

Summary of issues raised in submissions

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Note: Definitions of abbreviations can be found in the directions paper.

Part I Summary of issues about capex/opex allowances

Organisation	Issue	Substantive point being made	Page ref
ActewAGL Distribution	Capex/opex allowances	Businesses have the best knowledge of their network circumstances and any determination of efficient expenditure should be closely linked to the business's proposal. In the AER's proposal the business's proposal has been omitted from the list of matters to which the AER must have regard in determining efficient expenditure.	2
ActewAGL Distribution	Capex/opex allowances	Benchmarking is a useful tool but it should be only one input into the determination of efficient expenditure, and it must not take precedence over an individual business's circumstances. It should also be applied in a more sophisticated way than it has been in the past, and should take into account matters such a work practices and operating techniques. The AER is already able to use benchmarking.	3
AEMO	Capex/opex allowances	More accurate demand forecasting should lead to more accurate forecasts of expenditure. AEMC should consider the benefits of demand forecasts produced by AEMO, which will commence with AEMO's National Energy Forecasting Project, as part of the rule change	2
AER	Capex/opex allowances	There is sufficient protection in the regulatory regime for NSPs, particularly through the revenue and pricing principles, without the need for more prescription in the rules.	3
AER	Capex/opex allowances	There is an inherent bias towards NSPs in the reasonable estimates test, despite refinements applied by the AEMC in Chapter 6A.	4
AER	Capex/opex allowances	The two stage process (accept/reject, then consider the substitute) should be replaced by a process of determining the appropriate amount, allowing less focus on the proposal. Procedural fairness requirements contribute to tying the AER to the business's proposal. The requirement in Chapter 6A of determining a substitute amount by adjusting the regulatory proposal also achieves this. This is similar to the requirement in Chapter 6 that changes only be made to the minimum extent necessary to allow approval. The current rules don't allow the AER enough scope to produce its own independent analysis.	9, 10,11
AER	Capex/opex factors/criteria	The emphasis on the expenditure factors, which in turn refer to the regulatory proposal demonstrates the problem that the AER is tied to the proposal. It also makes the problem of the mix of process factors and substantive factors significant.	6
Alinta Energy	Capex/opex allowances	Alinta supports the AER's proposal for greater scrutiny of capex and opex, and agrees the restrictions on the AER's ability to respond to NSPs' proposals should be reviewed. The AEMC should consider the benefits and risks of moving away from the current prescriptive provisions.	2

Organisation	Issue	Substantive point being made	Page ref
Amcor	Rising prices	Deficiencies in the design and conduct of economic regulation account for part of electricity price increases.	1
APA Group	Capex/opex allowances	The NGR do not include a requirement that forecasts reasonably reflect the relevant criteria. Instead the NGR provides the AER has "limited discretion". This is an appropriate balance for the gas industry.	34
ATA	Capex/opex allowances	ATA supports the intent of the AER's rule change to give the AER more discretion in forecasting in revenue determination for DNSPs.	2
ATCO Gas Australia	Rising prices	The delivered price of gas for small end use gas consumers has increased in Western Australia over the last decade, largely due to increases in the commodity cost of gas and delivered price components other than network tariffs. There is no suggestion that network charges (including distribution tariffs) are driving significant increases in delivered gas prices in the report from Western Australian Legislative Assembly Economics and Industry Standing Committee.	2,3
Aurora Energy	Capex/opex allowances	Aurora does not agree with the extent of the problems raised by the AER. On the basis that there is a range of efficient forecasts, and the AER can already determine this, there appears to be no problem. The AER already has the power to apply top down checks, and already does apply targeted line by line analysis. The NEL requires that Aurora's forecasts be based in fact, so it is concerning that the AER proposes it need have no regard to such forecasts.	5, 6, 17
Aurora Energy	Capex/opex factors/criteria	It would be appropriate to amend the framework of factors, objectives and criteria, but only if the AER's discretion to set capex/opex allowances is amended as the AER has proposed. Since the AER has not demonstrated any such changes need to be made, no changes should be made to the factors, objectives or criteria.	6
Aurora Energy	Rising prices	Agrees with the observation made by Mr Stephen Lloyd SC in his Memorandum of Advice to the Australian Energy Regulator that, there is a tension between price and most of the other desirable characteristics (quality, safety, reliability and security) in that improvements in the latter generally come at a higher price.	2
Aurora Energy	Rising prices	Considers that, on the whole, the current Rules have been effective as they have been applied over the last five years. Furthermore, the first two sets of distribution determinations for New South Wales and Queensland were performed under transitional arrangements set by the respective jurisdictions. It would seem more useful to consider the results from the recent suite of Victorian distribution determinations, yet these received scant mention in the rule change request.	16
Ausgrid	Capex/opex allowances	AusGrid will need time to incorporate rule changes in its preparation of its next proposal, especially if there is to be greater use of top down models and benchmarking.	10

Organisation	Issue	Substantive point being made	Page ref
Ausgrid	Capex/opex allowances	There is no evidence that the current provisions allow higher expenditure allowances. There is no evidence that the AER starts from a range and that its substitute forecasts are forced into the top of the range. There is also no evidence that the AER has been forced to undertake a line by line assessment. The Tribunal when reviewing the AER's decisions has sometimes required a line by line assessment but other times has allowed a much broader substitution (in AusGrid's maintenance costs, for example). It is essential that a positive obligation be placed on the AER in order to require it to take the individual circumstances of the business into account. Clause 6.12.3(f) is essential as it places a guide on the AER's discretion.	11-13, 17
Ausgrid	Capex/opex allowances	It is inappropriate to remove the requirement that the AER have regard to the business's proposal. The business is in the best position to forecast its requirements. Furthermore, a detailed engineering analysis must be conducted. The AER receives enough information from the business to do this. The high level or top down approaches the AER seeks to use are too simplistic and do not enable an accurate forecast of a business's requirements (among other things it is not sufficient to focus on age)	14,15
Ausgrid	Rising prices	There is no evidence to satisfy the AEMC that a fundamental change to the electricity framework would contribute to the achievement of the NEO. In addition, the current framework was largely established based on recommendations strongly advocated by the ACCC and the AER. The need for this fundamental change to economic regulation was strongly driven by the lack of transparent and credible decision making from former jurisdictional regulatory bodies. Furthermore, the changes in price over this period are a reflection of the poor regulatory decisions in the past which produced artificially lowered prices compared to costs.	2,3
Ausgrid	Rising prices	Electricity prices can vary significantly within states depending on which electricity distribution area a customer is located in, their price plan (inclining block, time-of-use and controlled load), whether they are on a market contract and the amount of usage in various tariff categories. For instance, the comparative analysis of energy prices between Sydney and Melbourne suggests that when total energy costs (electricity and gas) are taken into consideration, it is estimated that a typical residential dual fuel customer in Melbourne pays more on their energy bills than a typical dual fuel customer in Sydney. Over the longer term official measures of consumer electricity prices in Sydney and Melbourne have been generally consistent.	Supplementary submission:1,2
Ausgrid	Rising prices	Interstate comparisons of replacement need based on the remaining asset lives in the Post Tax Revenue Model (PTRM) are of little relevance for asset management and determining replacement requirement.	Supplementary submission: 4

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Ausgrid	Rising prices	Analysis that seeks to compare cost outcomes between states based on high level benchmark metrics should also be considered with caution as benchmark indicators do not properly take into account the different drivers of network costs. For example, measures that compare the costs of supplying an individual customer are likely to be highly unreliable due to different customer density between states. NSW distributors operate under different licence conditions than Victorian distributors, particularly in respect of reliability of supply to the CBD. Other drivers include topography, network configuration, fuel mix and investment drivers and lifecycle.	Supplementary submission: 2,3
Australia & New Zealand Energy and Water Ombudsman Network	Capex/opex allowances	Supports the AER proposal on the basis that it allows a more balanced and objective approach to forecasting. All available information should be considered.	2
Australian Chamber of Commerce and Industry	Rising prices	ACCI agrees with the finding by the AER, the Garnaut Review, the IPART, the EUAA and others that deficiencies in the design and conduct of economic regulation account for part of the price increases.	1
Australian Industry Group	Rising prices	Increase in energy prices is a central concern for the Australian Industry Group and its members. Given the size of recent regulatory determinations by the AER it is appropriate that consideration be given to whether the current regulatory framework is delivering a necessary and efficient level of investment. Australian businesses also under pressure from global conditions and the strength of the dollar.	1
Australian Industry Group	Rising prices	The largest source of electricity price rises to date has been network charges, driven by enormous growth in capital investment. The regulation of Australia's energy market need to respond efficiently to the need for capital investment in Australia's transmission and distribution networks. In addition, it is appropriate that consideration be given to whether the current regulatory framework is delivering a necessary and efficient level of investment.	1
Australian Paper	Capex/opex allowances	Some clauses restrict the ability of the AER to exercise its judgment, in particular the clause requiring the AER to engage with the proposal on the "basis" on which it was proposed, and the statement in 6.12.2(2) requiring the AER to state whether its values have been derived from the building block proposal.	18
Australian Paper	Capex/opex allowances	It is reasonable to remove the requirement on the AER to accept a proposal if it is reasonable, since the AER can be expected to do this anyway. It is also reasonable to remove the requirement of approving the allowance "based on" the proposal, since this ties the AER to the proposal too much. It is appropriate to remove the "circumstances of the NSP" component from the criteria, since this means less reflection of competitive outcomes.	20

Organisation	Issue	Substantive point being made	Page ref
Australian Paper	Capex/opex factors/criteria	It is appropriate to add a catch-all expenditure factor.	20
Australian Paper	Rising prices	There is good evidence to suggest that the expenditure outcomes are not adequately explained by rising demand, ageing assets or historic under-investment. Particularly the research published through the Electricity Policy Research Group Policy in 2009 was used to explore the claims made by NSPs that expenditure outcomes are attributable to rising demand, ageing assets and historic underinvestment. Furthermore, the Mountain report pointed to the role of ownership, the conduct of regulation, asset valuation, and arrangements for appeal along with regulatory design as factors that might explain the observed outcomes.	11,12
Bellala	Rising prices	Agrees with the finding by the AER, the Garnaut Review, the IPART, the EUAA and others that deficiencies in the design and conduct of economic regulation account for part of the price increases.	1
Brotherhood of St Laurence	Capex/opex allowances	The AER's proposal would give the AER greater scope to weigh up all available information, evidence and data. This allows for a more impartial determination of expenditure.	11
Central Irrigation Trust	Rising prices	Agrees with the finding by the AER, the Garnaut Review, the IPART, the EUAA and others that deficiencies in the design and conduct of economic regulation account for part of the price increases.	1
Consumer Action Law Centre	Capex/opex allowances	The onus is currently on the AER to prove expenditure forecasts do not reflect efficient costs. This should be reversed so the burden is on businesses to show the forecasts reflect efficient costs.	3
Consumer Utilities Advocacy Centre	Capex/opex allowances	The proposed amendments contain sufficient checks to ensure that service reliability and quality is not compromised.	4
Consumer Utilities Advocacy Centre	Capex/opex allowances	The proposals should improve the ability of the AER to take into account the best available evidence, and implement greater use of benchmarking. It will also allow the AER to take into account developments in regulatory economics, and innovations used by other regulators.	3,4

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Consumer Utilities Advocacy Centre	Rising prices	Both proposals provide a compelling case for refinement to the current regulatory frameworks. Outcomes achieved under the current regulatory framework for electricity distribution businesses have resulted in significant increases in network expenditure compared to previous regimes. Further, there is no strong evidence that step changes in expenditure have resulted in significantly enhanced service quality or reliability. The scale of price increases is not justified by factors such as reliability standards, network upgrades and ageing assets alone. A prudent operator would manage assets in such a way that capex associated with replacement would occur progressively resulting in a smooth expenditure trajectory. Both capex and opex have increased in a step change that occurred when responsibility for regulation transferred to the AER.	1,2
Economic Regulation Authority	Capex/opex allowances	Changes are likely to be necessary to enable the AER to undertake a range of analyses, rather than just bottom up engineering analysis.	1
Endeavour Energy	Capex/opex allowances	The Rules currently strike the right balance between prescription and discretion, and allow the AER to have regard to a range of factors, not just the business's proposal. It is not appropriate to remove the requirement that the AER must have regard to the business's proposal. An increase in network costs or expenditures compared to historical expenditure does not prove that there is a deficiency in the rules; there may be many reasons for this. The current rules have enabled efficient expenditure so there is no reason to provide the AER with additional discretion.	2
Endeavour Energy	Rising prices	Endeavour Energy recognises that network costs are a major factor in rising electricity prices. However, an increase in network costs compared to historical expenditure under past regimes does not prove that the current regime is flawed. Past regimes operated under different market conditions and often had different priorities.	2
Endeavour Energy	Rising prices	By comparing the conservative trend line of 1.5% real growth in annual capital expenditure over the past 20 years against actual expenditures, it highlights that while expenditures in the next few years may be above this trend, the total value of such expenditure is still below the investment trend from the 1990's and early part of this century. It also highlights that the current high rate of price could well have been avoided under a long-term systematic investment trend that included reasonable growth annual capital expenditure.	4
ENERGEX	Capex/opex allowances	The AER has enough discretion to consider and revise expenditure forecasts. Energex's proposals were developed through a robust process. The AER made top level adjustments to these proposals on the basis of demand forecasts and input cost escalators. The rule change proposal seeks an increase in the AER's discretion without valid justification.	2

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Energy Networks Association	Capex/opex allowances	The Tribunal and the AEMC (in the 6A rule determination) have said that the role of the regulator should be to determine whether what is proposed is prudent and efficient, rather than to determine a best estimate. This is because there will be a range of forecasts which could be seen as valid (different people will come to different views about the appropriate level of expenditure). The AER can't be concluded to have an evidentiary burden under the current rules.	21-23, Att C: 7
Energy Networks Association	Capex/opex allowances	Businesses do not prepare forecasts by developing a range of efficient forecasts and then choosing the upper bound. There are also safeguards that create incentives for full and frank disclosure, including the AER's information gathering powers, and the requirement for senior management of the business to sign off on the proposal. The AEMC has said that the ability of the AER to substitute a less favourable forecast would deter ambit claims.	21, 23- 24, Att C: 15
Energy Networks Association	Capex/opex allowances	The AER has had sufficient opportunity to interrogate regulatory proposals (there are many examples of it eliciting further information), and it has never in any of its decisions identified lack of discretion as a constraint. It has also, in general, not discussed potential ranges (and when the AER has discussed ranges it has chosen the mid-point of the range). The mere fact that expenditure allowances have increased is not a sign of a problem with the rules. In all determinations the AER has rejected NSP's total expenditure forecasts.	25-26, Att C:13, 19, 24, 26, 30
Energy Networks Association	Capex/opex allowances	There is no evidence the AER has been restricted in its examination of expenditure forecasts: it has adopted benchmarking in several determinations (and where it hasn't this hasn't been because of the rules); it has considered the deliverability of capex; it has adjusted all projects based on a sample reviewed. In any regard, there is no problem with the AER undertaking a line by line assessment, and it has done so in Chapter 6A even though the rules did not require it. However, it is acknowledged that other tools may be needed, and a line-by-line assessment should not exclude other tools.	27,28, Att C: 33, 36, 43, 44
Energy Networks Association	Capex/opex allowances	The restrictions in Chapter 6A are less than those in Chapter 6. In Chapter 6A there is no restriction in the rules which prevents the AER setting a value below the top end of the range. Despite this in practice the AER has applied Chapters 6 and 6A in a consistent manner. Thus either the AER has chosen not to exercise the full extent of its discretion or the AER's substituted expenditure reflects its view.	Att C: 10, 13, 23
Energy Networks Association	Capex/opex allowances	It is incorrect for the AER to say it bears the burden to prove expenditure is not efficient/prudent. In fact if the business can't satisfy the AER about this the rules require the AER not to accept the forecast, so there is a burden on the NSP.	Att C: 28
Energy Networks Association	Capex/opex allowances	Where the AER has commented that it has not been able to benchmark, it has identified lack of data as the problem rather than provisions in the rules.	Att C: 37

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Energy Networks Association	Capex/opex allowances	It is not correct for the AER to say that because it must conduct bottom up reviews a portion of costs escape regulatory scrutiny. The AER has in practice adopted both detailed reviews of projects and broader reviews of processes. The AER has previously used results of sampling to adjust capex for projects which have not been explicitly reviewed.	Att C: 44, 45
Energy Networks Association	Capex/opex allowances	The AER claims that only assessing forecasts through a bottom up mechanism is inconsistent with the incentive framework. There is no link between the way the forecasts are determined and the subsequent actual expenditure decisions so there is no inconsistency with the incentive framework.	Att C: 49
Energy Networks Association	Capex/opex factors/criteria	There is no ambiguity in the three "process" factors. There is also no evidence that the requirement on the AER to publish its own analysis is unworkable. Any expansion on the AER's discretion to undertake analysis and not publish it is inappropriate. The requirement for transparency should be maintained.	70 Att D: 12
Energy Networks Association	Rising prices	Higher network costs are not of themselves any proof of failure of the regulatory regime or the regulatory bodies which currently apply them. Further, an increase in network costs compared to historical expenditure under past regimes is not sufficient to prove that the current regime is flawed. Past regimes operated under different conditions and had different priorities. Past regulatory regimes also delivered less reliable service. A meaningful comparison of historic and current expenditure needs to take into account all variables before sound conclusions can be drawn on the role of the regulatory regime. At face, the regulatory regime appears to have worked in that the required additional network investment has proceeded.	6
Energy Networks Association	Rising prices	Higher network costs are being driven by investment in ageing assets and asset replacement, investment to meet growing peak demand, substantial requirements to connect renewable energy sources to the NEM, connection of remote renewable generation to the grid, higher cost of capital due to the Global financial crisis (GFC), continuing pressure on labour and material input costs, and higher reliability standards in major jurisdictions. Information provided to support this. In this context, important to identify where issues of concern are either rule related, rule application related, or related to wider energy and public policy.	6,7,9
Energy Retailers Association of Australia	Capex/opex allowances	The AER's proposed changes will allow the AER to use a variety of approaches to estimating efficient costs and this will reduce the chance of network revenues being systematically inflated. It is more appropriate to assess projects at an aggregate level.	1
Energy Retailers Association of Australia	Capex/opex factors/criteria	ERAA supports the proposal to absorb the expenditure criteria into the new decision-making test and to remove the requirement to take into account the individual circumstances of the network. Good benchmarking should take these circumstances into account automatically.	2

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Energy Supply Association of Australia	Capex/opex allowances	The first cycle of resets do not suggest the AER is operating under significant constraints.	4
Energy Supply Association of Australia	Capex/opex allowances	The regulator should not be permitted to reject a forecast that is reasonable. Given the uncertainties involved in forecasting, it is legitimate that if a forecast is within a reasonable range it should be accepted.	4
Energy Supply Association of Australia	Capex/opex allowances	Given asymmetry of information, the NSP will always know its business best. Analysis of likely costs by the AER merely substitutes one set of engineers views for another. The NSP is the one who must bear the direct consequences of failure of the network.	4
Energy Supply Association of Australia	Rising prices	Point out that price is one of several considerations along with, quality, safety, reliability, and security of supply of electricity in the National Electricity Objectives.	3
Energy Supply Association of Australia	Rising prices	A number of cost drivers have put upward pressure on energy prices. According to the Productivity Commission in its review of productivity in the Electricity Gas Water and Waste sector, additions to the physical capital stock has increased faster than their output measure - electricity use - for the cyclical investment, peak demand and quality changes. The cost of financing this capital investment has also increased in recent years. Alternative pathways to reducing energy network cost pressures such as the technology to enable more dynamic pricing and tools to manage load shifting, installing network communications systems that allow for better monitoring of the condition of the system and making it easier to identify faults etc. do exist. ESAA is developing some quantitative work to submit to the next stage of the rule change process.	3
Energy Users Association of Australia	Capex/opex allowances	The NER restrict the ability of the AER to determine objectively efficient expenditure. As one example, the AER's discretion is reduced by the requirement that it adjust the allowances "on the basis" of the proposal. In another example, the onus of proof is too high under clause 6.12.2(2). The sources of information and methods of analysis the AER may use are restricted. The AER should have more independent ability to form judgments. As a result, the regulatory framework is favouring networks. The onus of proof should be reversed and placed on the networks, especially given the asymmetry of information. EUAA supports the AER's proposals.	20
Energy Users Association of Australia	Capex/opex allowances	AER should be doing more benchmarking and the NER should include a clearer requirement for this to occur. EUAA is not clear how the rules proposed would allow greater use of benchmarking, and seeks further comment on this.	29

