameworks for transmission and distribution reliability*, and believes that the approach taken in this rule change is consistent with the policy in those reviews. The Commission also notes the recent response of the Queensland Government to the recommendations of the Interdepartmental Committee on Electricity Sector Reform. The final rule should be applicable regardless of any changes made to regulated, or other applicable, standards. See section 6.3.
Grid Australia (p.1)	Generally supports the draft rule determination to make a more preferable rule, and supports the proposed drafting. Effect of the draft rule is to ensure that the service level prescribed by a regulation has primacy over the maintenance of historical service levels, to the extent that such obligations apply. Agrees with the treatment of safety in the draft rule.	The Commission notes this response.

Stakeholder	Issue	AEMC response
Jemena (p.1)	Supports the draft rule which makes the existing objectives 3 and 4 workable under Victorian arrangements. Reliability incentives in Victoria are driven mainly by the AER's Service Target Performance Incentive Scheme, which is not an obligation or requirement but does penalise Victorian NSPs if targets are not met, and rewards them if they are exceeded. Targets are set by NSPs on the basis of historical performance.	The Commission notes this response.
NSW DNSPs (p.1)	Support the decision to make a more preferable rule, that gives effect to the key objectives of the rule change proposal, and the reasons underpinning the AEMC's decision.	The Commission notes this response.
NSW DNSPs (p.2)	Support the AEMC's comments regarding the operation of the expenditure objectives as a whole, in particular with regards to the approach taken by the AER in assessing support costs associated with the operation of a network.	The Commission notes this response.
NSW DNSPs (p.2)	Allowing for expenditure sufficient for safety standards to be maintained does not provide for networks to improve the safety of their networks in circumstances where they deem it appropriate or necessary.	The Commission considers that the rule as made does not alter the current situation with respect to this expenditure. Where the regulatory requirements are changed so as to require additional expenditure then this may be recovered in the usual manner pursuant to the determination process. Where the NSP unilaterally decides to increase its expenditure then this additional expenditure may not be recoverable, although the AER may approve an increase in the allowance in the subsequent determination, based on this increase in historical expenditure. See section 6.3.