Organisation	Issue	Substantive point being made	Page ref
Energy Users Association of Australia	Rising prices	<p>Prices only diverged between +/-5% of the CPI between 1980 and 2008. Since 2008, prices have risen sharply to around 40% higher than the CPI. The main driver of the significant increases has been increased transmission and distribution charges which make up approximately 50% of an electricity bill. Analysis suggests that flaws in the regulatory framework and the way the framework has been administered by the AER along with ownership are the main reasons behind the massive increases in network charges.</p> <p>Analysis suggests that there is an inefficient response to demand growth by government-owned distributors in terms of their capitalised expenditure per connection. The AER has allowed the Victorian distributors around \$300 per customer per year to replace assets, yet the distributors in New South Wales are set to receive almost four times as much to replace assets. Studies found that capital proactivity by the distribution businesses was poor at approximately 0.2% per annum and the businesses could achieve a 20-30% reduction in operating costs through efficiency gains. No evidence to support the historic underinvestment in Energex.</p> <p>Strongly encourage the AEMC to examine the performance and outcomes of the gas regulatory resets.</p>	i,1,7,9,16
Energy Users Association of Australia	Rising prices	NSPs have failed to show evidence of why the factors that they assert have driven higher expenditure (demand growth, ageing assets, historic underspending) are, in fact, the real drivers and have also failed to respond substantively to the evidence that these factors, in fact, provide poor explanations of the increases in expenditure.	
Energy Users Rule Change Committee	Capex/opex allowances	Some clauses restrict the ability of the AER to exercise its judgment, in particular the clause requiring the AER to engage with the proposal on the "basis" on which it was proposed, and the statement in clause 6.12.2(2) requiring the AER to state whether its values have been derived from the building block proposal.	13
Energy Users Rule Change Committee	Capex/opex allowances	It is reasonable to remove the requirement on the AER to accept a proposal if it is reasonable, since the AER can be expected to do this anyway. It is also reasonable to remove the requirement of approving the allowance "based on" the proposal, since this ties the AER to the proposal too much. It is appropriate to remove the "circumstances of the NSP" component from the criteria, since this means less reflection of competitive outcomes.	14
Energy Users Rule Change Committee	Capex/opex factors/criteria	It is appropriate to add a catch-all expenditure factor.	15

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Energy Users Rule Change Committee	Rising prices	Privately owned NSPs appear to have dealt with rising demand and ageing assets more efficiently than their government-owned peers. This suggests that the explanation for rising expenditure is not exogenous factors such as ageing assets and demand growth but rather the differing efficiency of the distributors in managing these factors. Ownership, the conduct of regulation and the design of regulation have been identified as three possible factors affecting the observed outcomes.	i,ii
Energy Users Rule Change Committee	Rising prices	"Mountain Report" show that: - Between 2001 and 2011, government-owned distributors have increased their revenue collection per customer from around \$600 per customer per year to around \$1150 per customer per year. Privately owned distributors will have remained approximately constant at \$600 per customer per year over this period; - Between 2001 and 2011, the regulated asset base (RAB) per connection for privately owner distributors has remained approximately constant at \$3000 per connection per year. The RAB per connection for government-owned distributors has approximately doubled per connection from \$4000 per connection to \$8000 per connection over the same period. - Between 2001 and 2011, the capitalised expenditure per connection has risen from \$200 to \$300 per connection per year for privately-owned distributors, and from \$350 to \$900 per customer per year for government-owned distributors.	4,5
EnerNOC Pty Ltd	Capex/opex allowances	EnerNOC agrees that the current restrictions on an objective assessment of the efficiency/necessity of expenditure proposed by network businesses means consumers are paying more than they should.	1
Ergon Energy	Capex/opex allowances	No changes are needed to the NER. The AER has sufficient discretion under the rules as they currently stand. Evidence from the AER's final determination for Ergon Energy does not support the AER's claims. The AER should be required to start from a business's proposal, since it is the business which understands its future needs best. If the AER has more discretion there is greater chance of regulatory error. If changes are made that move towards consider-decide, it is important that the circumstances of the specific DNSP continue to be recognised.	6, 13
Ergon Energy	Capex/opex allowances	In Ergon's last regulatory determination, the AER generally did not include discussion of potential ranges, and where it did, it tended to adopt the midpoint rather than the upper bound. The Tribunal has said that it is not necessary for the AER to identify a range and then determine if a proposal falls within it.	8
Ergon Energy	Capex/opex allowances	AER applied a range of analyses in Ergon's last regulatory determination, not just line-by-line bottom up.	9
Ergon Energy	Capex/opex factors/criteria	AER should be required to consider ALL listed capex/opex factors.	13

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Ergon Energy	Rising prices	Ergon Energy notes that the Energy Users Rule Change Committee does not provide any reason as to why electricity prices should differ across jurisdictions simply as a result of the ownership of the relevant assets, nor does it recognise the adverse consequences for resource allocation that may result.	12
Essential Energy	Capex/opex allowances	It is not the regulatory framework which is responsible for increasing prices. The AER already has sufficient discretion regarding forecast capex and opex, and the rules already require the businesses to make justifiable claims. The changes to the capex and opex factors mean the business's proposal would never be an appropriate consideration, which is inappropriate. A more prescriptive approach would put the AER in the position of an asset manager, which is undesirable.	4,5
Essential Energy	Capex/opex allowances	Essential Energy supports robust benchmarking, which must take into account the individual circumstances of each DNSP. This is particularly the case for Essential Energy for whom customer density is particularly low. It is inappropriate to remove consideration of individual circumstances of businesses from the opex and capex criteria.	8
Essential Energy	Rising prices	Its view is that the perceived flaws identified by the AER in the regulatory framework which allegedly gave rise to the increase in electricity prices are misconceived. The increasing prices are driven by the replacement of ageing assets; artificially low and unsustainable levels of historical allowed expenditure and price paths; spatial peak demand growth, that is outstripping what are now decreasing consumption levels; increased funding costs resulting from global economic instability; the introduction of renewable energy schemes; and the associated growth of the regulatory asset base.	4
Essential Energy	Rising prices	It believes that a sustained level of investment expenditure will flatten out peaks and troughs in pricing. This would require a consistent regulatory framework that operates for more than one regulatory control period.	4
Ethnic Communities Council of NSW	Capex/opex allowances	The Ethnic Communities Council supports the AER's proposals.	3
ETSA, CitiPower and Powercor	Capex/opex allowances	Does not approve of changing propose-respond model to a model where AER determines an amount without having to start with the business's proposal. Such a material change should only be made where a deficiency is identified and there is evidence in support. The AER has not provided evidence of such a deficiency. At present there is no evidence from one entire regulatory period. It is not enough to show that allowed revenues in one period are higher than allowed revenues in previous periods. There are other reasons for increases in expenditure from one period to the next. The "reasonably reflects" requirement has not operated to restrict the AER's ability to reject expenditure forecasts (the AER has rejected forecasts in every determination).	12, 15, 45-47

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ETSA, CitiPower and Powercor	Capex/opex allowances	The AER has not been constrained in determining substitute forecasts. The AER's references to Chapter 6A, where there are no such constraints in the NER, show that the rules are not the problem. The Tribunal's view is that the rules do not require the AER to accept a forecast where there is a range of forecasts and the business has proposed a forecast within that range. There is no evidence that the AER has approached forecasts by establishing first what the reasonable range should be. The risk of systemically inflated forecasts does not exist for opex which uses a revealed costs model (using a year in the previous period as a base year).	50-52
ETSA, CitiPower and Powercor	Capex/opex allowances	The Tribunal shows the AER has the ability to depart from a proposed methodology in determining a substitute. In any event, there is nothing wrong with the AER having to undertake a line by line analysis of the business's proposal. The rules don't stop benchmarking occurring and the AER has undertaken benchmarking. The rules impose no onus or burden of proof on the AER. The evidentiary burden is a consequence of the information disclosure requirements the rules place on the businesses.	14, 52, 53
ETSA, CitiPower and Powercor	Capex/opex factors/criteria	The reference to the circumstances of the relevant NSP must be retained. It is critical to ensuring the AER considers the operating environment of the relevant business. There is no evidence the AER has been constrained in its ability to apply benchmarking. The AER's obligation to consider the expenditure factors must also be retained as this increases certainty and reduces the risk of regulatory error.	16, 58, 59
ETSA, CitiPower and Powercor	Capex/opex factors/criteria	The removal of the obligation on the AER to consider published material, and inclusion of obligation to consider all material, should be rejected. This curtails the right of a business to be heard. This requires the AER to consider material which has not been published and conflicts with obligations of procedural fairness. The rules don't otherwise require the AER to provide details of analysis performed. The AER should have greater obligations to publish analysis undertaken.	17, 60-62
Grid Australia	Capex/opex allowances	There is no evidence that the AER has ever been restricted in its ability to assess expenditure proposals. It's taken the same approach as under the ACCC's SRP when there was wide discretion. There are many other factors contributing to an increase in network charges.	27
Grid Australia	Capex/opex allowances	The AER proposal means there is less weight placed on the business's proposal. This is inappropriate; this weight encourages sound proposals and provides certainty, businesses know that if they can satisfy the AER they are likely to be accepted. The assessment must start with an assessment of the reasonableness of the proposal, otherwise insufficient evidence would be required to dismiss it. This would reduce the evidentiary threshold for the AER.	34-35
Grid Australia	Capex/opex allowances	Striving for the best forecast ignores that in most cases there is no "best" forecast, only evidence.	36
Grid Australia	Capex/opex factors/criteria	Grid Australia supports the proposal to split out the factors relating to process from those relating to evidence.	39

Organisation	Issue	Substantive point being made	Page ref
Grid Australia	Capex/opex factors/criteria	Does not support removal of requirement to have regard to individual circumstances of business. This requirement is needed to be sure that any benchmarking takes into account the specific factors that impact on the business. Rules should be clarified so that when benchmarking AER is required only to have regard to specific position of businesses and relevant external factors, though the extent to which this is a problem depends on how the circumstances of the business are interpreted.	39
Grid Australia	Rising prices	Grid Australia acknowledges the difficulties that have arisen with applying the previous standard approach for setting the WACC during the recent periods of material financial market uncertainty.	3
Grid Australia	Rising prices	No transmission business has yet completed a regulatory control period under the current rules, it is too early to draw strong inferences about the operation of the Rules to date. Based on the information available to date many of the AER's claims about the problems in the current regime appear unfounded. There is evidence which demonstrates that the changes made to the Rules by the AEMC are delivering the outcomes that were intended. Substantial transmission investment has been undertaken to meet growing energy demand, to manage the impact of climate change policies, to replace old assets, and to expand the network into new areas.	2,13
Grid Australia	Rising prices	Future challenges, rather than any fundamental flaw in the regulatory framework will be the major driver for price rises for customers in coming years. These challenges also underscore the continued importance of a certain and predictable regulatory regime.	2
Grid Australia	Rising prices	The current rules were intended to enhance regulatory certainty. The fundamental change to the regulatory framework just five years since the last review would place enhanced certainty and predictability at risk, unless compelling evidence is provided of a need for change.	2
Grid Australia - supplementary submission	Capex/opex allowances	The capex and opex criteria in Chapter 6A do not give rise to a systematic bias in setting prices. Given the NEO, there is a range of ways to promote efficiency and to focus on price alone involves error. The AER's approach also gives inadequate weight to section 7A(2) of the NEL which requires a TNSP to be given a reasonable opportunity to recover at least its efficient costs. Much of the Stephen Lloyd opinion is based on the specific requirements of Chapter 6 and is inapplicable to Chapter 6A.	13, 15
Grid Australia - supplementary submission	Capex/opex allowances	The AER's proposed changes would shift the regime from propose-respond to consider-decide. The AER's discretion would be much broader. In removing from the criteria the reference to the circumstances of the TNSP there is a tension with section 7A(2) of the NEL. The changes could be productive of regulatory uncertainty.	21

Organisation	Issue	Substantive point being made	Page ref
Independent Pricing and Regulatory Tribunal	Capex/opex allowances	Supports the AER's proposed changes in respect of capex/opex allowances. The "reasonably reflects" test in the criteria puts too high a burden of proof on the regulator. It is hard for the AER to provide a balanced determination when it must approve a forecast at the upper end of the reasonable range, and may only revise a forecast that is beyond the reasonable range to the minimum extent necessary. It is not the AER's role to simply make a decision it considers best.	8,9
Independent Pricing and Regulatory Tribunal	Rising prices	Consider that network costs increases, which are responsible for most of the recent price increases, may be higher than necessary due to certain aspects of the regulatory framework which is contributing to inefficient outcomes. Current regulatory arrangements are putting upward pressure on network prices.	5
Jemena	Capex/opex allowances	The AER has not demonstrated that a material problem exists. Businesses already have an incentive to lodge prudent and efficient forecasts. The AER must engage with a business's proposals at a level of technical detail. The AER's proposal inappropriately reduces the importance of the business's forecast and makes the determination harder to contest. It departs from the MCE's approach of propose-respond in favour of consider-decide. This creates uncertainty.	23-25, 36
Jemena	Capex/opex allowances	The AER already has sufficient discretion to disallow and substitute expenditure forecasts, and has been using it. The AER's information gathering powers discourage over-inflated forecasts. The level of cuts in both capex and opex in JEN's most recent determination have demonstrated that the AER is not constrained, and the AER has never said or implied it felt constrained. In addition the AER has adopted an alternative approach, its repex model to forecast replacement capex. JEN's historical performance demonstrates it does not over-forecast.	28-32
Jemena	Capex/opex factors/criteria	The rules must require the AER to publish and consult on analysis conducted for it.	27
Jemena	Rising prices	Electricity prices and typical bills for the typical domestic customer in Victoria have increased by 7% in real terms from 1996-2010. However, since 2007, domestic electricity prices have increased by 30% in real terms. The increase in domestic electricity prices in Victoria cannot be explained by increases in network costs (i.e., the sum of distribution and transmission use of system charges)	App: 2
Jemena	Rising prices	Analysis shows that the increases in annual domestic electricity prices in NSW and Queensland paid by the typical customer between 1996-97 and 2010-11 are explained by increases in network costs.	App: 15
Major Energy Users	Capex/opex allowances	Supports flexibility in rules for AER to conduct top down analysis (including benchmarking) of capex/opex, and an added requirement that capex/opex reflects outcomes of incentive schemes. More discretion for the AER is needed, in particular in how to place weight on different sources of input. The MEU supports the AER's proposals in this area.	18

Organisation	Issue	Substantive point being made	Page ref
Major Energy Users	Rising prices	The AER has not addressed the issue of pricing, especially the concept that pricing should reflect a need to allocate costs based on times of peak usage. MEU will address this at a later stage.	12
Michael Cunningham	Capex/opex allowances	There is a distinction between the propose-respond model and the concept of a reasonable range. The presumption in favour of accepting a business's proposal comes from the reasonable range concept. Where there is strong market power a presumption in favour of the proposal may be misplaced. The AER should be able to reject a proposal if it is higher than the best estimate of efficient cost. The elements of the rules that give rise to a presumption in favour of businesses' proposals should be removed. If this were done there should be no need also to remove the requirement on the AER to accept or reject the business's capex/opex forecast.	22
NSW Business Chamber	Rising prices	NSW Business Chamber is strongly of the view that a key driver has been deficiencies in the regulatory framework that governs the operation of the electricity sector.	1
Origin Energy	Capex/opex allowances	Origin considers the Littlechild/Mountain analysis and concludes that the AER needs to be given more scope to benchmark network performance and cost metrics across jurisdictions using top down approaches. The AER needs more ability to challenge business's proposals. The requirement for the AER to disprove the each item in excess of a reasonable forecast leads to systemic upward bias.	2
Origin Energy	Rising prices	The rules should promote consistent value for money as network prices have increased significantly and put impact on customers. When a network is augmented, renewed and extended this should not automatically lead to increases in average price per unit. Renewed assets deliver improved network efficiency and extensions allow for costs to be spread over more users. Furthermore, a negative x term in the price control formula reflects the allowance for increased efficiency.	1
Queensland Department of Employment, Economic Development & Innovation	Capex/opex allowances	AER should have increased ability to ensure only prudent and efficient costs are passed on to consumers.	2
Queensland Magnesia	Rising prices	Agree with the finding by the AER, the Garnaut Review, the IPART, the EUAA and others that deficiencies in the design and conduct of economic regulation account for part of price increases.	2
Queensland Magnesia	Rising prices	The largest increases contributing to the increase in total average electricity costs incurred by Queensland Magnesia have been in the areas of Electricity Distribution and Transmission Network Costs. Over the period, these costs have risen from a total rate of \$20.4/MWh to \$32.4/MWh - representing an annual compound growth rate of 9.7%.	2

Organisation	Issue	Substantive point being made	Page ref
SA Department of Manufacturing, Innovation, Trade, Resources and Energy	Capex/opex allowances	The removal of the obligation to accept a proposal if it reasonably reflects required expenditure does not reflect a balanced position. The rules must require the AER to consider the proposal submitted and enable the AER to make a decision based on the proposal and other information, such as benchmarking. Benchmarking is an important part of the process. Rather than a "reasonable" test it would be more appropriate to use an "efficient investment" test.	3,4
Southern Sydney Regional Organisation of Councils	Capex/opex allowances	It is a weak test of efficiency that the AER is required to accept a proposal if it provides an outcome within a reasonable range. Rule changes are required that enable the AER to benchmark, and, allow the AER to make appropriate adjustments.	3
SP AusNet	Capex/opex allowances	SPAusNet endorses the ENA/Grid Australia comments, particularly that there is no evidence of a problem. The AER has the power to undertake any assessment of forecasts, and for SPAusNet has applied a top down repex model, top down extrapolation, historical trends, application of regulatory accounting information (it dropped a weighted average probability approach because it was a weak model, not because of the rules). There is no evidence the AER has been constrained to revise to the top of a range, and there is no burden of proof on the AER. The rule change may remove the requirement for the AER's decisions to be based on evidence. Any restriction on proper benchmarking should be removed.	17, 20
SP Ausnet	Rising prices	Three factors are considered to be contributing upward pressure on network prices in electricity: ageing assets, demand growth and government imports. However, different price outcomes in Victoria are driven by two key factors: the existence of probabilistic planning standards in Victoria and the private ownership of network businesses in Victoria which ensures the full force of incentive regimes put in place under the Rules are responded to effectively. In addition, the Victorian DNSPs have maintained relatively high standards of service, in terms of reliability of supply compared to other jurisdictions.	4,5,6,7
Tasmanian Council of Social Service	Capex/opex allowances	It appears the AER is restricted in its ability to restrict businesses' infrastructure spending. This must be changed and the AER must have the support of the rules.	2
Tasmanian Council of Social Service	Rising prices	It believes that reform of the Rules has real potential to limit further increases in electricity prices. It urges the AEMC to consider the rule change requests with particular reference to both the effect on electricity prices of the current National Electricity Rules and the interests of consumers.	2

Organisation	Issue	Substantive point being made	Page ref
Financial Investor Group	Capex/opex allowances	No evidence the AER has been constrained by the current rules, or that the rules have led to a systematic problem of capex overspending. It is not relevant to compare actual capex in a previous period with the proposal put forward for the current period. A better measure is the extent of cuts by the AER compared to cuts by previous regulators. This analysis shows the AER has actually cut more than previous regulators. The AER will never be in a position to "decide" what appropriate expenditure forecasts should be. It would be better for the AER to improve its performance rather than seek changes to the rules.	52, 54,55
Financial Investor Group	Rising prices	Believes that in addition to the common view that network charges have been a major contributor to the recent increases in electricity prices, the deficiencies in network regulation have made a material contribution to the increases in network charges, and thus, retail electricity prices.	7
Total Environment Centre	Capex/opex allowances	The current rules do not give the AER enough power to curb excessive proposals, and tie the AER too much to the original proposal. The bias in the current framework may inhibit the AER from fully using its discretion. TEC supports the AER's proposed changes.	1,2
United Energy and Multinet Gas	Capex/opex allowances	Company directors must provide statutory declarations that their forecasts are reasonable, this is significant. The AER must be tied to the business's proposal; the company, not the regulator, is in the best position to exercise judgment over the forecasts. It may be too onerous for the AER to determine the forecast.	8
United Energy and Multinet Gas	Capex/opex allowances	There is no evidence expenditure forecasts have been upwardly biased. The current rules are appropriate.	8
United Energy and Multinet Gas	Rising prices	EURCC is incorrect in rejecting the principles of competitive neutrality. Its proposal will create a long term distortion in network prices that will affect competition in upstream and downstream markets.	28
Victorian Department of Primary Industries	Capex/opex allowances	Supports more discretion for the AER to allow it to use a range of regulatory tools, as well as the business's proposal, to assess capex. This will reduce the focus on line-by-line assessments of proposals.	3
Victorian Department of Primary Industries	Capex/opex factors/criteria	Supports the AER's proposed changes in respect of the capex/opex factors.	4

Part II Capex incentives (and related issues)

Organisation	Issue	Substantive point being made	Page ref
ActewAGL Distribution	Capex incentives	The AER's proposed mechanism would create an incentive to routinely overstate capex forecasts as well as failing to address existing incentives to postpone over expenditure until as late as possible in the regulatory control period. In addition, it provides no discretion to allow capex overspend as a result of unforeseen circumstances to be rolled into the RAB - the AER's proposed uncertainty regime is unlikely to be of practical use to smaller NSPs unless cost thresholds are set impractically low from an administrative perspective.	3
AEMO	Uncertainty regime	AEMO supports the introduction of contingent projects for distribution through the development of guidelines. Other triggers should be considered, such as AEMO completing a RIT-T assessment.	2
Alinta Energy	Capex incentives	The AER's proposed 60/40 sharing mechanism may deter shareholders and debt holders of NSPs from financing expenditure above the regulatory allowance which may prevent NSP's from undertaking essential capex late in a regulatory control period. This will impact on the integrity of the network and security of supply. Providing greater discretion to the AER to scrutinise capex should be considered.	2
APA Group	Capex incentives	The NGR includes an ex post review of capex and, as a consequence, does not include the potential risks identified by the AER for efficient capex.	34
APA Group	Shared assets	There is a similarity between the AER proposal for shared assets and the way the NGR works, including the allocation of costs between different services and the provision for rebateable services. Some of these approaches are constrained due to the potential for distortion of investment or undermining of incentives.	35
Aurora Energy	Capex incentives	Expenditure in excess of an allowed forecast is not necessarily inefficient. It may, for example, reflect the difficulty in providing an accurate estimate of expenditure for a period or project that may be up to seven years into the future. It is difficult to ascertain whether the situation is as the AER claims - for example, the AER has not demonstrated that expenditure in Queensland has been inefficient. In this way, the AER has presented no non-hypothetical evidence that the main reason for expenditure in excess of forecast is to obtain a return on unnecessary assets. Given the lack of supporting evidence, the introduction of any capex incentive scheme, let alone an asymmetric incentive regime, is premature.	7
Aurora Energy	Uncertainty regime	Aurora agrees in principle with applying contingent projects to distribution, though is concerned that this may artificially lower the initial approved expenditure forecasts. Aurora welcomes capex reopeners to cover events not covered under the cost pass through mechanism. Aurora does not necessarily agree there is stakeholder uncertainty due to the absence of a definition of "materially" in respect of pass throughs, but has no fundamental objection to a definition being inserted. Aurora also agrees that there is the potential for double recovery for capex recovered through a pass through.	8, 9
Aurora Energy	Related party margins	Agrees with the AER's assessment. The proposal is, in effect, an ex post review of capex which the AER believes is not appropriate.	9

Organisation	Issue	Substantive point being made	Page ref
Aurora Energy	Other incentive schemes	Disagrees with the AER's proposal that it be given the power to introduce incentive schemes as required. Proposal is not consistent with the existing regulatory framework and would therefore seem inappropriate. Suggests that the AER should institute new schemes through the standard rule change process. In this way, such schemes will be subject to a proper and transparent scrutiny by stakeholders and, additionally remove the perception of conflict of interest whereby a rule enforcer becomes rule maker.	10, 11
Aurora Energy	Shared assets	Aurora agrees with the problems raised by the AER, and commends the approach used by ESCOSA. Aurora also notes that the term "distribution service" as defined in the NER may extend to the use of assets for non-electrical purposes.	11
Ausgrid	Capex incentives	In the absence of an EBSS for capex, NSPs generally face stronger incentives to reduce capex earlier in the regulatory control period and weaker incentives towards the end of the regulatory control period. Claims that differences between the allowed and true costs of capital have accentuated the incentive are not based on any evidence. Does not support the AER's proposed 60/40 sharing mechanism. It is unnecessarily prescriptive and may ultimately fail to promote the NEO and the AER's own objectives in respect of such schemes. Note that the mechanism is asymmetrical which may undermine its effectiveness and could potentially lead to the deferral of prudent and efficient capex. This mechanism combined with the AER's proposed changes to the decision framework for capex and opex have the potential to lead to serious regulatory error and expenditure outcomes that are not in the long term interests of consumers. The AER has not exercised its discretion under Chapter 6 to develop an EBSS for capex.	27 - 28
Ausgrid	Uncertainty regime	The capex reopener threshold is set too high to be meaningful. Instead this should be dealt with through a pass through.	28
Ausgrid	Uncertainty regime	Contingent projects don't work as well for distribution where there are more smaller projects, with shorter lead times. In addition, the threshold is set too low, which would create a burden for the AER. A threshold of \$60m - \$100m would be more appropriate.	28,29
Ausgrid	Uncertainty regime	There is no evidence of a problem with the current definition of materiality for pass through events. It currently can be interpreted flexibly and this should be maintained. The definition should reflect the circumstances of the DNSP, otherwise a strict definition may exclude costs which don't meet the threshold but which are non trivial in impact. There is no need for the threshold in transmission and distribution to be the same. If there is a need to pre-define materiality, a similar approach should be taken to costs to avoid distortions.	30-32
Ausgrid	Other incentive schemes	Does not agree that there is a problem with the rules. An open discretion to apply a new incentive arrangement on top of a prescribed framework is inconsistent with good regulatory practice.	28
Ausgrid	Shared assets	The AER has not fully considered the complexities of the shared assets issue, and a wider range of options should be provided. Any mechanism must be based on key principles: maintain incentives for sharing, take into account risks, benefits subject to positive commercial outcome, regulatory oversight only if materially beneficial.	33
Australian Paper	Capex incentives	Regulatory incentives for capex are too weak. Government-owned TNSPs have overspent their	21 - 23

Organisation	Issue	Substantive point being made	Page ref
		<p>regulatory allowances under the current regime. Government-owned DNSPs have overspent against their regulatory allowances under similar regimes applied by QCA and IPART in their previous regulatory control periods. The case for strengthening the penalty for overspends is sound.</p> <p>The AER's proposed 60/40 split is arbitrary – as indeed would be any split. The proposed 60/40 split should provide an adequate discipline on NSPs to spend within their regulatory allowances.</p> <p>The additional provisions dealing with uncertainty weaken the capex disciplines and undermine the philosophy of price cap regulation. Would like to see a carefully developed analysis of alternative regulatory designs.</p>	
Australian Paper	Actual/forecast depreciation	An important consideration of incentive design is ensuring that investors and managers understand the incentives that they operate under. Therefore it would be better to settle on actual or forecast depreciation to roll forward the RAB rather than leave it to the AER to decide in each regulatory decision. Prefer the use of actual expenditure.	23
Australian Paper	Uncertainty regime	The uncertainty regime proposed by the AER is unattractive because it provides other opportunities for recovery of expenditure beyond the price/revenue cap. This weakens expenditure discipline, as well as the strength/certainty of the cap. Another option might be strengthening the service standard scheme. Also it may be possible to apply an "excess" (NSPs absorb first portion of a claim), a requirement that re-openers or contingent projects can only be used if the allowed capex or opex has been exceeded, or a requirement that NSPs demonstrate substitution of projects has been considered. The AEMC should think broadly about the regulatory design.	22
Brotherhood of St Laurence	Capex incentives	The AER's proposed changes to the NER limit the incentive to overspend on network infrastructure.	11
Consumer Action Law Centre	Capex incentives	Concerned by the current incentives which enable the NSP to profit from expenditure over the regulatory allowance, even though the expenditure might not have been efficient or necessary. Support changes to arrangements that more fully ensure expenditure is carried out when and where it is necessary rather than based on how NSPs can further profit from it and support a rule change that achieves this outcome.	3
Consumer Utilities Advocacy Centre	Capex incentives	The AER's proposed 60/40 sharing mechanism appears to be modest and reasonable. It appears to appropriately share risk between the regulated businesses and consumers and shareholders.	4
COTA Australia	Capex incentives	The estimated 25% of increased network charges in NSW and QLD that can be attributed to overspend in the previous regulatory period represents a serious flaw in the way that assets are rolled into the RAB. NSPs do not require the kind of protection that allows for revenue to be earned on unnecessary assets. The 60/40 mechanism proposed by the AER deserves serious consideration.	2
Economic Regulation Authority	Capex incentives	The current arrangements under Western Australia's Electricity Networks Access Code - which allows for ex ante and ex post new facilities investment tests to determine the efficiency of expenditure - is an approach which should be considered by the AEMC as a means to address the identified problem.	1, 2
Endeavour Energy	Capex incentives	The proposed 60/40 sharing mechanism: does not allow any discretion in application; is ill	5

Organisation	Issue	Substantive point being made	Page ref
		conceived; and does not provide a continuous incentive across the regulatory period (which creates incentives for inefficient timing of capex). The AER has not used its existing discretion under Chapter 6 to develop an EBSS for capex - this is the more appropriate mechanism.	
ENERGEX	Capex incentives	Does not agree that the current RAB roll forward mechanism creates incentives for NSPs to incur more than efficient levels of capex. For Energex, capital overspend for the previous two regulatory control periods was due to high demand growth. Similarly, expenditure in these regulatory control periods was incurred prior to the making of Chapter 6. The proposal to codify a capex incentive scheme into the NER is unnecessary as the AER already has the discretion to introduce an EBSS for capex.	3, 4
ENERGEX	Shared assets	Energex supports the concept but not the scope of the changes. It will create inflexibility if a mechanism is prescribed up front. Jurisdictional specific matters must be taken into account, along with risks involved and a materiality threshold.	4
Energy Networks Association	Capex incentives	<p>Agrees that capex incentives could be improved. Without an EBSS for capex, NSPs generally face stronger incentives to reduce capex earlier in the regulatory control period and weaker incentives towards the end of the regulatory control period which can create unintended financial incentives for inefficient delay or 'back loading' of capex.</p> <p>However, it is incorrect for the AER to claim that the capex incentive issue is accentuated by any current (i.e. spot rate) difference between the regulated cost of capital and the NSPs true cost of capital. In order for any current difference between the regulated WACC and the true cost of capital to affect NSPs' expenditure decisions, NSPs would need to believe that the gap would continue into the foreseeable future.</p> <p>Does not support the AER's proposed capex incentive mechanism. A capex incentive mechanism should be developed through an AER guideline and further developed in the context of each business. It should not be hard wired in the rules. This is because there are a number of issues of detail that must be addressed, and an argument could be made for aspects of the scheme varying across NSPs or at least between the different sectors (in particular in relation to the incentive power). In addition, the proposed mechanism would not meet the objective of providing for a consistent incentive across a regulatory control period and thus not remove the incentive for NSPs to defer capex until the end of a regulatory control period.</p> <p>The AER should use its existing discretion in Chapter 6 to develop an EBSS for capex. In addition, this discretion should be extended to Chapter 6A. However, the AEMC should review the guidance that is provided to the AER under the existing EBSS provisions to ensure that this directs the AER to consider all relevant matters and that appropriate safeguards exist.</p>	30-33
Energy Networks Association	Capex incentives	Agree with the AER that the incentives for capex efficiency are imperfect under the current regime. Note that NSPs currently have an incentive to alter the profile of capex to spend less in the early years of a regulatory period and more towards the end. In addition, the incentive to strive for efficiency gains declines during the regulatory period and an incentive to substitute capital projects	Att B: 7-9, 19-20, 30-32, 36-38, 44-48

Organisation	Issue	Substantive point being made	Page ref
		<p>for operating expenditure may also exist late in the period.</p> <p>However, the AER has overstated the potential for NSPs to have an incentive to increase their spending (rather than being financially indifferent to the level of spending in the last year of the period). Also disagree with the objective the AER has set out for its scheme, which would appear to be to encourage NSPs to spend no more than the regulatory expenditure allowance for the regulatory period in question.</p> <p>The AER's proposal to codify the operational details of its proposed incentive scheme in the rules results in an inappropriate degree of prescription. The preferable means of implementing a capex incentive scheme would be for this to be empowered by the NER, and with appropriate criteria developed. The AER already has the discretion to implement a capex incentive scheme through the EBSS provisions for distribution.</p> <p>Much of the guidance under the existing rules provisions is appropriate, and need not prevent the implementation of an appropriate scheme. However, there a number of refinements that could be made to the criteria.</p> <p>The AER's 60/40 mechanism would not meet the current criteria for a capex EBSS for distribution. The scheme is asymmetric (applying a greater penalty for overspending NSPs) and would not provide a continuous incentive. In addition, note that the incentive power of the scheme risks being materially out of balance with other incentive arrangements and regulatory obligations, with the potential to encourage inefficient behaviour (such as the inefficient substitution away from capex to opex, and the avoidance of capital projects at the expense of service performance). Also suggests that the absence of measures to ameliorate risk and to ensure a proper measurement of efficiency gains has the potential to create more risk than is desirable, and also to create additional incentive problems. Finally, the scheme will not provide NSPs that expect to underspend overall with an incentive to minimise cost in the last year of the regulatory control period.</p>	
Energy Networks Association	Actual/forecast depreciation	The inclusion of depreciation in the current incentive scheme implies that the power of the scheme differs according to the life of the project in question, being higher for shorter lived assets.	Att B: 7, 44
Energy Networks Association	Actual/forecast depreciation	<p>Broadly agrees with the problem identified by the AER. The choice between actual and forecast depreciation is linked to the consideration as to whether depreciation should form a part of capex incentive framework or not. The use of actual depreciation is not suitable when differences between actual and forecast capex are likely to be driven by uncontrollable factors rather than efficiency improvements. Therefore there is scope for improving the depreciation provisions of the current transmission rules by giving the AER discretion to adopt either actual or forecast depreciation for electricity transmission networks.</p> <p>There is no evidence from operation of gas businesses, where forecast depreciation is typically adopted, that exclusion of depreciation from the incentive framework leads to inefficient substitution</p>	34-35

Organisation	Issue	Substantive point being made	Page ref
		of operating inputs in favour of capital inputs as indicated by the AEMC in 2006. The AEMC should adopt these provisions as drafted by the AER.	
Energy Networks Association	Uncertainty regime	The proposals relating to capex reopeners and contingent projects may be workable for large projects but are less workable for demand or customer-driven capital expenditure.	33
Energy Networks Association	Other incentive schemes	The AER's proposal to provide itself with a general power to make new incentive schemes without the new schemes being authorised by the NER (and with appropriate criteria and safeguards developed) provides the AER with an inappropriately wide scope to determine important areas of policy.	Att B: 10, 15, 20, 45
Energy Networks Association	Other incentive schemes	<p>Does not agree that there is a problem. In addition, notes that the AER has not used its power to introduce a capex incentive scheme in distribution.</p> <p>The proposed rule change represents a departure from the current market governance and policy design by opening up a gap between the level of guidance and discretion applicable to the AER in designing and implementing incentive schemes. The AER's proposed rule changes are not consistent with good regulatory practice because they will impose significant uncertainty around the scope of future potential incentive schemes, with no significant offsetting benefits being identified. The introduction of any new incentive scheme should be conducted in a formal rule change process, consistent with current regulatory design principles.</p> <p>In the event that such discretion is given to the AER, improved guidance will be required to ensure that the development of incentive schemes take into account such issues as consistency with national access and pricing principles and revenue impact on regulatory risk.</p> <p>Support in principle the AER's proposal to amend the Chapter 6A of the NER requirement that the AER must apply an EBSS and STPIS to align it with Chapter 6 of the NER where application of a scheme is optional.</p>	36-37
Energy Networks Association	Shared assets	ENA agrees there is a gap in the rules regarding shared assets, but these can be achieved by modest changes without the addition of prescription. The rules must retain flexibility. The appropriate mechanism can be determined at the time of the relevant business's determination. The mechanism applied should follow certain principles: maintain incentives to share assets; take into account risks; adjustment subject to positive commercial outcome; regulatory oversight only if benefits exceed costs.	38,39
Energy Retailers Association of Australia	Capex incentives	Supported this proposal by the AER because it provides better incentives to avoid over-capitalisation of networks. It noted that when the cost of capital is set too high for a monopoly provider under the current framework there is a strong incentive to overspend capital towards the end of the regulatory period.	1
Energy Retailers Association of Australia	Uncertainty regime	ERAA provides conditional support for the reopener and contingent projects proposals, on the basis that deficiencies in the pricing approval and notification process are addressed. It is also conditional on the AER being required to rigorously assess reopeners and contingent projects. The uncertainty regime must be limited to exceptional items that could not have been foreseen when the regulatory	2

Organisation	Issue	Substantive point being made	Page ref
Energy Supply Association of Australia	Capex incentives	<p>decision was made.</p> <p>The argument that incentives should be designed on the presumption of an excessive allowed return conflates two issues. The strength of incentives should be considered under the assumption that the allowed return is, at least on average, consistent with a NSPs' actual cost of capital.</p> <p>The incentive in the AER's proposed mechanism is stronger than 40% in most cases, with the actual figure depending on the allowed return and the depreciation rate. By contrast, a net underspend will not be subject to this adjustment, creating an asymmetric incentive.</p> <p>No clear justification has been given by the AER for why 40% is an appropriate fixed rate or why asymmetric treatment of overspending versus underspending is appropriate.</p>	4, 5
Energy Users Association of Australia	Capex incentives	<p>There is a perverse incentive to overspend capex in the last year of the regulatory period particularly for government-owned NSPs. Therefore considers it necessary to strengthen the discipline on NSPs to properly manage their capex.</p> <p>The overspend in the last year is not independent of the cost of funds. For example, any disparity between the actual cost of debt and allowed cost of debt will strengthen over borrowing and overspending. It seems plausible that the combination of accessing cheaper cost of debt relative to 'allowed' cost of debt for government-owned NSPs together with the benefit of being rolled in to the RAB mostly explained the motivation for the overspend of government-owned NSPs.</p> <p>Even if some overspends were efficient, it is highly unlikely that all of the overspend would be efficient and that the 60/40% rule tries to strike a balance. Currently there is no mechanism to assess the efficiency of the overspend in the last year of the regulatory period before it is being rolled in to the RAB. It is inefficient and unfair (to users) to allow all overspend to be rolled in to the RAB (and subsequently earned a return on and of capital) if these are inefficient expenditure in the first place.</p> <p>Penalties imposed on overspend in other overseas jurisdictions (in particular by OFWAT and OFGEM in the UK) and urge the AEMC to investigate these schemes further.</p> <p>Offers qualified support for the 60% rule proposal in the absence of a superior alternative but urges the AEMC to apply a cost/benefit analysis to the proposed rule as well as to consider other options.</p>	ii, 22-23
Energy Users Association of Australia	Uncertainty regime	<p>EUAA has a concern over these proposals, that they may weaken expenditure discipline, create opportunities for cost shifting, and undermine the price/revenue cap. AEMC must weigh up the costs and benefits of the proposal in this area.</p>	24
Energy Users Rule Change Committee	Capex incentives	<p>There is little doubt that the regulatory incentives established by the AEMC provide weak incentives to reduce capex below the regulatory allowances. The existing incentive scheme provides a financial incentive to spend above the regulated expenditure allowances if the allowed rate of return is greater than the actual cost of capital. This is likely to be the case for government-owned NSPs for a</p>	Table 1, 16, 18

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		<p>number of reasons including excessive allowed rates of return on debt, and state government receipt of income tax equivalents on the profits delivered by their NSPs.</p> <p>Overspending has occurred by the government-owned TNSPs to which the NER applied, and also the government-owned DNSPs under similar regimes applied by the Queensland Competition Authority and Independent Pricing and Regulatory Tribunal (IPART) in their previous regulatory control periods. Similar regulatory incentives applied by the Essential Services Commission of South Australia and the Essential Services Commission in Victoria did not however result in overspending by distributors in South Australia and Victoria. This suggests that the incentives have been too weak to constrain spending by government-owned distributors, but not too weak to constrain expenditure within the regulatory allowances, for privately-owned distributors.</p> <p>The AER's proposal that shareholders bear 40% of the overspend (and consumers the remaining 60%) is arbitrary, as indeed would be any other split. An important factor in choosing this split would be whether it is sufficiently large as to provide an adequate discipline on NSP expenditure, particularly by government-owned NSPs. The proposed 40/60 split should provide an adequate discipline on NSPs to spend within their regulatory allowances. However this merits more detailed assessment having regard also to the AER's treatment of depreciation, ex-post adjustments for changes in capitalisation policy and related-party margins and also other aspects of the incentive design, discussed further below.</p> <p>In addition, the AEMC should be encouraged to take a wider perspective on this issue and to propose and evaluate a variety of possible regulatory designs that may provide effective incentives to control expenditure by both government and privately-owned NSPs. This could include approaches that discriminate incentive design on the basis of ownership, reflecting the differences in the cost of capital to government and privately-owned NSPs.</p>	
Energy Users Rule Change Committee	Actual/forecast depreciation	An important consideration of incentive design is ensuring that investors and managers understand the incentives that they operate under. It would be better to settle on actual or forecast depreciation to roll forward the RAB rather than leave it to the AER to decide in each regulatory decision. On the basis of the AER's stronger incentive not to overspend the regulatory allowances, the appropriate choice would be to calculate the value of the regulatory asset base using the depreciated value of the actual expenditure during the regulatory period.	16,17
Energy Users Rule Change Committee	Uncertainty regime	The uncertainty regime proposed by the AER is unattractive because it provides other opportunities for recovery of expenditure beyond the price/revenue cap. This weakens expenditure discipline, as well as the strength/certainty of the cap. Another option might be strengthening the service standard scheme. Also it may be possible to apply an "excess" (NSPs absorb first portion of a claim) or a requirement that re-openers or contingent projects can only be used if the allowed capex or opex has been exceeded. The AEMC should think broadly about the regulatory design.	17
EnerNOC Pty Ltd	Capex incentives	Current regulatory arrangements result in a 'skewing' of the network business decisions in favour of spending capex to support the building of inefficient investments in electricity networks.	2

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Ergon Energy	Capex incentives	Agrees that the capex incentive framework could be improved. However, does not support the AER's proposed 60/40 mechanism. It may lead to stronger incentives for DNSPs to over forecast and could have a detrimental impact on reliability of supply and service levels. It will also not provide a consistent incentive across the regulatory control period. It would be more appropriate for the AER to develop an EBSS for capex under the existing Chapter 6 rules. This will need to be supported by standard performance measures. In addition specific target performance levels will need to be established taking into account the current performance of individual NSPs. Above all, the incentive scheme should focus on what is valuable to customers and not just on minimising cost of service.	13
Ergon Energy	Uncertainty regime	Ergon supports the introduction of contingent projects for DNSPs but notes it is more difficult to apply to distribution projects. As for capex reopeners, this concept is supported but Ergon considers the threshold of 5% is too high.	13
Ergon Energy	Shared assets	Ergon supports the concept, but seeks a different approach. Ideally there would be no mechanism - which would promote flexibility - and there would be a minor rule change and a change to the ring-fencing guidelines. If a sharing mechanism is to be applied, Ergon has proposed some basic principles for how it would operate.	14
Essential Energy	Capex incentives	<p>The AER's conclusions with respect to expenditure may be premature.</p> <p>A capex incentive scheme should be established in the same way that the EBSS and STPIS have been, i.e. through a guideline which allows for modification and fine tuning and flexibility to allow it to be applied differently to different NSPs. The AER has the power to develop an EBSS for capex under Chapter 6. It would seem inappropriate to discard the current regime where the incentive arrangements are yet to be tested.</p>	6
ETSA, CitiPower and Powercor	Capex incentives	<p>Agrees that the incentives applied to capex under the current rules are relatively low powered and could be improved although the evidence cited by the AER for stronger capex incentives does not support its position.</p> <p>Does not support the AER's proposed solution on the basis that:</p> <ul style="list-style-type: none"> - it is asymmetric, providing only penalties where there is overspend and no rewards where there is underspend, and does not provide continuous incentives to make efficiency gains throughout the regulatory control period; - it introduces penalties for NSPs for making efficient investment in the network where the actual level of efficient expenditure is higher than forecast, thereby potentially deterring efficient investment in the network; - it fails to take into account potential trade offs between opex and service standards and any capex incentive regime; and - it locks a particular capex incentive regime into the NER, rather than allowing it to develop over 	18, 70-74

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		<p>time and vary as other incentives facing NSPs evolve.</p> <p>Notes that the AER has not used its existing powers to develop an EBSS for capex under Chapter 6 of the NER.</p>	
ETSA, CitiPower and Powercor	Uncertainty regime	<p>The capex reopener and contingent projects regime will not overcome the disincentives to incur efficient capex higher than forecast capex. The capex reopener is too narrow (not extending to events that were foreseen but whose cost implications were unknown) and the threshold is too high. The criteria would also impose a high burden on both business and AER. The 90 business days limit should be able to be extended. The contingent projects regime is not appropriate for distribution, which has a larger number of smaller projects. The threshold of \$10m is too high and would capture very few distribution projects, it should be aligned to the proposed \$5m threshold for the regulatory test in distribution.</p>	18, 74, 75
ETSA, CitiPower and Powercor	Uncertainty regime	<p>The proposed 1% materiality threshold should be replaced with \$1m. A materiality threshold is not required to maintain incentives to improve efficiencies, since pass through events are beyond the control of businesses anyway. Also, since distribution capex is less lumpy than transmission the cost impacts from any one event will be less and a lower materiality threshold is appropriate. These problems are exacerbated by the way the AER characterises pass through events (little grouping) and the asymmetry between positive and negative pass through events. If the change was effected, the business would require compensation for the increased risk.</p>	19, 79-80
ETSA, CitiPower and Powercor	Related party margins	<p>There may be scope for actual capex incurred in a regulatory control period to include related party margins that are not efficient. However, the AER's proposed rule changes are ambiguous and lack the certainty necessary to encourage efficient investment in networks. The proposed rule change may unreasonably limit the expenditure that may be rolled into the RAB to the actual amount as determined in the distribution determination (rather than to an amount that is determined by reference to the framework used to assess, or policies underpinning, the forecast amounts at the distribution determination stage).</p> <p>Potential rule changes on related party margins should provide for:</p> <ul style="list-style-type: none"> - related party margins to be included in the RAB where they would be considered efficient under the AER's framework for determining whether such margins are efficient in the previous distribution determination; and - capitalised overheads to be included in the RAB where they are allocated consistently with the capitalisation policy in place at the time of the AER's previous distribution determination. <p>By linking the assessment to be undertaken to the previous distribution determination, the NSPs will get greater certainty as to whether capex incurred will be included in the RAB.</p>	20, 21, 86
ETSA, CitiPower and Powercor	Other incentive schemes	<p>The AER's proposed rule change would not promote the NEO or the RPPs as they do not offer sufficient certainty or clarity.</p>	21-22, 89-91

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		<p>The AER's proposed rule change departs from the level of prescription in the rules and the level of discretion afforded to the AER that has been determined by rule makers to be the level that promotes the NEO.</p> <p>If the AER is given more power to introduce new incentive schemes, the AEMC should supplement the AER's proposed decision making criteria to ensure greater clarity, transparency and predictability in the regulatory framework in order to mitigate the potential for adverse impacts on investment.</p>	
ETSA, CitiPower and Powercor	Shared assets	<p>The concept of sharing the benefits when assets are used for other services is accepted, however criteria need to be put in place for how this is to occur (whether through the building block or the control mechanism). The AER should be required to maintain incentives to engage in unregulated activities, and offer rewards commensurate with risk. The F&A paper should be used, and should be published whenever a business proposes a change in use of assets for other services. The AER must be required to conform to this unless there are unforeseen circumstances.</p>	23, 97-98
Financial Investor Group	Capex incentives	<p>The AER provides a selective sample on which to judge "actual outcomes" – the performance of the government-owned NSPs in NSW and Qld and makes no mention of the broader performance of these NSPs in particular whether their actual capex reflected what they originally forecast and whether they overspent on opex as well.</p> <p>If the AER had drawn a different sample it would have observed different outcomes and different conclusions. In the previous round of regulatory determinations, the Victorian and South Australian distribution NSPs, in aggregate 'overspent' their capex allowances by 1% and spent 10% less than their opex benchmarks.</p> <p>In addition, no commercial business would spend a dollar more on capex than it has to (regardless of whether it has been allowed for or not), if the cost of capital is appropriate. Also, a cost of capital that was too high would only support a capex overspend if it was systematically too high and investors could reasonably expect it to stay high for at least the medium term.</p> <p>AER's capex overspend sharing mechanism has a number of problems: highly arbitrary, asymmetric, regulatory assurances that it will not be applied unreasonably are both unlikely to provide investors with comfort that the scheme is not arbitrary and likely to be highly complex and thus undermine the incentives it is intended to create. The proposed scheme will not solve the timing problem that the AER is also trying to address.</p> <p>Would welcome stronger incentives in respect of capex. One option may be to introduce an efficiency carryover mechanism for capex that is similar to that developed for opex. The rules allow the AER to establish such a mechanism for capex but it has not exercised this discretion. This would symmetrically strengthen the incentives to invest in capex efficiently, neutralise any incentive to</p>	56-60

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		<p>defer capex within a regulatory period and provide more balanced incentives from a capex and opex optimisation perspective.</p> <p>Ex-post reviews of capex are not consistent with providing incentives for efficiency, nor the certainty necessary to encourage investment. More simply, they encourage regulators to make decisions with the benefit of hindsight and information that was not available at the time the business needed to make the investment decision or the regulator approved it.</p>	
Grid Australia	Capex incentives	<p>Agrees that there are imperfections in the current incentives to minimise capex. In particular that the strength of the incentive to pursue efficiency gains declines towards the end of the regulatory period. However, there is no evidence of TNSPs spending more than efficient levels of expenditure. In addition, there are a number of other elements of the framework that limit the incentive and capability for TNSPs to incur inefficient capex such as a requirement for a TNSP to conduct a RIT-T and internal cash flow constraints.</p> <p>The assertion by the AER that the issue of capex incentives is aggravated by any differences between the regulated cost of capital and a business' actual cost of capital fails to recognise that it is future expectations of the cost of capital, rather than the current spot rate, that impacts on incentives for investment. Given the long lived nature of network investment there is considerable uncertainty about how the future regulatory allowance will track against actual costs of capital. It is therefore unlikely that NSPs would make investments on the expectation that any current wedge would persist into the long term.</p> <p>Considers that the incentive mechanism proposed by the AER has a number of flaws including:</p> <ul style="list-style-type: none"> - the penalties under the scheme may encourage an inefficient substitution towards operating expenditure and discourage TNSPs from undertaking 'market benefit' projects; - it is asymmetric so does not encourage underspending TNSPs from continuing to pursue efficiency gains at the end of the regulatory period; - it does not provide a continuous incentive across regulatory years. <p>In addition, it considers the mechanism is too prescriptive and does not allow for enough discretion or flexibility in its application. Suggests that matters that are unique to transmission such as differences in the types of projects and service incentives/obligations need to be taken into account when setting the incentive rate of the scheme for example.</p> <p>It notes that the AER has the discretion to develop an EBSS for capex under Chapter 6 of the NER and considers that the extension of the same discretion under Chapter 6A of the NER should be explored. However, it is essential that the AEMC undertake a review of the current EBSS criteria to</p>	42-50

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		ensure that they will direct the AER to the issues that are specific to transmission, as well as putting in place appropriate safeguards. Considers that the current criteria are deficient.	
Grid Australia	Actual/forecast depreciation	A well designed capex incentive scheme should be the first preference for providing capex incentives with the arrangements for the treatment of depreciation being carefully considered with other elements of the rules that are under review. At a minimum the rules should provide flexibility about whether actual or forecast depreciation is applied. However, the use of actual depreciation as an incentive tool is a second best option for enhancing incentives to minimise capex as the application of actual depreciation creates a stronger incentive rate for short lived assets than for long lived assets. The AEMC may wish to consider prescribing forecast depreciation.	54,55
Grid Australia	Uncertainty regime	Contingent project regime as it applies to transmission has been applied too rigidly by the AER and should be reviewed.	50
Grid Australia	Other incentive schemes	<p>The AER has not identified in what way its existing discretions prevent it from developing new schemes, or any schemes applied internationally that could not be developed within the existing framework. Incentive schemes can have a significant impact on the financial performance of a business and their behaviours, therefore it is important that their development be subject to sufficient scrutiny and input from stakeholders. If a proposed incentive scheme is sufficiently unique that the current discretions in the rules are insufficient for its development and implementation then such a change is important enough to be subject to the transparency and rigour of the full rule making process. Doing so supports the governance framework in the NEM and provides recognition to the discretions afforded to the AEMC and the AER.</p> <p>The proposal affords the AER excessive discretion in the creation of incentive schemes. In addition, the principles proposed by the AER for this power are significantly broader than the current principles for incentive schemes, such that some existing safeguards may be lost. In particular there are no protections like revenue at risk or any requirement to consider the risk created by the scheme. In addition, there is a risk that the AER will be unlikely to apply this discretion appropriately. The AEMC should reject the AER's proposal.</p>	51-53
Independent Pricing and Regulatory Tribunal	Capex incentives	<p>Considers that the AER's proposal should be supplemented with an ex-post review of expenditure. Also suggest that rolling incentive mechanisms could provide an appropriate mechanism. Appropriate to include a range of mechanisms to allow the most effective mechanisms given ownership arrangements of NSPs.</p> <p>Concurs with the AER that its proposed sharing mechanism does have advantages over a rolling incentive including its simplicity. Notes that rolling incentive frameworks have been successfully used by other regulators and therefore could also provide an appropriate mechanism for the AEMC's consideration.</p> <p>AEMC should also consider the use of ex-post prudency assessments prior to rolling capex into the asset base. Recognises that any ex-post review needs to be appropriately defined but is confident that they work in practice without materially jeopardising investment certainty.</p>	11 to 12

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		<p>Given the rules will apply to both publicly and privately-owned NSPs it suggests it is appropriate to include a range of mechanisms. The AEMC should consider including both the sharing mechanism and ex-post reviews in the rules.</p>	
Jemena	Capex incentives	<p>A capex incentive scheme should be designed to encourage the efficient level of capex for each NSP, which could be above or below the forecast the AER determines at the start of a regulatory period. This is consistent with the revenue and pricing principles.</p> <p>While all efforts can be made to accurately forecast capex, many extrinsic factors influence the efficient level over the period: actual growth in consumers, demand, better knowledge of costs, reassessments of risk, new technologies and alternatives. It is wrong to characterise expenditure in excess of forecast as inefficient.</p> <p>While there may be an incentive to overspend in the later years of the regulatory period if the WACC is expected to be significantly greater than the NSP's actual cost of capital for the life of the asset, the dominant incentives under current arrangements are to underspend, particularly in the early years of the period and to defer expenditure within the period. However, NSPs have limited discretion to respond to those incentives due to practical and financial constraints. Overall, the current arrangements are more likely to encourage underspending in aggregate than overspending in aggregate.</p> <p>The AER's proposal for a new capex incentive scheme is inappropriate because it would result in the automatic disallowance of 40% of defined classes of capex overspend even where the overspend is efficient and prudent. The proposal could be a major impediment to efficient investment and has undesirable implications when considered in conjunction with the AER's proposal to widen its discretion to determine capex forecasts.</p>	39, 42-46, 50, 55-56
Jemena	Actual/forecast depreciation	<p>Using actual depreciation produces a stronger incentive than forecast depreciation to reduce capex (or not to over-spend), especially in the early years of the regulatory period.</p>	46,47
Jemena	Uncertainty regime	<p>The reopener and contingent project proposals will not adequately deal with program capex, for which it is often not possible to designate what should be contingent. The contingent project regime will not provide the businesses with the certainty they need, and there is likely to be a significant burden of proof on the business for a varied capex allowance.</p>	52
Jemena	Related party margins	<p>The proposal is flawed because the incentives it creates would operate asymmetrically. There would be no incentive for the NSP to reduce expenditure from the a priori allowance. It would also create a high-powered incentive to reduce capex. The current NER employs low- or medium-powered incentives. The proposal also fails to recognise that NSPs are constantly reviewing their structures and contracting arrangements and that those reviews can result in changes that are to the long term benefit of consumers.</p> <p>The combined effect of the AER's proposal for the treatment of related party margins and capitalised</p>	51, 54, 55, 56

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		<p>overheads and its proposal to widen its discretion to determine capex forecasts, is that the AER would have considerably greater discretion to influence the level of related party margins and capitalised overheads but only on an ex-ante basis. The AER's proposal is not designed to promote efficient investment when circumstances change during the regulatory period.</p> <p>If a desired outcome is to ensure that only efficient related party margins and capitalised overheads are rolled into each DNSP's RAB, Jemena can see scope for the AER being given increased discretion to conduct an ex-post review of overspends on related party margins and capitalised overheads before they are rolled in.</p>	
Jemena	Other incentive schemes	Disagrees with the AER's proposal that it should have discretion to develop "other" incentive schemes. The AER proposal does not identify the nature of these schemes. The AER's proposals on other incentive schemes amounts to giving the AER quasi rule-making power blurring the demarcation between the AEMC as rule maker and the AER as enforcer which is undesirable. Also notes that the AER has not used discretion to develop existing schemes in the rules. Any new incentive scheme should be developed through the existing rule change process. However, if the AER is given discretion then that discretion must be appropriately circumscribed.	39, 53-54, 56-57
Jemena	Shared assets	Jemena agrees with the concept, but takes the view the AER's approach provides too much flexibility. The AER has not proposed any guidance for when the sharing should occur. Also, the mechanisms proposed by the AER are likely to involve practical complications. Jemena proposes a set of principles that should be implemented to guide AER decisions in this area. The mechanism used should be by way of annual revenue forecast, possibly with an ex post true up. This would be preferable to trying to adjust the price control mechanism.	107-109
Major Energy Users	Uncertainty regime	The MEU is of the view that the uncertainty regime needs more consideration. In particular it does not support contingent projects being added at a later stage, and is of the view that these should be added at the expense of existing projects	10
Major Energy Users	Other incentive schemes	Supported.	10
Major Energy Users	Shared assets	The MEU supports the AER proposal in respect of shared assets.	11
MEU	Capex incentives	Agree with the problem but not the solution. Prefer ex-post assessment of prudence and efficiency, and optimisation. Also consider the AER should develop an EBSS for capex.	9,10,12
Origin Energy	Uncertainty regime	Origin does not believe three separate uncertainty mechanisms are needed and takes the view this will encourage ongoing efforts to seek reviews under all mechanisms. The uncertainty mechanism will also make it harder for users to predict prices.	3
Queensland University of Technology Credit, Commercial and Consumer Law Program	Capex incentives	Believes the current regulatory framework is failing consumers including by permitting NSPs to over invest in capital asset bases.	2

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SA Department of Manufacturing, Innovation, Trade, Resources and Energy	Capex incentives	The 60/40 sharing factor is a blunt regulatory instrument that is not the most effective method that is available to discourage NSPs from overspending on capex allowances. There is no evidence for systematic capex overspending in South Australia as supported by the actual capex programs from the two regulated monopolies. The AEMC should consider other options, such as an ex-post capex review. It is vital that perverse incentives to not undertake expenditure required to provide reliable supply are created.	4
SA Department of Manufacturing, Innovation, Trade, Resources and Energy	Uncertainty regime	DNSPs should be able to access the same mechanisms for contingent projects as TNSPs.	4
SP AusNet	Capex incentives	<p>Agrees that there are flaws in the current capex efficiency regime. However, the proposed solution does not meet the NEO or the RPP and the criteria that the AER has to have regard to when setting an EBSS under the existing Chapter 6 of the NER.</p> <p>The AER's solution does not fix the identified problems, in that it does not provide a continuous incentive across time or provide an equally strong incentive to reduce expenditure below the approved allowance even though these are equally valuable to customers.</p> <p>The AER's solution does not fix other identified problems in the regime such as the strength of the incentive varying with asset life and allowing flexibility to balance the different incentives operating in the regime.</p> <p>The AER has had clear powers to introduce a capex incentive scheme under Chapter 6 of the NER which it has not used.</p> <p>Would welcome the extension of discretion under Chapter 6 to design capex efficiency schemes to Chapter 6A of the NER.</p>	15 -16
Total Environment Centre	Capex incentives	Believes that the requirement that all capex be rolled into the RAB at the start of each regulatory period encourages overspend, or at the very least, does not encourage disciplined and efficient capex.	1
United Energy and Multinet Gas	Capex incentives	The AER's analysis of the current incentives to overspend in the final year of the regulatory period is based on two unrealistic assumptions that would never be accepted by senior management or a company board: The regulated cost of capital is 11% compared to the actual cost of capital of 8%. And, that the assumed difference between the regulated and actual cost of capital will persist over the 40 year life of the asset, which is 8 successive regulatory periods. In addition notes that as commercially-driven organisations, UE and MG would never intentionally 'overspend' capex. As a practical matter, planning and governance arrangements that are focused on cost efficiency cannot simply be 'turned off' towards the end of a regulatory period in order to respond to a perverse regulatory incentive, even if one did exist.	12, 13

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		<p>The practical impact of the AER's proposed solution is that company boards will be very reluctant to sanction any capex above the regulator's allowance. Therefore, the AER's proposal will fail to promote efficient network investment because it precludes any efficient investment above the forecast amount. The AER's proposed solution is a disproportionate response to an ill-founded concern.</p> <p>While the AER's proposed changes may be well-intentioned, the changes are more likely to cause inefficiently low capex. A better approach would be to create stronger incentives for capex efficiency improvements, possibly through the extension of the EBSS to capex.</p> <p>The AER's proposal in relation to capex incentives will not promote efficient network investment.</p>	
United Energy and Multinet Gas	Uncertainty regime	The concept of contingent projects is not applicable to distribution. The process for reopening a distribution determination creates administrative costs and project delays.	10
United Energy and Multinet Gas	Related party margins	<p>Forecast capex should not necessarily determine the treatment of related party margins when capex is rolled into the RAB. A NSP's contractual arrangements may change during a five year regulatory control period. The case for excluding or including related party margins may also change over that period. Therefore, it is better to treat the case for including or excluding related party margins from the RAB on its merits at the time of the decision.</p> <p>Related party margins should be examined on their merits. It is not appropriate for the rules to adopt a fixed view that has no regard to the particular circumstances of the NSP. The AER's proposal will not promote efficient network investment because efficient capex may include the payments of a margin to a related party. Further, by prejudging the treatment of actual payments to related parties, it may either inadvertently remunerate inefficient capex or penalise NSPs that have achieved efficiency improvements.</p>	14
United Energy and Multinet Gas	Other incentive schemes	The AER's proposal runs the risk of blurring the distinction between 'rule maker', which is the role of the Commission; and 'rule enforcer', which is the role of the AER. Furthermore, it is unclear why the AER's consultation process for introducing a new incentive scheme should be any less onerous than the Commission's consultation process for a Rule change proposal.	15
United Energy and Multinet Gas	Shared assets	The RAB should be fixed. The AER's proposal would transfer the value of assets out of the RAB into non-regulated activities. The value shareholders have paid for the assets reflects the earnings from non-regulated activities as well. It is reasonable for network prices to be insulated from the profits and losses in non-regulated activities. United Energy and Multinet Gas does not support the proposed change.	17, 18
Victorian Department of Primary Industries	Capex incentives	Supports changes to the NER that incentivise efficient and prudent capex. However, considers that there are perverse incentives associated with the AER's proposed incentive mechanism. Considers that NSPs would have a greater incentive to over inflate their capex proposals to the AER as part of a revenue determination to reduce the risk that the level of capex included in a revenue determination is inadequate. In addition, it considers that the privatised NSPs would never invest	9

Organisation	Issue	Substantive point being made	Page ref
		<p>more than their forecast capex, even where it is efficient to do so. Also suggest that if there is a risk that capex included in a revenue requirement is insufficient for the level of efficient investment required during a regulatory control period, NSPs may argue for a higher WACC.</p> <p>Do not fully agree with the AER's presumption that there is an incentive to overspend where the true WACC is lower than the regulated WACC. Considers that there is an incentive to overspend only where future expectations of the regulated WACC are greater than the true WACC over the life of the asset. Notes that the AEMC will be considering changes to the rules relating to WACC and that these changes may ensure that future expectations of the regulated WACC are more aligned with the true WACC and thereby address the issue.</p> <p>Suggests that the core issue appears to be access to funding. Suggests that if funding is constrained, then NSPs will necessarily be more disciplined in prioritising investment and thereby invest more efficiently. If funding is less constrained, then NSPs will tend to be less disciplined in prioritising investments and more likely to invest inefficiently.</p> <p>Suggests it is misleading to compare the AER's proposal with the capex rolling incentive used by the Office of the Regulator General (now the Victorian Essential Services Commission) as the likelihood of large negative carryover amounts was reduced compared to the AER's proposal.</p> <p>Suggests that the AEMC should consider alternatives that address the core issues, noting that the most efficient and effective way to address the core issue may be changes to governance arrangements which strengthen the discipline around accessing funding, rather than through the economic regulatory regime.</p>	
Victorian Department of Primary Industries	Actual/forecast depreciation	Strongly supports this rule change. The prescribed use of actual depreciation for TNSPs in the NER cannot be used as a rationale for routinely adopting actual depreciation for rolling forward the RAB in future revenue determinations. Rather, the specific circumstances of each jurisdiction should be able to be taken into consideration.	7
Victorian Department of Primary Industries	Uncertainty regime	Supports rule changes but feels they do not adequately deal with uncertainty in large numbers of smaller projects, so doesn't work well for distribution. Supports the materiality threshold for pass throughs, but suggests these thresholds and the thresholds for contingent projects be indexed to inflation.	5, 8
Victorian Department of Primary Industries	Related party margins	Strongly support the rule change. The literal interpretation of the current rules leads to perverse and unintended outcomes and undermines the incentive-based regulatory regime. In the absence of the rule change, NSPs have an incentive to enter into related party contracts for any arbitrary amount so that the capex they subsequently incur can be rolled into the RAB. Customers will continue to pay a return on and of the related party margins for the life of the asset.	8, 9
Victorian Department of Primary Industries	Other incentive schemes	The economic regulatory regime is not able to continually evolve in line with best practice. Support the rule change as it will provide the AER with more discretion to develop innovative incentive schemes that are in line with best practice and that ultimately protect the long term interest of	7

Organisation	Issue	Substantive point being made	Page ref
		consumers.	
Victorian Department of Primary Industries	Shared assets	Supports the principle but considers that a properly designed cost allocation mechanism should already support this. If the mechanism does not support this, it should be reviewed.	9

Part III Summary of issues about WACC

Organisation	Issue	Substantive point being made	Page ref
ActewAGL Distribution	WACC - timing issues	Should the rule changes proposed by the AER and the EURCC be approved, ActewAGL would find itself facing a new and unfamiliar regime in October 2012 when it would be well into the process for preparing its May 2013 submission and having never had the opportunity for a review under the current full Chapter 6 provisions of the NER.	4
Amcor	WACC - cost of debt	Cost of debt methodology should be prescribed in the rules rather than left to the AER's discretion in its proposed periodic reviews.	1
Amcor	WACC - cost of debt for government-owned vs. privately-owned NSPs	The allowed return on debt for NSPs should closely reflect the actual cost of debt as proposed by the EURCC.	1
APA Group	WACC - effectiveness of current rate of return frameworks	<p>Fit for purpose regulatory model for gas was adopted by MCE. The MCE recognised that there were good reasons for divergence between the regimes. The resulting 'fit for purpose' framework reflected those areas where consistency was considered appropriate, as well where differences should be maintained.</p> <p>The current NGR WACC provisions are appropriate and far superior, both from an investor's perspective and in terms of achieving the NGO. There is some cherry picking by NSPs on particular aspects of rate of return, but it cannot be contended that the AER is somehow compelled to adopt changes to some parameters that are challenged in individual review processes, but bound to retain other unchallenged parameters as per the AER's WACC review process.</p> <p>The AER provides no evidence that individual cost of capital decisions, and the ability to challenge individual parameters in each review process, has led to a rate of return that is higher than an efficient level through purported cherry-picking. WACC parameters are subject to full regulatory discretion under the NGR, and are more accurately described as "consider-determine" provisions. The AER has exercised this right in respect of individual WACC parameters in every gas access arrangement decision it has made under the NGR.</p>	5, 7,12

Organisation	Issue	Substantive point being made	Page ref
APA Group	WACC - AER rate of return framework rule change proposal	<p>The AER has not shown that its proposal better contributes to the achievement of the NGR and RPP than the current NGR. The AER's proposal appears centred on the drive for consistency between regimes and regulatory expediency, at the expense of good decision making that takes into account available evidence and delivers outcomes that reflect prevailing market conditions.</p> <p>The AER's proposal does not contemplate or address the risk of regulatory error in setting the WACC provisions. This was a key concern in the establishment of the WACC review framework in electricity distribution, with the ultimate adoption of flexibility in the adoption of the WACC review outcomes.</p> <p>The AER overstates its own administrative cost savings (which it never quantifies) by not considering the costs and lost benefits. The AER references expected savings to consumers and other stakeholders conducting an 'all in' WACC review. Again, these savings are not quantified, and indeed the AER makes no effort to support these expected savings through evidence. No consideration of the countervailing cost of regulatory error.</p> <p>Report commissioned from Ernst & Young on cost of regulatory error in the AER's current electricity statement and regulatory intent as identified by the Tribunal. For the regulated gas sector, these errors amount to approximately \$89 million in annual revenues or \$0.02 per GJ.</p>	6, 17, 18
APA Group	WACC -CAPM / nominal post tax prescription	<p>The AER's concern to provide regulatory certainty in the NGR in respect of the approach to taxation is not grounded in any real concerns raised by stakeholders on this issue. No groundswell of concern detected amongst stakeholders or the community related to uncertainty over the AER's approach to taxation. This would therefore suggest that the certainty is sought by the AER, and is related to expediency rather than concerns in the market.</p> <p>It is important to recognise that the acceptance and use of financial models evolves over time with experience and research (both theoretical and empirical). AER does not make any distinction between using alternative models to inform the application of the CAPM, and using those models as an alternative to the CAPM. It entrenches a single view of finance theory. Debate is essential and healthy. The AER's rule change proposal is directed at a regulatory expediency at the expense of good decision making, and the case for change to the NGR has not been sufficiently made.</p>	28, 29, 30

Organisation	Issue	Substantive point being made	Page ref
APA Group	WACC - timing issues	<p>The AER's claim that its proposal would lead to the review of WACC provisions at least every 5 years is incorrect. While an industry-wide review would occur every 5 years, provisions would not be revised for businesses until the next review of that access arrangement. Contrary to the AER's claims, the result would be that for most businesses, they would not feel the effect of a WACC review correcting parameters for prevailing conditions at the time of the WACC decision for up to 10 years, and most would see periods between effective updating of WACC parameters of 6 years or longer. This outcome would considerably undermine the RPP, which require that the reference tariff should allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which that tariff relates. The AER's proposed approach undermines this principle by forcing the application of potentially out of date decisions on NSPs without consideration of market conditions prevailing at the time of the regulatory decision. The AER provides no evidence that the current practice of assessing cost of capital parameters in individual access arrangement decisions every 5 years detracts from certainty or investment.</p>	14, 15
APA Group	WACC - cost of debt	<p>Analysis of coupon rates of various utility debt issues is too simplistic. The EURCC data does not necessarily reflect the cost of debt commensurate with the prevailing conditions in the market for funds at the time the various debt instruments were issued. It is not clear that this information demonstrates the existence of a problem with the existing rules.</p> <p>The EURCC's benchmark debt approach supported. Actual debt costs can only reasonably reflect the cost of funds comensurate with the cost of funds in the marketplace at the time the debt was issued. However, the EURCC proposal to use A and BBB rated bonds is a concern. This is not internally consistent with the rest of the WACC framework, as a business with a 60% gearing ratio is unlikely to be able to obtain an 'A' credit rating.</p> <p>The EURCC's assertion that actual NSP practice reflects a shorter yield to maturity is not supported by its own evidence. Table 1 in the EURCC's proposal indicates a majority of debt is issued longer than a five year term. EURCC appears to inappropriately focus on the most recent years dominated by then unsettled markets of the GFC to support its assertion. A 10 year benchmark bond yield over a 5 year benchmark should be used. This aligns better with the longer term investment outlook of infrastructure businesses and reduces the refinancing risks associated with long term investments in infrastructure assets.</p>	31, 32, 33

Organisation	Issue	Substantive point being made	Page ref
APA Group	WACC-general comments	<p>The rate of return provisions in the current NGR and NER are fundamentally different in their style and approach. These differences reflect the ways in which the gas and electricity regimes have evolved separately, but also key concerns of policy makers at the time these rules were developed. Also the differences between the approaches to the rate of return for gas and electricity reflect the different paths of regulatory development, but this is not the only reason for difference between the regimes. One of the key conclusions of the previous review of access regimes was a clear decision on the part of the MCE to adopt a fit for purpose regulatory model. The AEMC should be mindful that the MCE recognised that there were good reasons for divergence between the regimes.</p>	2,5
ATA	WACC - general comments	<p>The intent of the rule change proposals to revise WACC framework is supported.</p>	2
ATCO Gas Australia	WACC - effectiveness of current rate of return frameworks	<p>The stability of the regulatory framework has facilitated investment in long-life assets. The current NGR provisions provide the regulator with flexibility to apply a methodology that takes into account what is happening in the real world rather than being bound to apply an abstract or theoretical methodology that does not reflect prevailing conditions. It also provides flexibility to deal with GFC type extraordinary events as a safety valve. It safeguards state-by-state and business-by-business circumstances to achieve a level playing field.</p> <p>Current NGR provides the AER with limited discretion to ensure flexibility to accommodate assessments of impacts of uncertainty and changes in market conditions and the commercial and regulatory risks facings NSP in providing regulated services.</p>	5, 7
ATCO Gas Australia	WACC - AER rate of return framework rule change proposal	<p>Rights to merits review are enshrined in the NGL and it is questionable whether a rule change can be used to amend a superior legislation. Merits review process is designed to deal only with matters of material significance with a financial impact threshold. Defending a material matter is not cherry picking. Merits review provides a counterbalance to the regulator's existing discretion to the extent it has not been exercised appropriately.</p> <p>A single WACC framework cannot accommodate the RPP requirement for a return to be commensurate with the regulatory and commercial risks involved in providing the reference service because of differences between gas and electricity NSPs as well as between different gas NSPs.</p>	6

Organisation	Issue	Substantive point being made	Page ref
ATCO Gas Australia	WACC - cost of debt	<p>Alternatives to determining DRP was undertaken in WA under existing NGR provisions where the ERA and the NSP were able to offer different approaches. While the ERA preferred a bond-yield approach, ATCO Gas (previously known as WA Gas Networks) submitted an approach based on seeking advice from an experienced capital market adviser on possible options for refinancing, and on the likely pricing of debt by lenders taking into account the RPP requirement of factoring in the commercial and regulatory risks involved in providing the regulated service to which the tariffs relate. This approach would allow a reasonable estimate of the cost of debt to be made as a build-up of costs likely to be incurred by a NSP with benchmark gearing requiring debt to finance for investment, including recognising that NSPs source finance from a diverse range of markets including international capital markets. This illustrates the current NGR framework's flexibility to deal with specific issues according to the circumstances.</p>	7, 8
Aurora Energy	WACC - effectiveness of current rate of return frameworks	<p>The extent of the problems presented by the AER on the existing persuasive evidence test is exaggerated. Experience shows that the persuasive evidence test does not overly restrict the AER's ability to depart from SORI WACC values when trying to get a lower WACC figure.</p>	12
Aurora Energy	WACC - AER rate of return framework rule change proposal	<p>The AER's proposal would give it full authority to set and apply its preferred WACC with absolute discretion, which is not supported.</p>	11
Aurora Energy	WACC - timing issues	<p>With respect to the proposal to align Chapter 6 and 6A WACC reviews, the current rules as written provide the AER with the capacity to perform a review at any time, with a limit of 5 years between reviews. The AER's proposed changes do not alter this.</p>	12
Aurora Energy	WACC - cost of debt	<p>The bond market has been creating difficulty in ascertaining the appropriate DRP. However, the AER's proposal to allow itself full discretion does not correspond with the AER's assessment that the current WACC framework does not allow it the flexibility to cope with changing market conditions. This appears to be a retrograde step and leaves the AER more open to challenge than the existing prescriptive method.</p> <p>It is uncertain as to why the AER has raised the relevance of determining benchmark with respect to the actual cost of deb being caused by the NER. The NER is not prescriptive in directing how the AER should perform the benchmarking.</p>	13

Organisation	Issue	Substantive point being made	Page ref
Ausgrid	WACC - effectiveness of current rate of return frameworks	<p>Differences exist between network sectors and individual NSPs. It is not always correct to apply the same WACC parameter values or approach across the transmission, distribution and gas network sectors. For example, the equity beta and the DRP might differ across network sectors. The AER's approach to date has been to apply consistent WACC parameters across electricity transmission, distribution and gas networks but this approach in itself does not justify prescribing the use of the same WACC parameters/approaches in the rules' frameworks for gas and electricity.</p> <p>Current Chapter 6A rules are inflexible. The AER has no ability to depart from its WACC review statement.</p> <p>The AER has argued that the current Chapter 6 rules result in it being in continual —WACC review mode. A commissioned report from CEG highlights the complexity of analysing the regulatory cost of capital issues. However, CEG has noted that consensus could eventually be achieved under the current rules over time through consideration of WACC by the AER as well as independent review of those decisions by the Tribunal where appropriate.</p> <p>Ausgrid commissioned CEG report looked at recent WACC decisions and what options may be available to improve the process. CEG report also looked at the AER's use of its discretion in setting the rate of return for NSPs. CEG report attempts to provide evidence of how the AER has used its discretion to have the effect of setting a cost of capital that is too low to provide electricity NSPs with a rate of return commensurate with the prevailing conditions in the market for funds, and highlights how the AER did not take into account a sufficient range of information to come to a good decision, particularly where this information contradicted the AER's previous views or decisions.</p> <p>CEG's view is that the AER has been relying on legal technicalities within the rules to attempt to keep down the WACC allowed to NSPs at a level that is artificially low given the current and recent economic turmoil.</p> <p>CEG concludes that any new set of rules needs to be one where the WACC decision making body has the expertise and incentive to properly implement the rules in accordance with the NEO. CEG canvasses three possible ways in which the quality of decision making on WACC issues could be improved without risking the achievement of the NEO. The options include:</p>	20, 21, 24, 25

Organisation	Issue	Substantive point being made	Page ref
		<ul style="list-style-type: none"> • retaining the status quo and allow more time for the AER to improve its reasoning in response to Tribunal decisions; • giving the role to an expert panel operating at arm's length to the AER to either replace or assist the AER with some of its functions on determining WACC; or • creating and funding a consumer advocate body for small energy users that can free up the AER to play a more neutral role in its decision making. Ausgrid supports set up of an expert panel, but is not clear on the details of this option yet. 	
Ausgrid	WACC - timing issues	<p>The transitional arrangements do not go far enough. Planning processes are impacted by the proposed changes. WACC and DRP changes would prejudice Ausgrid if they were to apply to its 2014-19 reset. The SOCC would not be completed until 31 March 2014, which is one month before the AER is due to publish its final determination for Ausgrid. However, under both the current and the proposed rules, the outcomes of a WACC review would normally only apply to a determination where the final WACC statements were published prior to the lodgement of an NSPs initial regulatory proposal. This would leave the NSW/ACT businesses in a very difficult position when preparing for the next regulatory proposal. Should the AEMC find in favour of the AER's position to bring the next review forward for NSW/ACT businesses, these businesses would have little specific preparation for their business.</p> <p>The AEMC should not subject Ausgrid to any changes to the WACC rules and instead allow the current rules apply to NSW and ACT DNSPs. This would ensure due process and allow the DNSPs to prepare their proposal with a clear understanding of their obligations and the assessment of the parameters. In substance this would result in the NSW/ACT NSPs and the AER being able to draw on information available at that time, including information arising in the context of any review being conducted by the AER, to justify a departure away from the current SORI.</p>	7, 9, 19, 20

Organisation	Issue	Substantive point being made	Page ref
Ausgrid	WACC - cost of debt	<p>There is some merit in the EURCC's proposed approach of setting the return on debt allowance as the embedded/actual cost of debt rather than a benchmark and prospective cost of debt. However, greater analysis needed before changing the status quo.</p> <p>There are two important flaws to the argument that the facility fees paid by government-owned NSPs to their state government owners cannot be appropriately measured as part of the cost of debt of NSPs, the compensation for risk and competitive neutrality. The fees are not required purely for competitive neutrality but also provide compensation for risk incurred by the government in funding the NSP.</p> <p>There is no evidence to substantiate the EURCC's position that government-owned NSPs have fundamentally different actual costs of debt to privately-owned NSPs.</p> <p>With respect to the DRP over this period, the AER chose to interpret the definition of the cost of debt benchmark under the Rules in the narrowest way possible. The effect of this interpretation was that the AER did not seek out, and did not have proper regard to a broader set of information that would have been determinative in its choice between the two cost of debt benchmarks.</p>	<p><i>CEG Report for Ausgrid</i> : 11, 24, 30, 31</p>
Ausgrid	WACC - cost of debt for government-owned vs. privately-owned NSPs	<p>The EURCC's claim that government-owned NSPs face a much lower cost of debt than privately-owned NSPs due to state government's ability to access debt finance at much lower cost than other businesses is not correct. In NSW, government-owned businesses (including Ausgrid) pay a government guarantee fee to ensure that they do not receive a preferential cost of debt. This is required by competitive neutrality principles in the CPA. The government guarantee fees help to ease the pressure on state governments to raise debt for other purposes. With respect to government dividends, it is appropriate to require government-owned businesses to pay commercial dividends to jurisdictional governments to ensure that commercial disciplines do apply.</p> <p>The EURCC's arguments in respect of lack of competition for NSPs is not accepted. While Ausgrid itself does not face competition for its standard control services, there are substitutes to electricity supply such as natural gas. Allocative efficiency issues arise if statutory provisions move away from the competitive neutrality principle.</p>	23

Organisation	Issue	Substantive point being made	Page ref
Ausgrid	WACC - single framework proposal	<p>AER should have the ability to depart from WACC review statement at the time of a determination. Recent market events have demonstrated the need for a safety-valve in the rules, which enables the AER to adjust the WACC for a material change in market circumstances, eg GFC. AER's recent decisions demonstrate its willingness to use its discretion to depart from a WACC review statement at the time of a determination to reflect prevailing market conditions. This is clearly inconsistent with the AER's argument that WACC parameters are slow to adjust over time and should be locked-in through its proposed statement on the cost of capital.</p> <p>Aligning the review of WACC parameters for TNSPs and DNSPs would remove the potential for market wide parameters such as the MRP to be applied inconsistently across the sectors. Also agrees that changing Chapter 6A rules to allow a WACC review to be conducted more frequently than every 5 years is appropriate.</p> <p>Since the rate of return is a major component of regulated revenues for NSPs, it is appropriate for the rules to provide flexibility to respond to changed market circumstances or to correct errors in a WACC statement. AER should not have full discretion to depart from previously adopted WACC values/approaches without persuasive evidence test. The current rules provide investment certainty to NSPs over the long term that parameter values will not be significantly adjusted without persuasive evidence test (eg. the GFC). Persuasive evidence requirement in the rules should be retained.</p>	20, 21
Australian Chamber of Commerce and Industry	WACC - cost of debt	The allowed return on debt for NSPs should closely reflect the actual cost of debt as proposed by the EURCC. Cost of debt methodology should be prescribed the rules rather than left to the AER's discretion in its proposed periodic reviews.	1
Australian Industry Group	WACC - cost of debt	The AER and the EURCC proposals raise serious issues for consideration, and the prospect that significant savings could flow to energy consumers through more efficient and effective regulation while maintaining needed investment.	1
Australian Paper	WACC - AER rate of return framework rule change proposal	The persuasive evidence clause from Chapter 6 should be removed. DNSPs have been able to appeal the AER WACC decisions on the averaging period for the risk free rate and gamma under this clause. Both appeals have been disastrous for consumers and it is concerning that the Tribunal was not adequately equipped to deal with these appeals and failed to understand their effect on electricity prices.	23

Organisation	Issue	Substantive point being made	Page ref
Australian Paper	WACC - cost of debt	The determination of the return on debt should not be part of the AER's WACC review and the EURCC proposal is preferred. The specification of the risk free rate should not be left to the AER. While current specification of the risk free rate is incorrect, by having it prescribed in the rules means that it is subject to correction through proposals that energy users (or others) could make. Energy users would not have the same opportunity to propose changes to the calculation of the risk free rate if it was simply left to the AER's determination.	24, 25
Australian Pipeline Industry Association	WACC - effectiveness of current rate of return frameworks	<p>The AER has not made a case for changing the gas rules based on the requirements that AEMC must apply in assessing rule changes, ie, NGO and RPP. The AER has not demonstrated that there is a problem in the current gas rules. Current NGR has only been in operation for just three years and a full round of Access Arrangements decisions have not been completed yet.</p> <p>Rules on WACC in NGR replicated well tested provisions from the Gas Code. Current NGR provides the AER with full discretion, so it is difficult to envisage any material issues with the rules.</p> <p>The AER's cost/benefit analysis is cursory. There is no evidence provided to support its assertions. Its analysis does not contain any cost of error in the WACC reviews. The 5 year WACC review will not be open to merits review to correct for any errors. Current NGR provisions give primacy to the requirement that rate of return must reflect market conditions at the time tariffs are set and address risks for each business. This gives confidence to investors to continue to invest.</p>	4
Australian Pipeline Industry Association	WACC -CAPM / nominal post tax prescription	Prescription of CAPM coupled with 5 yearly WACC reviews cannot provide rates of return that are commensurate with prevailing conditions in the market for funds and the risk for providing regulated services at the time of the determinations.	5
Bellala	WACC - cost of debt	Cost of debt methodology should be prescribed the rules rather than left to AER's discretion in its proposed periodic reviews. The allowed return on debt for NSPs should closely reflect the actual cost of debt as proposed by EURCC.	1
Brotherhood of St Laurence	WACC - cost of debt	Supports both AER's proposal and EURCC on cost of debt methodology. Both proposals meet the NEO and will ensure customers do not bear the burden of funding inefficient investment. The benefits outweigh the costs.	11, 12
Business Council of Australia	WACC - AER rate of return framework rule change proposal	Proposals for greater regulatory discretion and flexibility should be balanced against need for regulatory certainty for energy users and NSPs. Need to reflect on the current scope for the AER to use its discretion and the extent to which this level of discretion has been applied in practice.	2

Organisation	Issue	Substantive point being made	Page ref
Business Council of Australia	WACC - effectiveness of current frameworks	It would be useful for the AEMC to outline how Australia's cost of capital regulatory arrangements compare with other jurisdictions and how other jurisdictions account for changes in industry practices and financial markets over time.	2
Central Irrigation Trust	WACC - cost of debt	The allowed return on debt for NSPs should closely reflect the actual cost of debt as proposed by the EURCC.	1
Central Irrigation Trust	WACC - cost of debt	Cost of debt methodology should be prescribed the rules rather than left to the AER's discretion in its proposed periodic reviews.	1
Consumer Action Law Centre	WACC - AER rate of return framework rule change proposal	The rules should not allow NSPs to achieve a return on capital that is far above other businesses. Supports approach that will most effectively reduce windfall gains to NSPs. AEMC should focus on ensuring that the rules deliver the level of WACC that is no more than necessary from a consumer perspective, to maintain fair and efficient prices.	3
Consumer Utilities Advocacy Centre	WACC - effectiveness of current rate of return frameworks	The current regime is resulting in an unreasonably high WACC. The current merits review appeals on WACC parameters seem to involve a competition to see who can find the most distinguished expert to engage in debate with another distinguished expert on the most esoteric of topics such as gamma. There are serious doubts about the ability of a court to make judgments that would represent any improvement on the judgement of the regulator.	6
Consumer Utilities Advocacy Centre	WACC - AER rate of return framework rule change proposal	The benefit of the AER's approach is that the WACC parameters would be set in a process that would not be subject to merits review appeal and would therefore provide greater certainty, and most likely lower network costs, to consumers.	6
Consumer Utilities Advocacy Centre	WACC - cost of debt	Current framework contains imperfections that allow DNSPs to receive a return on their debt in excess of its cost. The benefit of EURCC's proposal is that it would set the WACC at a rate that is most appropriate given current market conditions. However, such a prescriptive approach may increase the likelihood of appeals.	2, 6
COTA Australia	WACC - cost of debt	No strong views. The AER is seeking greater discretion on WACC and EURCC more prescription. More discretionary approach preferred on principle, however it is uncertain whether the issue of the cost of debt will be adequately handled in the absence of more specific rules.	2
COTA Australia	WACC - cost of debt for government-owned vs. privately-owned NSPs	Debt-raising is different for government than for privately-owned NSPs. This indicates that a different approach is required to ensure accuracy in revenue allowances and to ensure that consumers do not pay too much for their energy. The EURCC proposal should be independently assessed.	2

Organisation	Issue	Substantive point being made	Page ref
Dampier Bunbury Pipeline	WACC - effectiveness of current rate of return frameworks	<p>Investors in gas networks require a rate of return allowance to reflect current market conditions for debt and equity funding and address risks specific to each business in providing services. Current NGR, NGO and RPP mandate this. The NGR currently provides a means of dealing with volatility and change particularly during the dramatic financial market changes over the past few years.</p> <p>Current NGR needs time to work. It has only been in place for a short time.</p> <p>Gas service providers operate in a diverse market and differ significantly from electricity markets. There are also material differences between gas transmission businesses.</p>	2
Dampier Bunbury Pipeline	WACC - AER rate of return framework rule change proposal	<p>The AER's proposal gives rise to legal issues about whether it can implement a single WACC framework for gas AAs. The proposal does not contribute to NGO and is inconsistent with RPP. Locking in a "one size fits all" methodology for setting key elements will also be inconsistent with NGO and RPP. Removing the requirement for the rate of return to be commensurate with prevailing conditions in the market for funds and the risks involved in providing regulated services will also not contribute to NGP and RPP. Access to merits review is necessary for good administrative decision making and should not be removed from the framework.</p> <p>The AER has not undertaken a complete analysis of the expected costs and benefits of this proposal. There is little or no quantitative analysis of the benefits. AER proposal does not identify the cost of the additional WACC review process to regulators which will be passed onto NSPs. To the extent the AER and the ERA conduct separate WACC reviews, DBNGP will have to participate in both processes at additional cost to the business without any reduction in its regulatory budget.</p>	5, 6
Dampier Bunbury Pipeline	WACC -CAPM / nominal post tax prescription	Locking in a one size fits all methodology for setting key elements will be inconsistent with NGO and RPP.	5
Economic Regulation Authority	WACC - effectiveness of current rate of return frameworks	WA electricity transmission and distribution framework does not prescribe the WACC methodology, but allows the ERA discretion to make and publish a determination of the preferred methodology for calculating the WACC. After its initial preferred WACC methodology review, the ERA decided not undertake further methodology reviews as there was little to be gained in undertaking a WACC review outside of the review of the regulatory determination.	2

Organisation	Issue	Substantive point being made	Page ref
Economic Regulation Authority	WACC -CAPM / nominal post tax prescription	<p>The ERA has to date used a pre-tax CAPM as a well-accepted financial model. However, the pre-tax CAPM is becoming problematic. Regulatory determinations will tend to have range of “unders” and “overs” - which on balance may be viewed as delivering a “reasonable” outcome overall that is in line with the regulatory objectives. However, NSPs are increasingly seeking to dispute the “unders” based on points of precision. Correcting for "overs" is also important. The ERA is considering amending its approach to adopt the post-tax CAPM framework. Prescribing a nominal post-tax CAPM framework could:</p> <ul style="list-style-type: none"> • address concerns regarding the inherent over-compensation arising from the pre-tax approach; • reduce the distorting effect inherent in the potential for gas service providers to cherry pick unfavourable elements in the WACC determination; • generally reduce the administrative cost associated with reviewing the rate of return provisions; and • allow for a consistent approach, thereby informing the relativity of returns among different regimes. 	4
Economic Regulation Authority	WACC - timing issues	<p>Timing of review of the WACC parameters in WA is less problematic than in the eastern states. The ERA tends to review its WACC approach for the first determination that comes due, which then largely carries through to the two subsequent determinations, depending on considerations relating to the matters raised in submissions.</p> <p>There is some concern that any proposal to conduct WACC reviews outside of the period of access arrangement assessment processes would impose additional resource costs without significant efficiency gains in terms of the assessment process, eg where an inflexible timing of such reviews did not match the timing of determinations. For WA, it is preferable to undertake targeted analysis of particular components of the WACC during the normal gas access arrangement assessment process and utilise the AER's reviews of particular parameters as appropriate.</p>	4
Economic Regulation Authority	WACC - cost of debt	<p>Regulators should have some flexibility in setting the DRP. EURCC proposal has merit. Proposed changes overlap with changes adopted by the ERA in its WACC reviews for gas NSPs.</p> <p>Due to shortcomings with Bloomberg and unavailability of CBA spectrum data, ERA has developed a bond-yield approach to DRP estimation. EURCC's proposed approach is similar to the ERA's in that it relies on bond yields observed directly from the Australian financial market, which is simple,</p>	4, 5

Organisation	Issue	Substantive point being made	Page ref
		<p>transparent and replicable.</p> <p>Preference for matching term to maturity of risk free rate and DRP with length of regulatory period because:</p> <ul style="list-style-type: none"> • there is risk of overcompensation if risk free rate exceeds length of regulatory period; • there is no evidence that NSPs will seek to issue long term debt as a matter of preference. There is evidence that NSPs issue debts over a period of less than 5 years; and • NSPs avoid the situation of having a significant proportion of their debt funding maturing in any one year. <p>The New Zealand and UK regulators currently match term of risk free rate with length of regulatory period.</p>	
Economic Regulation Authority	WACC - cost of debt for government-owned vs. privately-owned NSPs	There are no government-owned gas NSPs in WA, but the EURCC has made a case for reviewing approach to estimating the debt costs of government-owned NSPs. The ERA will consider this issue as part of its current electricity distribution access review for Western Power.	6
Economic Regulation Authority	WACC - single framework proposal	Regular WACC reviews by the AER will be an important benchmark for the ERA's own consideration in electricity and gas access arrangements. There is support for the AER's view that a harmonised WACC review approach would not detract from the benefits of being able to consider whether there is a need for different parameters between different classes of energy networks (including gas service providers) as part of a single WACC review process. However, the regulators should have the discretion as to whether and when to undertake periodic WACC reviews.	3, 4
Endeavour Energy	WACC - effectiveness of current rate of return frameworks	Errors addressed by the Tribunal to date highlight that regulators are fallible and need to be subject to independent review.	6

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Endeavour Energy	WACC - AER rate of return framework rule change proposal	<p>While there are some administrative benefits of a single framework, the benefits are not contingent on deleting two of the frameworks in favour of an all-encompassing WACC review. It is necessary for a WACC framework to have regard to prevailing market conditions, with access to merits review to preserve good governance and due diligence.</p> <p>Chapter 6 framework provides a better balance of certainty from 5 yearly WACC reviews and adaptability for DNSPs/AER to depart from WACC review outcomes.</p>	5, 6
Endeavour Energy	WACC - cost of debt	<p>There is evidence in the yields of a wide range of listed bonds of a step change in the cost of debt financing, which implies tightening of new equity capital finance. Increase in cost of debt financing during GFC also had impact on cost of equity which has not been recognised.</p> <p>The proposed rules might result in an inconsistent conceptual framework, with one element determined on a backward looking basis rather than current market or forward looking basis. Endeavour's debt raising approach is to use a mix of shorter and longer term debt instruments of up to 25 years.</p>	6
Endeavour Energy	WACC - cost of debt for government-owned vs. privately-owned NSPs	No merit in abandoning the competitive neutrality principle. This will embed distortions in the regulatory regime which will lead to inefficient outcomes and the create potentially perverse incentives.	6
ENERGEX	WACC - cost of debt	The EURCC and the AER approach of taking snapshot of actual debt issuance yields without considering inherent re-financing risk is concerning.	5
ENERGEX	WACC - cost of debt for government-owned vs. privately-owned NSPs	Cost of debt should not be estimated differently for government-owned NSPs. Energex has specific interest rate risk management parameters within which it actively manages its Client Specific Pool (CSP) of debt instruments via the Queensland Treasury Corporation (QTC).	4
Energy Networks Association	WACC - effectiveness of current rate of return frameworks	The most important lesson of the last 5 years is that, if the process of the AER conducting a periodic determination of values or methodologies is to continue, the application of those values or methodologies must not occur without being subject to a 'safety valve' – that is, the potential to depart from presumptive values or methodologies where there is persuasive evidence to do so. The potential for such departures also establishes an AER decision that is subject to merits review, a process that has itself been an important safety valve for correcting AER errors and resolving otherwise intractable controversies. The experience under Chapter 6A shows that it does not have a safety valve and has serious deficiencies. The AER's own actions	41, 42

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		<p>underline the problems with the 5 yearly 'lock-in' of WACC parameters as currently occurs under Chapter 6A.</p> <p>Contrary to the AER's assertions, DNSPs and the AER have not been in "continual WACC review mode" and there have been no spurious challenges to parameters established in the 2009 WACC review. While there have also been significant challenges to the AER's determination of the DRP, these challenges have not related to the benchmark credit rating or maturity established in the 2009 SORI, but rather to the AER's case-by-case determination of the benchmark bond yield. These challenges to the AER's application of the NER s in relation to the DRP (or, in the case of gas, to the AER's preferred approach to the same parameter under the much less prescriptive NGRs) have applied with no less validity under Chapter 6A.</p> <p>The AER has not presented any evidence of a "cherry picking" problem under the Chapter 6 framework. To the extent that WACC parameters are inter-linked, evidence for a change in one linked parameter must also be persuasive evidence for the change in the other linked parameter. In the case of the one parameter that has been changed since the SORI (the value for gamma), the AER has considered offsetting adjustments (in particular, the reconsideration of the measurement of a historically-based estimate for a MRP adjusted for the claimed effects of the revised gamma value) but has not ultimately pursued them. The AER chose not to seek an offsetting adjustment, either as part of its distribution determinations or before the Tribunal. To the extent that there are interrelationships between various parameters, the risk of offsetting adjustments being made by the AER causes NSPs to think carefully before challenging any aspect of the WACC.</p> <p>The AER's assertions of "continual WACC review" and "cherry picking" are similarly unfounded in respect of gas businesses. Whilst there has been a greater degree of challenge on WACC parameters under the NGR, this has largely reflected gas businesses seeking to have differences between electricity and gas businesses reflected in particular parameter values (particularly the equity beta or, more widely, the cost of equity). Such differences were not explicitly considered in the 2009 WACC review, and therefore businesses have asked the AER to consider this as part of individual access arrangements decisions.</p>	

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Energy Networks Association	WACC - AER rate of return framework rule change proposal	<p>The AER is required to make a decision on the rate of return to be applied for each NSP that is consistent with both the NEO and the RPP at the time it is made. There must be discretion to depart from values or methodologies set in a WACC review in order to provide a safety valve on WACC determinations. In addition the AER should be provided with guidance within the rules as to how and on what basis it conducts its determination of WACC parameters. The Chapter 6A framework is not a suitable model on which to converge. The experience of the past 5 years has demonstrated that some form of 'safety valve' is critical to ensure the robustness of the WACC process in the face of challenging financial market circumstances, as well as for addressing material errors by the AER.</p> <p>Some of the considerations cited by the AER as being advantages of having a single WACC framework and associated 5 yearly review process are overstated, particularly since only 2 of the WACC parameters are pure market values (MRP and Risk Free Rate) that can be measured independently of the characteristics of an energy NSP. Most parameters are business/industry-specific values, for which there may be good reason to observe differences, particularly between electricity and gas businesses. Within the gas pipeline sector, there are likely to be significant differences between typical gas distribution network services, and particular gas transmission services, which often face different end-market characteristics.</p> <p>The AER's assertion that WACC parameters are slow to evolve and so can be settled for periods as long as 5 years at a time is completely inconsistent with recent experience, and the effects the GFC has had on both financial markets and the cost of capital. The AER has generally sought to apply the findings of that review in gas decisions, even though the NGR make no provision for this. However, there are likely to be administrative and resource allocation efficiencies if the AER were to have suitably designed powers and responsibilities to conduct a periodic review of the values and methodologies for determining the rate of return.</p> <p>The simplest, most practicable means to ensure that a safety valve applied to WACC decisions across all electricity NSPs and gas businesses would be to amend the rules so that Chapter 6A allowed for departures to the SORI under the same 'persuasive evidence' criteria as that applying under Chapter 6. There is no need to amend the NGR, since the model applying in gas already provides for the most up-to-date and best information to be taken into account. Such a</p>	41- 45, 51- 53

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		<p>change would have the merit of preserving the AER's 5 yearly WACC review process for electricity NSPs, while allowing the experiment of an alternative, much less prescriptive framework to continue to operate. The only other change to the NER that may be desirable is to refine the provisions applying to the DRP. To the extent that the AEMC is minded to contemplate convergence to a single WACC framework applying to electricity and gas pipeline determinations, this would be a substantial undertaking requiring careful analysis of the basic differences between the existing electricity and gas arrangements, and the interactions between individual elements of any proposal.</p>	
Energy Networks Association	WACC - AER rate of return framework rule change proposal	<p><i>Joint Report for ENA - Assessment of AER's proposed WACC Framework</i></p> <p>The AER's proposal to move TNSPs, DNSPs and gas service providers to a common framework for determining the rate of return that, in essence, reflects that already established in Chapter 6A involves a substantial risk of setting a WACC that is not commensurate with prevailing conditions in the market for funds and/or involves known error. Locking-in the WACC parameter values, methods and credit ratings gives rise to the risks that:</p> <ul style="list-style-type: none"> • the pre-specified WACC parameters are no longer appropriate due to changes in financial market conditions subsequent to the SOCC; • the SOCC will specify methods dependent on data or information that subsequently ceases to exist; and • the SOCC contains errors that cannot be adequately addressed without merits review. <p>Given financial market developments over the past 5 years, the absence of any credible safety valve mechanisms amounts to a fundamental design flaw in both the Chapter 6A provisions of the current NER and the framework now proposed by the AER.</p> <p>The AER's contention that a process involving periodic review of rate of return parameter values or methodologies and so the establishment of an updated SOCC could be brought forward from its 5-year cycle is not adequate to deal with changing market circumstances.</p>	Att A: 17, 21-25

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Energy Networks Association	WACC - cost of debt	<p>Agrees that the NER definition of the DRP could be improved. The restrictive language of the definition and ambiguity has been a source of significant dispute between the AER and NSPs in recent years. These difficulties have been accentuated by developments in financial markets during and following the GFC. However, not all elements of the DRP definition are codified in the NER. The benchmark maturity and credit rating were established by the AER in its 2009 WACC review and do not form part of the NER. Had there been persuasive evidence to suggest that either the benchmark maturity or credit rating was no longer appropriate in light of financial market developments, under the provisions applying at Chapter 6 either DNSPs or the AER could have moved to adopt a different benchmark.</p> <p>Does not agree that the apparent short-term divergence between the actual and benchmark cost of debt evidences any deficiency in the NER. The NER require a forward-looking estimate of the return on capital commensurate with prevailing conditions in the market for funds, consistent with the broader policy intent for regulated revenue allowances to reflect forward-looking efficient costs. There is no reason to expect that a forward-looking estimate of the cost of debt would necessarily align with the historic cost of debt for NSPs. The forward-looking cost of debt may be higher or lower than the historic cost of debt at any point in time depending on current market conditions and how these relate to historic conditions. In current market conditions it is to be expected that the forward-looking cost of debt will be above the historic cost of debt since the historic cost of debt is likely to include some borrowings at lower (pre-GFC) levels.</p> <p>The EURCC proposal to set cost of debt with reference to embedded cost of debt does not sit comfortably with the wider, integrated WACC framework, including the principle articulated in both the NGR and NER that “the rate of return is that commensurate with prevailing conditions in the market for funds”. Unless there is a preparedness to step back and reconsider all aspects of this framework, there is a real risk that tinkering with fundamental properties of one element alone will not be consistent with the NEO.</p> <p>The EURCC fails to recognise the distinction between the current cost of debt and embedded debt costs. As a result, it mischaracterises the issue of current borrowing rates being above historical averages as a problem of “excessive profits”. If the EURCC analysis was undertaken during a period of sustained falls in the DRP, it would produce a conclusion that the regulated cost of debt was below the actual cost of debt of a NSP.</p>	45-47, 51

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		<p>The EURCC has provided little evidence to contend that the term to maturity should be lower (5 years rather than 10) and the credit rating band broader (broad A and BBB). The EURCC's proposal is highly prescriptive. Recent experience has shown that unduly high levels of prescription can be inappropriate since they lack the requisite "safety valve" to deal with aberrant market conditions. For example, future changes in market conditions may result in illiquidity in certain bonds classes, causing difficulties in the application of the prescribed methodology.</p>	
Energy Networks Association	WACC - cost of debt for government-owned vs. privately-owned NSPs	<p>The EURCC concern in relation to the cost of debt for government-owned businesses is misplaced. The EURCC also does not provide any reason as to why electricity prices should differ across jurisdictions simply as a result of the ownership, nor does it recognise the adverse consequences for resource allocation that may result. The EURCC's proposal would give rise to circumstances where NSPs operating in different geographic regions set prices that were differentiated by ownership rather than by reference to the underlying economic costs of providing those services. Such circumstances would provide an artificial incentive for overinvestment by customers in the lower priced regions, along with under-investment in demand side initiatives. Consistent with an emphasis on industry- and economy-wide efficiency, the principle of competitive neutrality for government-owned and private businesses has been a key feature of economic policy over the past two decades, since the publication of the National Competition Policy Review by the Independent Committee of Inquiry in August 1993 (Hilmer Report).</p> <p>The principles that were set out in the Hilmer Report and implemented through subsequent government policy do not just apply to government-owned businesses operating in competitive markets. They equally apply in infrastructure sectors where the ultimate aim of regulation is to mimic a competitive market in terms of price and other outcomes.</p>	48
Energy Supply Association of Australia	WACC - general comments	<p>Setting the WACC is one of the most challenging tasks a regulator can face. There is no inherently right answer, as it entails forecasting a number of components that are either subject to fluctuations with market conditions, or are difficult to measure directly. Need to understand the risks of setting WACC that turns out to be either materially too high or materially too low. Risk is asymmetrical as there are serious consequences for NSPs and consumers if WACC is too low.</p>	5

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Energy Supply Association of Australia	WACC - effectiveness of current rate of return frameworks	5 years is a long time in capital markets. The process needs to allow for individual price control reviews to reflect prevailing capital market conditions that may be very different from those set at the time of the WACC review.	5
Energy Supply Association of Australia	WACC - AER rate of return framework rule change proposal	Preferable that NER is amended to move transmission WACC framework to the current distribution framework to allow departures from WACC review outcomes under the same 'persuasive evidence' criteria. No need to amend the NGR framework since it already allows for the most up-to-date and best information to be taken into account.	6
Energy Supply Association of Australia	WACC - cost of debt	The AER should not be given complete discretion to determine a methodology or value for DRP in a WACC review. This level of discretion is not conducive to regulatory stability and certainty, which would be better served by retaining some structure to the methodology in the rules. Issues such as the definition benchmark for the DRP could be considered in the context of a revised rules-based methodology.	6
Energy Supply Association of Australia	WACC - cost of debt for government-owned vs. private owned NSPs	The EURCC rationale overlooks the fact that an appropriate allowed return for any business should be related to the riskiness of its cash flows. For NSPs, this risk is not dependent on whether it is government-owned or privately-owned. While government-owned NSPs can typically borrow at very low rates, efficient allocation of public capital requires that they seek the same return from any commercial entities they control that a private owner would.	6
Energy Users Association of Australia	WACC - AER rate of return framework rule change proposal	The proposal by the AER to eliminate the persuasive evidence test is supported. The reason is that the persuasive evidence test has been used by NSPs to appeal AER decisions on the WACC parameters. The results of these appeals have been to the detriment of consumers. This particular provision is unbalanced because it incentivises the NSPs to appeal the AER decisions without the risk of a negative outcome. For example, if NSPs appeal, they have an equal chance of winning. Thus NSPs either receive a better outcome from the Tribunal. At worst, they get what they were given by the AER. They cannot be worse off. This is especially so since expenditures on these appeals are included as efficient expenditure in their regulatory proposal.	25
Energy Users Association of Australia	WACC - cost of debt	The existing return on debt methodology is flawed. The best solution to flawed clauses in the rules is not for the AER to review them in future WACC reviews, but to fix the flawed clauses. The actual cost of debt should be given more weight in the estimation of the cost of debt. The EURCC proposal is supported.	24

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Energy Users Association of Australia	WACC - cost of debt for government-owned vs. privately-owned NSPs	The Competition Principles do not apply to NSPs because there is no risk of “crowding out” a competitor. The NSPs’ captive customers cannot seek out a competing supplier.	27
Energy Users Rule Change Committee	WACC - effectiveness of current rate of return frameworks	<p>It would be beneficial to revisit WACC parameters in each decision if they are found to be inappropriate at the time of that decision. The AER has argued that WACC parameters (the AER refers to all WACC parameters) are stable over time, and hence it is unnecessary to revisit the parameters at each decision. The AER’s stability argument in respect of the cost of equity parameters such as the MRP, beta, gamma and gearing assumptions is supported. However the stability argument on other parameters such as the risk free rate or cost of debt is not appropriate since these can change quickly depending on capital market conditions.</p> <p>The Tribunal's decisions on WACC (both on gamma and a previous decision on the averaging period for the risk free rate – an appeal by NSW distributors, TransGrid and Transend - have been controversial. The Tribunal did not know (and hence did not consider) the impact of its decision on electricity prices in respect of either the value of gamma or the averaging period for the risk free rate.</p>	20, 21

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Energy Users Rule Change Committee	WACC - AER rate of return framework rule change proposal	<p>The Tribunal's ability to effectively review the AER's WACC decisions is an issue. The Tribunal cannot assess whether its decision met the NEO if it did not know what effect its decision would have on electricity prices. The AER's proposals to eliminate the persuasive evidence test, and with it the scope of the Tribunal's review of some of the AER's WACC decisions, is well directed and should be supported.</p> <p>The fact that the risk free rate is written into the NER means that energy users are able to propose to the AEMC that it be changed. This would not be possible if the AER determined the specification of the risk free rate through its WACC review. The benefit of a possibly more expeditious change to the calculation of the risk free rate (through the AER's periodic WACC reviews) has to be set against the fact that energy users have no specific role in such reviews and are not able to propose changes to the AER's determination in the way that they are able to propose changes to the NER. On balance, and taking account of the fact that the risk free rate is amenable to clear specification in the rules, the AER's proposal to withdraw the specification of the risk free rate from the NER should not be supported.</p>	21
Energy Users Rule Change Committee	WACC - cost of debt for government-owned vs. privately-owned NSPs	<p>Supports EURCC's proposal to determine cost of debt for government-owned NSPs differently to privately-owned NSPs. Analysis of the profitability of distributors shows that the NSW government achieved a 28.3% return on its investment after counting attributable profits, income tax equivalents and margins on debt sourced from the government treasury and on-lend to its distributors at a premium. This compares to a return on equity of 10.3% that the AER had calculated would be appropriate, in its price control decision of these distributors.</p> <p><i>Supplementary submission in response to NSW Treasury and Queensland Treasury Corporation submissions</i></p> <p>The NSW Treasury claim that that the return on equity for the NSW distributors in 2010 of 5.5% is inconsistent with the 16.5% calculated and reported by the NSW Auditor General. It is also inconsistent with the financial information provided by the DNSPs to the AER. The NSW Treasury's claim that the net profit after tax on its DNSPs of 5.5% means that it must have achieved a 235% return in its retail businesses. If this is the case, then it suggests that the allocation of shared costs between DNSPs and their retailers is inconsistent with</p>	8,18, 19 2,3,5, 7, 9,10

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		<p>the financial information provided by the DNSPs to the AER.</p> <p>Contends the QTC analysis of the EURCC's proposal that the difference between swap issue margins and the DRP allowances determined by the AER (in Table 5 of the EURCC's rule change request). The difference arises because QTC has used Bloomberg and EURCC's analysis is performed using publicly available data from the Reserve Bank of Australia on swap rates and commonwealth government bonds. The QTC has also appeared to have made an error in averaging the DRP allowances in AER's decisions and the date range is inappropriate.</p> <p>The QTC has also used a point estimate. A more valid approach would be to use a range. The focus should be on the total cost of debt allowance rather than just the DRP. Analysis of the DRP in isolation of the risk free rate provides only part of the picture.</p>	
Envestra	WACC - effectiveness of current rate of return frameworks	There has been very limited experience in the application of the NGR to gas distribution business to that can be used to provide evidence on whether the NGR has been effective or ineffective. Only about half the gas businesses have been through the current rules. The current NGR framework is very similar to the Code provisions and numerous decisions have been made by state regulators and the ACCC, none of which identified any material issues with the WACC framework that it produces any biased rate of return.	4
Envestra	WACC - AER rate of return framework rule change proposal	<p>The rule change proposal has the effect of excluding any decision on WACC to be exempt from the merits review appeal process. The AER has not made any case to change the WACC framework in the NGR. AER has not provided any evidence to support its conclusion for the rule changes.</p> <p>The rule change is unlikely to produce rate of return as required by the NGR and RPP, which requires the rate of return to be commensurate with prevailing conditions in the market for funds. If WACC is set every 5 years as proposed, then it would only be by chance that the rate of return applied at the time of the determination of any gas business would be consistent with prevailing conditions in the market for funds at the time the decision was handed down. Hence, it would be in violation of the NGO and RPP. This situation is currently borne out in the Chapter 6A of the NER for TNSPs, on which the AER has modelled its rule proposal.</p> <p>The WACC processes should be developed that maximise efficiency in WACC</p>	2, 3, 5, 6, 7

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		<p>debate to reduce the cost of regulation. However, administrative ease should not be the driver of the rule change proposal. More important for WACC rules to deliver right outcomes. AER's proposal will simplify the WACC debate and stifle discussion on the most important regulatory decision. The reason for businesses giving so much attention to WACC is because the WACC reviews under the NER cannot be appealed. Consequently, businesses had no opportunity to resolve the divergence of views other than to wait for their individual determinations and subsequent appeals to the Tribunal. Now that many matters have been resolved, future submissions to the AER on WACC are likely to be shorter and refer to the body of work already done and settled. This approach is more preferable to reconciling difference of views on WACC rather than giving regulator more discretion to impose its own value without appropriate academic and professional enquiry. Supports the AER undertaking a 5 year review of WACC as a regulatory guideline with the ability to depart from parameters at each determination if market conditions warrant any deviation.</p>	
Envestra	WACC -CAPM / nominal post tax prescription	Use of CAPM under certain market conditions can give unrealistic cost of equity estimates. Need flexibility in the framework to take into account academic progress and other alternative methodologies. Current framework allows the AER flexibility in considering alternatives and should be retained.	4
Envestra	WACC - cost of debt	A number of appeals currently pending on DRP. Once resolved by the Tribunal, there will be greater clarity for all parties and avoid the need to spend an excessive amount of time on this issue.	7
Ergon Energy	WACC - effectiveness of current rate of return frameworks	Merits review enables NSPs to protect their interests in circumstances where they believe that their proposed parameter values have been unreasonably rejected. The presence of such a review process also encourages NSPs to ensure that their proposals are within the reasonable range. Otherwise, an 'unreasonable' proposal would not be supported on appeal to the Tribunal. The appeal on gamma is an example where the AER made an error which had to be corrected.	10, 11
Ergon Energy	WACC - cost of debt	<p>Interest rate risk cannot be considered in isolation from refinancing risk. The two risks must be considered together. Similarly, the regulated cost of debt should not be considered without also considering the actual cost of equity.</p> <p>Contrary to the EURCC's assertions, Ergon Energy as a government-owned NSP is actively involved in managing its interest rate risk and determining the duration and debt maturity profile of its CSP with QTC. The Ergon Energy's Board has responsibility for all decision-making related to the duration and</p>	12, 14, 15

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		<p>maturity profile of the debt instruments held in its CSP with QTC, including the liability management parameters. The Board also determines the debt refinancing and hedging strategies which apply at each regulatory reset (in consultation with QTC) and the management of associated risks such as inflation risk, which is implicit in the nominal cost of debt used in the regulated WACC.</p> <p>Ergon Energy is accountable for managing its overall capital structure, including the debt on its balance sheet, and actively responds to regulatory incentives to minimise its debt costs and reduce the impact of adverse interest rate changes on net profit. The actual weighted average cost of debt paid by Ergon Energy for the 2010–11 financial year was 7.14% which includes a competitive neutrality fee (CNF) component. The CNF has been fixed for five years in alignment with the current regulatory control period and in accordance with the Code's requirements. Under the Code, Ergon Energy has the option of fixed or variable CNF costs. The CNF is expressed as a margin to the QTC State government guaranteed yield curve, not the Commonwealth Government yield curve.</p> <p>The EURCC's proposed benchmark for government-owned NSPs is inappropriate. It is unclear how the current fixed rate borrowings made within the CSP could be restructured to deliver an actual cost of debt that matches the cost produced by the EURCC's proposed benchmark. The proposed benchmark is also based on the incorrect assumption that embedded debt costs are irrelevant for government-owned NSPs.</p> <p>The definition of DRP could be improved, but the AER's proposal to completely remove the definition of DRP from the rules and allow it to determine the methodology is not appropriate. AER's proposal for broad regulatory discretion is a significant departure from current practice. The AER's implied proposal to set the regulated cost of debt based on the actual funding practices of the NSPs is also not supported. This is a circular argument as Ergon Energy's current funding practices are based on the AER's methodology for calculating the regulated cost of debt.</p>	
Ergon Energy	WACC - cost of debt for government-owned vs. privately-owned NSPs	The EURCC does not provide any reason as to why electricity prices should differ across jurisdictions simply as a result of the ownership of assets, nor does it recognise the adverse consequences for resource allocation that may result. Its proposal would give rise to circumstances where NSPs operating in different geographic regions set prices that are differentiated by ownership rather than by reference to the underlying economic costs of providing those services. This is	12

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		inconsistent with the NEO and could lead to an artificial incentive for overinvestment by customers in the lower price regions, along with underinvestment in demand side initiatives, undermining the principles of allocative and dynamic efficiency.	
Essential Energy	WACC - effectiveness of current rate of return frameworks	To date, the AER has not correctly applied its existing discretion with respect to WACC as evidenced by the Tribunal decisions. Any proposal to increase the AER's discretion on WACC without recourse to an appeals process is concerning.	7
Essential Energy	WACC - AER rate of return framework rule change proposal	A safety valve mechanism is needed in the WACC framework to deal with abnormal financial events like the GFC. The AER proposal cannot be supported if persuasive evidence is removed and replaced with Chapter 6A's inflexible framework.	7
Essential Energy	WACC - cost of debt	Methodology for DRP can be improved.	7
ETSA, CitiPower and Powercor	WACC - AER rate of return framework rule change proposal	<p>Agreement in principle with the establishment of a single, common WACC review process for electricity transmission and distribution and the associated establishment by that review of a single, common set of WACC values, methodologies and credit rating levels. There is no readily apparent justification for the difference in the WACC determination frameworks as between Chapters 6 and 6A in relation to the application of WACC review outcomes in individual determinations.</p> <p>The provisions of Chapter 6A should not be the basis for convergence of WACC review outcomes.</p> <p>One of the key effects of the AER's proposed convergence of the framework for WACC determination under Chapters 6 and 6A, based on the existing framework in Chapter 6A, is to remove the availability of merits review of the AER's WACC decision making for distribution.</p> <p>Neither the AER rule change proposal's conferral of additional discretion on the AER nor its removal of the exercise of that discretion from regulatory scrutiny by the Tribunal is appropriate in circumstances where Tribunal determinations to date demonstrate the real potential for regulatory error by the AER and the resultant need for the Rules to provide guidance to the AER in the exercise of its discretion and for the regulatory accountability and scrutiny delivered by merits review. Against this background, the AEMC should be wary of making rule changes that confer additional discretion on the AER or reduce the potential for</p>	13, 24, 25, 27, 29

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		<p>AER determinations has been underestimated, not that it has been overestimated. The AER fails to take into account that the lower DRP on actual debt can be fully explained by the fact that the average maturity of that debt was less than 10 years. and that while issuing short term debt reduces interest costs, there is an offsetting increase in the cost of equity. The debt cost savings from issuing more short term debt are fully offset by a higher cost of equity – leaving the overall WACC unchanged. The cost of equity and debt under the Rules are determined on a consistent basis in terms of the underlying term of the debt financing. The AER's analysis in the rule change proposal breaks this internal consistency. It takes the observed lower cost of debt on short term issues but ignores the consequential effect on the cost of equity. As a result, its conclusion that the overall return (WACC) has been set too high is based on a form of "cherry-picking".</p> <p>There is no evidence of a "gap" between actual and benchmark WACC arising from the DRP. The AER and the EURCC only consider the return on debt in isolation and do not consider the effect on the return on equity of the recent change in NSP practice to issue shorter term debt. NSPs raised long term debt prior to the GFC, and have subsequently issued shorter term debt. When the DRP for recent non-SPI actual bond issues are adjusted to a 10 year DRP, more than half of the implied ten year DRPs are greater than the nearest regulatory allowance to that bond issue. This demonstrates that recent determinations of DRP (as amended by the Tribunal) are a reasonable reflection of the actual Australian corporate bond ten year BBB+ DRP. While there is a DRP "gap", it is primarily a function of differences in the maturity period. The DRP "gap" is expected to be more than offset by the return on equity "gap" and therefore recent benchmark WACC determinations have not been compromised by the apparent DRP "gap".</p>	20

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ETSA, CitiPower and Powercor	WACC - effectiveness of current frameworks	<p>The persuasive evidence requirement is important because:</p> <ul style="list-style-type: none"> • for at least some WACC parameters (eg gamma, equity beta and the debt to equity ratio), their value is relatively stable and slow to change; • certainty and predictability in the return NSPs can expect to earn on their investments is important for the creation of incentives for efficient investment and the achievement of the NEO; and • the persuasive evidence requirement delivers certainty and predictability in this rate of return by prescribing a minimum evidentiary standard for any departure from the value of those parameters that are relatively stable and slow to change and for any departure from the method of estimation of those WACC parameter values that are sensitive to changing market conditions, such as the risk free rate and MRP. <p>The AER's asserted deficiencies in the Chapter 6 framework for WACC determination are unfounded and do not withstand scrutiny.</p>	26, 27
Grid Australia	WACC - cost of debt	<p>Problems with DRP emerged during the GFC. The rules should permit additional classes of information to be considered. However, the discretion the AER seeks is unnecessarily wide. Key constraints for determining the cost of debt – namely that it reflect a benchmark for an Australian borrower, with the benchmark assumptions (term and credit rating) transparently disclosed – should remain. There is also merit in removing the need for the same risk free rate to be used to estimate the cost of equity and cost of debt. Further guidance in the rules should be considered to ensure the AER is properly guided. The "persuasive evidence test should also remain.</p> <p>One of the characteristics of many WACC parameters is that the estimates obtained are imprecise (that is, they have a high standard error). This means that different people estimate the WACC and so with a "blank sheet of paper", they could come up with economically material differences in estimates, even during normal market conditions. The prospect of a regulator conducting reviews over time and commencing each with a "blank sheet of paper" would create the potential for unpredictable outcomes, and so materially diminish the incentive and capacity for continued investment. The objective of the current persuasive evidence threshold is to require the AER to take into account the benefits of stability in its decisions, and hence increasing the predictability of outcomes over time, and with it the incentive and capacity for investment. Moreover, it achieves this improvement in the investment environment without causing higher prices – the persuasive evidence hurdle is symmetric, all it does is</p>	6, 63, 64, 66, 67, 68

Organisation	Issue	Substantive point being made	Page ref
		<p>increase predictability. Against this, the AER has not presented any compelling evidence that the current threshold has prevented it from changing a WACC parameter or method where it considered the evidence justified the change.</p> <p>EURCC's conclusion that current allowances for the DRP provide excessive returns because they exceed the historical debt costs ignores the difference between an allowance that reflects the spot rate and one based on embedded debt costs (which is what the EURCC ultimately propose). However, further consideration should be given to changing to a regime in which the debt allowance reflects the embedded cost of debt for a benchmark financed entity, which is an important component of the EURCC proposal. A number of issues need to be addressed:</p> <ul style="list-style-type: none"> • whether the embedded debt component should relate to the whole cost of debt or just the risk premium element; • how the benchmark debt cost at any point in time is to be determined; and • whether prices should continue to be revised continually during the regulatory period to reflect the change in the borrowing costs as the efficient portfolio is refinanced over time, or whether the debt allowance should be based in part upon forecasts. <p>Many of the figures on actual debt costs that are presented in the EURCC proposal are erroneous. In particular, in Table 2 while the spread is identified as the spread over the swap rate, this spread is erroneously added to the government bond rate that applied at time of issue. The large table of issues (Table 1) also has a number of observations that appear unusually low (apart from the zero cost of debt for a CitiPower bond). Moreover, this table also omits the utility debt raisings that were undertaken during the worst of the GFC.</p>	
Grid Australia	WACC - cost of debt for government-owned vs. privately-owned NSPs	<p>There are a number of flaws with the EURCC's proposal. First, it would create lower network charges in states where networks are government-owned, thus distorting the locational decisions of major energy users. Specifically, this distortion would arise from more network assets being built than would be the case if energy users were encouraged to locate where it was the lowest cost option. Second, this proposal ignores the risk that tax payers bear from these activities and ignores the downstream resource misallocation that would arise where different network charges result purely on account of ownership. Third, it would create an artificial bias for governments that own network assets to continue to own those assets, given that a material upward impact on prices would occur if assets were sold.</p>	68, 69

Organisation	Issue	Substantive point being made	Page ref
Grid Australia	WACC - effectiveness of current frameworks	<p>Standard approaches for setting the WACC failed during the GFC, and experience has shown that a safety valve mechanism that permits departures from inputs or methods in a WACC review statement is essential to cope with such events.</p> <p>Chapter 6A framework has proven to provide insufficient flexibility to respond to changing market conditions and errors made by AER in the 2009 WACC review cannot be addressed and must continue to be applied to new TNSP determinations. The inability to depart from the WACC statement is having a material detrimental impact on TNSPs. The risks for investors can lead to reduced appetite for investment. This outcome is inconsistent with the RPP because it denies TNSPs an opportunity of recovering at least the efficient costs of meeting their regulatory obligations.</p> <p>There is evidence (in the Joint Expert Report) that Chapter 6 and 6A framework should have provided substantially higher cost of equity estimates during the impact of the GFC, but this was not provided to NSPs. This is not something questioned in the current framework.</p> <p>Problems with Chapter 6 framework have been exaggerated. In merits reviews, DNSPs have only argued for changes for gamma and MRP. The Gamma issue arose due to widespread dissatisfaction with the AER's handling of the issue in the 2009 WACC review. It was subsequently found by the Tribunal that the AER had made an error. The MRP was challenged because of continued instability in financial markets, and the widespread belief that investors were requiring materially higher returns than prior to the GFC.</p> <p>The AER is incorrect to assert that WACC parameters are slow to change and so reviews at 5 yearly intervals are sufficient. While this may be correct in normal situations, the experience over recent years is that the character of financial markets can change very quickly (especially with negative events).</p> <p>The cherry picking assertion is also contended. If changing one parameter means that a change to another is justified (where they are interrelated), then the AER is able to make that change – the flexibility is symmetric. The AER is also able to depart from the WACC statement wherever persuasive evidence exists and is justified. In addition, the Tribunal is also empowered to consider whether correcting for one error requires other matters to be addressed.</p>	5, 58, 59, 60, 61

Organisation	Issue	Substantive point being made	Page ref
Grid Australia	WACC - single framework proposal	<p>The process for setting WACC should include a WACC review every 5 years based on clear guidance in the rules. This process should combine transmission and distribution, and be subject to merits review. The case for including gas sector is less compelling. Decisions in electricity already provide a defacto precedent on relevant gas decisions. Electricity and gas sectors are sufficiently dissimilar that implementing a single regime will create implementation costs and uncertainty that will outweigh any prospective benefits.</p> <p>The AER's proposal to bring forward WACC reviews cannot address GFC type events. If the WACC review statement is binding, then the problems experienced during GFC with cost of debt will remain. The Joint Expert Report on WACC notes that the time required to review and replace a WACC review statement means that bringing forward the review would not be sufficiently quick to address the implications of sudden changes in capital market conditions.</p> <p>Chapter 6A framework should be aligned with current Chapter 6 framework. Chapter 6 framework provides access to merits review allows correction for material errors by the AER. The availability of merits review offers administrative efficiencies. If merits review of the 2009 WACC statement was available, then dissatisfaction with the AER's conclusions on gamma and the MRP could have been tested upfront through a single, efficient process. This would have avoided the need for piecemeal reviews in the context of individual determinations and the consequent perception that the merit review process was being overused.</p>	58, 59, 61-63
Independent Pricing and Regulatory Tribunal	WACC - cost of debt	There is merit in exploring the option of indexing the cost of borrowing of private businesses in setting return on debt allowance.	13
Independent Pricing and Regulatory Tribunal	WACC - cost of debt for government-owned vs. privately-owned NSPs	The EURCC analysis of government-owned NSPs' excessive profit is flawed. Competitive neutrality fees and corporate taxes are legitimate costs to NSPs that should be accounted for.	13
Jemena	WACC - general comments	Any decision regarding the possible expansion, curtailment or removal of merits review is a strategic policy decision that would more appropriately be addressed by the SCER and not through a rule change process.	75

Organisation	Issue	Substantive point being made	Page ref
Jemena	WACC - effectiveness of current rate of return frameworks	<p>Over the past few years, the NGR and chapter 6 of the NER have contained sufficient flexibility to cope with a major shock like the GFC. These rules are also flexible enough to allow the AER to reduce these parameters if the market conditions change and benchmark efficient funding costs reduce. The NGR and chapter 6 of NER have been flexible enough to deal with the fallout from the GFC as it unfolded and with AER errors in the SORI. There has been no robust case provided for major changes to chapter 6 of the NER or part 9 of the NGR, which have both only been in place for a few years.</p> <p>Clear limitations emerged in chapter 6A. The chapter 6A framework has been the worst-performed of the three frameworks currently in place. The chapter 6A framework does not allow for the flexibility that is required to respond to changing market conditions or AER errors in the SORI. Chapter 6A could benefit from mechanisms similar to those in chapter 6, which allows departures from parameters set in the SORI where persuasive evidence exists that such a departure is warranted.</p> <p>There must be a safety valve on AER WACC review decisions, as is currently provided for in chapter 6. Moving to the chapter 6A framework which lacks a safety valve increases the risk that regulatory error will go uncorrected and is likely to lead to rate of return outcomes that are unrepresentative of prevailing market conditions.</p> <p>The current trade-off in between prescription and discretion—as set out in chapter 6 of the NER and part 9 of the NGR—represents the right balance for electricity and gas, respectively.</p> <p>The AER already has sufficient discretion on setting the cost of capital parameters, including the DRP and the risk free rate, and that the persuasive evidence test does not unduly restrict that discretion. Therefore, there is no merit in the AER’s proposal to provide additional discretion by removing guidance on how the DRP and the risk free rate should be calculated. However, there is a case for additional guidance on how these parameters should be determined, as proposed in the ENA’s submission.</p> <p>Merits reviews will decrease in frequency now that the current rules have been interpreted.</p>	62, 63, 71, 72, 75, 79

Organisation	Issue	Substantive point being made	Page ref
Jemena	WACC - AER rate of return framework rule change proposal	It cannot be assumed that the cost of capital determined in a single 5 yearly review will be an appropriate benchmark for all gas and electricity businesses. A single 5 yearly review cannot take account of the significant differences that exist between the businesses, their markets, their services and the market conditions that might prevail at the time. Administrative ease is an inadequate justification for changing the method for determining such a critical regulatory element as the cost of capital.	63
Jemena	WACC - cost of debt	<p>There is no case for fundamental changes or the removal altogether of the rules guidance on DRP. However, minor incremental improvements may be desirable.</p> <p>There may be some deficiencies in the current definition of the DRP in the NER and that this definition may be unduly restrictive. The ENA submission in relation to proposed solutions to these deficiencies is supported.</p> <p>The EURCC's analysis of the cost of debt is flawed in that it compares the EURCC's estimates of the historic actual costs of debt of various firms against a forward-looking parameter set by the AER for a benchmark efficient firm.</p>	63, 73, 74
Jemena	WACC - cost of debt for government-owned vs. privately-owned NSPs	<p>The approach promoted by the EURCC, where prices are set to fund a different cost of debt and therefore a different cost of capital for a business depending on its ownership structure, conflicts with the long-established competitive neutrality principle. Such an approach could distort investment as consumers seek out supply of network services from government-owned businesses, whose prices will be forced lower.</p> <p>The original policy intent of the NER and NGR, is to focus on a benchmark efficient firm and to preserve the principle of competitive neutrality. The focus on a benchmark efficient firm recognises that each regulated business will have different strengths and weaknesses, and each will take a different path to improving its efficiency.</p>	73
Major Energy Users	WACC - timing issues	A 5 year WACC review would effectively mean that any WACC parameter decision would be in place for 10 year period. This creates risk if there are any changes after a parameter is determined and subsequently found to be incorrect.	20, 21

Organisation	Issue	Substantive point being made	Page ref
Major Energy Users	WACC - cost of debt	There is considerable variation between the spot value of CGS used to set the WACC for the following 5 year period and the actual values for the 10 year Commonwealth government bonds over the five year period. The methodology for developing the risk free rate should be reassessed with the view to setting the risk free rate at a value which is more representative. One approach might be to increase the averaging period used to establish the risk free rate used in setting the regulatory WACC calculation.	22
Major Energy Users	WACC - cost of debt for government-owned vs. privately-owned NSPs	Debt provided to government-owned NSPs is similar to the risk free rate that is used as the basis for WACC, which effectively means that government-owned NSPs are incurring a DRP of zero, whereas privately-owned NSPs are paying a somewhat higher DRP. The most efficient cost for the provision of debt is the lowest cost that can be achieved. If debt is provided by a state treasury corporation at near the risk free rate and this is the lowest cost possible, then this is the most efficient source of debt and this is the cost that the regulator should allow. For government-owned NSPs, the cost of the debt should be the cost the NSP actually pays. In the case of privately-owned NSPs, the cost of debt should be capped at a rate based on the efficient level which reflects the reality of debt provision with relation to a portfolio of sources and typical durations.	21, 22
Michael Cunningham	WACC - effectiveness of current rate of return frameworks	<p>Some of the AER's decisions on elements of the WACC were rejected by the Tribunal, such discriminating between Bloomberg, and CBASpectrum, and gamma. In each case the Tribunal's reasons were sound. However, there is legitimate concern about cherry picking because decisions that appear to be unduly in favour of regulated businesses will not be appealed. For example, although the AER found the most persuasive evidence indicated the equity beta for electricity infrastructure was between 0.44 and 0.68, it adopted a higher value of 0.8. The effectiveness of cherry picking relies on the existence of regulatory error.</p> <p>The experience to date suggests there have been regulatory errors and that merits reviews should not be removed. Other options should also be considered. The strong incentives for regulated businesses to pursue appeals and the scope for cherry picking that they present suggests that some reform to the decision-making frameworks appears needed.</p> <p>The NER are too prescriptive and detailed in regard to the methodology for determining the WACC. By forcing a formulaic approach, they strip out the important role of judgement, and encourage selective appeals against elements</p>	4, 5, 6

Organisation	Issue	Substantive point being made	Page ref
		within the formula. The merits review process may need reform to ensure that it does not simply represent another decision-maker having a different view.	
Michael Cunningham	WACC - AER rate of return framework rule change proposal	<p>The electricity and gas rules encourage the adoption of a preferred value for each parameter and calculation the WACC as if these parameters were known with certainty. Greater consideration could be given to taking the uncertainty of WACC parameter estimates into account in the process of combining those parameters. The Monte Carlo method is one approach. This may assist to separate the fact finding exercise of estimating WACC parameters, and their range of uncertainty, from the decision maker's role in using those facts to form a decision on the overall cost of capital.</p> <p>The effectiveness of the merits review process could be improved by providing the Tribunal with greater guidance on the scope of appeal. This includes guidance on the intended meaning of "unreasonableness" of a decision and the meaning of "facts".</p> <p>There are several options for consideration on the role of WACC reviews. One option is for the WACC to be determined periodically in a WACC review, but for the SOCC to be made subject to merits review at the time it is made. Another option is for the WACC review to establish certain parameters, such as the MRP, and equity beta, and leave other parameters, such as the risk free rate and DRP to be determined at the time of the determination/access arrangement. The second option may better balance the benefits of process simplification and administrative cost reduction against the detriments associated with inflexibility and risk the WACC may become too far out of line with market conditions.</p>	11, 12

Organisation	Issue	Substantive point being made	Page ref
Michael Cunningham	WACC -CAPM / nominal post tax prescription	<p>The AEMC should consider whether the methods for determining rates of return on capital for energy networks in Australia are meeting the regulatory objectives (NEO/NGO). More international benchmarking is needed. The CAPM/WACC method for estimating the cost of capital is not used exclusively by regulators overseas. The UK and Europe generally use this method, but the USA and Canada use different methods. Regulators in the UK have been actively considering alternative approaches to the CAPM/WACC for determining the rate of return. There now appears to be a move away from exclusive reliance on the CAPM, complementing this with simulation modelling and investor surveys. The USA is eclectic and historically has given most attention to the Dividend Growth Model. The Canadians, in a broad sense, use the historical utility sector return on equity, measured as a spread over the bond rate, and index this to current bond rates.</p> <p>While the nominal vanilla post-tax WACC formula is a valid method, it can be usefully complemented by other relevant analysis. The prescription of nominal vanilla post -tax WACC as the only method for determining the cost of capital may unnecessarily narrow the analysis and preclude the complementary use of the other types of analysis.</p>	12, 13, 14, 17
Michael Cunningham	WACC - cost of debt	Over-prescription may result in lack of flexibility and adaptability to new facts or risks that become relevant. The methods of raising debt may change, with less reliance on corporate bond issues. Other approaches to estimating the cost of debt could possibly provide further information or cross checks. The AEMC should consider modification of the rules to reduce unnecessary specificity and provide the AER with appropriate delegation to use its own judgement on the detailed aspects of methodology.	19, 20
NSW Business Chamber	WACC - cost of debt	The allowed return on debt for NSPs should closely reflect the actual cost of debt as proposed by the EURCC.	1

Organisation	Issue	Substantive point being made	Page ref
NSW Treasury	WACC - cost of debt	<p data-bbox="757 228 1686 252"><i>NSW Treasury Corporation (Tcorp) - attachment to NSW Treasury submission</i></p> <p data-bbox="757 288 1686 435">The aggregate debt of NSW utilities at the time of drawdown by the utility indicates that the average term of this debt is 9.8 years. Long term debt life is achieved using a combination of fixed rate and capital indexed loans. The long debt life is an important part of maintaining NSW's AAA credit rating, as well s being consistent with the long term economic life of regulated utility assets.</p> <p data-bbox="757 472 1686 770">Given the constraints of the Australian debt capital markets, accessing the required volume of long term funding is not always possible. The risk is then managed by spreading the borrowings and limiting the amount that needs to be refinanced at one point in time or over the short term. Under the current framework, the rate of return to NSPs is re-set to market rates every 5 years. Rates reset using an observation period that spans only a few weeks to represent the benchmark cost of the entire debt portfolio. From a debt management perspective, there are 2 key risks for the regulated NSP. The first is funding or refinancing risk, and the second is interest rate risk or repricing risk.</p> <p data-bbox="757 807 1686 1018">Regulators should provide the appropriate incentives and compensation for a prudently financed model utility. The proposal to shift to a 5 year debt cost parameter assumes that TCorp can always refinance of approximately \$24 billion in utility debts to 20 day periods every 5 years. The assumption of refinancing under CAPM ignores market realities. The assumption that regulatory debt costs should match NSPs actual debt costs also removes any incentive to manage debt costs efficiently.</p> <p data-bbox="757 1054 1686 1233">Ofgem and IPART have made changes to their cost of debt estimation. Ofgem approach is preferred as it is likely to significantly diffuse tensions around regulatory determinations. A mechanism that updates debt cost parameters within the regulatory period would closely reflect the model utility's benchmark funding costs, allowing prices to gradually adjust to any changes in market conditions.</p> <p data-bbox="757 1270 1686 1329">The risk free rate yield on 10 year government bonds is appropriate as it provides greater certainty and financiability than 5 year bonds.</p>	1, 2, 4, 5

Organisation	Issue	Substantive point being made	Page ref
NSW Treasury	WACC - cost of debt for government-owned vs. privately-owned NSPs	<p>The EURCC proposal to determine government-owned NSPs' cost of debt is not supported. It would result in:</p> <ul style="list-style-type: none"> • a fundamental breach of the CPA; • inappropriate discrimination between NSPs based on ownership; • taxpayers no receiving appropriate compensation for the risk of lending to NSPs; and • a reduction in allocative efficiency as a result of distortions in resource allocation. <p>The EURCC proposal also does not represent the relevant facts used to justify the rule change request. The EURCC claim that the profit from NSPs was 16.5% is incorrect. When the retail business profit is removed, the return falls to 5.5%. The EURCC also mischaracterises the government guarantee fee paid by NSW NSPs. These fees are not profits but compensation to the government for risk. In addition, the EURCC has erred in including Tax Equivalent Regime (TER) payments in their profit analysis. The TER payments are not profit, but equivalent to tax payments made by the private sector. The TER is applied to government-owned NSPs as part of competitive neutrality principles under the CPA.</p>	2, 4, 5, 6, 7
Queensland Department of Employment, Economic Development and Innovation	WACC - cost of debt	GFC has presented problems with the prescriptive approach to setting cost of debt. The solution should provide the right balance between the principles of flexibility, and providing sufficient certainty and predictability for NSP, their financiers and investors given the long term nature of investments. Some definition in the rules may be warranted to supplement the AER's proposed 5 yearly WACC review proposal.	3
Queensland Department of Employment, Economic Development and Innovation	WACC - cost of debt for government-owned vs. privately-owned NSPs	Cost of debt for government-owned NSPs should not be determined differently to privately-owned NSPs. Queensland Government is a signatory to the CPA 1995. Queensland government-owned businesses are required to operate in a commercially-oriented manner and compete with the private sector on the same basis. The EURCC's claim that government-owned NSPs have substantially lower debt costs is incorrect. A competitive neutrality fee is applied. To apply discriminatory arrangements for cost of debt would be in breach of the CPA.	3
Queensland Magnesia	WACC - cost of debt	Cost of debt methodology should be prescribed in the rules rather than left to the AER's discretion in its proposed periodic reviews. The allowed return on debt for NSPs should closely reflect the actual cost of debt as proposed by the EURCC.	2

Organisation	Issue	Substantive point being made	Page ref
Queensland Treasury Corporation	WACC - cost of debt	<p>Does not agree with the AER's conclusion that the current framework leads to systematic over-compensation for the cost of corporate debt. The NER definition of DRP is too narrow, and the AER has also taken a narrow interpretation. The combination of these two factors has led to the AER relying on a very limited range of data, and raising concerns that the DRP is not cost reflective.</p> <p>When a broader analysis of available data is undertaken, there is evidence that DRPs are not inconsistent with actual corporate debt costs, particularly when refinancing risks are taken into consideration. The AER's proposal is concerning to repeal the existing definition and replace it with a broad regulatory discretion could increase uncertainty for NSPs and their debt and equity providers, potentially making it more difficult to raise funds in increasingly risk-adverse capital markets.</p> <p>While there are a number of issues with the existing definition of DRP, including the lack of sufficient market data and uncertainty regarding the extent to which securities that are similar to the benchmark 10-year corporate bond can be considered, to some extent, recent decisions of the Tribunal have clarified the approach that the AER should take. These decisions found that the AER had been overly restrictive in its interpretation of the definition of DRP and, had it taken a different approach that may have alleviated some of the concerns around the lack of available data.</p> <p>Does not agree with the proposal to shorten the tenor of the regulated cost of debt from ten to five years. The EURCC's claim that a 10-year cost of debt over-compensates NSPs that have recently raised shorter-term debt does not account for the higher systematic risk borne by equity providers due to increased refinancing risk when NSPs are unable to raise longer-term funding. The regulated cost of debt for all NSPs should continue to be based on a 10-year risk-free interest rate and DRP. Although QTC does not agree with use of a 5-year tenor for the regulated cost of debt, the EURCC's proposal to use a 5-year moving average could be given further consideration.</p>	1, 11, 19, 21, 22

Organisation	Issue	Substantive point being made	Page ref
Queensland Treasury Corporation	WACC - cost of debt for government-owned vs. privately-owned NSPs	<p>There are sound reasons for continuing to apply the same RPP to government and privately-owned NSPs. The risks of investing equity and debt in an NSP are the same irrelevant of whether the investment is made by government or the private sector. The EURCC has not made a compelling case to depart from National Competition Policy and has overlooked that NSPs pay a competitive neutrality fee to deal with the differential in the cost of debt.</p> <p>The EURCC has incorrectly concluded that Queensland Government-owned NSPs are not responsible for managing their debt and, therefore, do not respond to regulatory incentives. QTC borrows funds in the domestic and international financial markets by issuing a variety of debt instruments. The majority of the funding is raised through QTC's benchmark fixed-rate bond lines. Shorter-term funding is raised by issuing discount securities and combining interest rate swaps with fixed rate bonds to create synthetic floating rate notes. Total state borrowings are spread across multiple bond lines with a wide range of maturity dates. The total cost of debt paid by an NSP is made up of a base interest rate (book interest rate), administration and capital market fees, and a CNF to Queensland Treasury.</p> <p>The actual cost of debt paid by an NSP reflects the interest rates associated with its past borrowing, refinancing and hedging transactions, and the average duration of the borrowings. The transactions initiated by an NSP do not impact the total cost of debt for the other NSPs or CSP borrowers.</p> <p>The proposed benchmark cost of debt equal to a 12 month average of daily market yields on 3 to 7 year state government bonds, which is to be re-calculated annually, to be inappropriate. In a competitive market, the expected return on an investment reflects the systematic risks associated with the investment. However, the EURCC's claim that this principle does not apply to monopolies is incorrect.</p> <p>There is no evidence of excessive profits for Queensland government-owned NSPs.</p>	2, 6, 8, 9, 10, 11

Organisation	Issue	Substantive point being made	Page ref
SA Department of Manufacturing, Innovation, Trade, Resources and Energy	WACC - AER rate of return framework rule change proposal	<p>Supports alignment in the manner in which the WACC is determined across transmission and distribution. NSPs should have access to an appeals mechanism, in particular, to any address identified errors.</p> <p>Fixing the value of WACC in advance of all the distributor determinations within the five year period of WACC reviews should improve consistency in the application of WACC, although it is recognised that market conditions will continue to influence WACC values over time.</p>	5
SA Department of Manufacturing, Innovation, Trade, Resources and Energy	WACC - cost of debt	The DRP should be set in the same manner for all NSPs so that it is consistent with best practice regulation, regardless of ownership structure of the NSP. Analysis of DRP values in South Australian regulatory determinations under the previous and current regulatory regime indicates that the methodology for determining DRP varies with each determination, with a contributing factor being a lack of data. Further analysis by the AEMC should seek to establish the principles by which the DRP would be determined.	5
Shopping Centre Council of Australia	WACC - cost of debt	The allowed return on debt for NSPs should closely reflect the actual cost of debt as proposed by the EURCC. Cost of debt methodology should be prescribed the rules rather than left to the AER's discretion in its proposed periodic reviews.	1
Southern Sydney Regional Organisation of Councils	WACC - cost of debt for government-owned vs. privately-owned NSPs	WACC should be close to the risk free rate for NSPs that are government-owned monopolies. Commercially derived WACC is inappropriate. The EURCC proposal should be implemented to determine cost of debt differently for government-owned NSPs and private NSPs.	3
SP AusNet	WACC - effectiveness of current rate of return frameworks	<p>Merits review has allowed the Tribunal to correct "gross errors of fact" by AER.</p> <p>Standard approach to setting WACC failed during GFC. This experience shows that a safety valve that permits departures from WACC SORI is essential. Chapter 6 framework flexibility is more preferable to deal with this whereas Chapter 6A framework is incongruous that errors cannot be remedied subsequently. Chapter 6A WACC framework does not provide certainty to private investors in the Australian utility sector. Gas rules provide good flexibility to deal with GFC type situations.</p> <p>The flexibility of Chapter 6 framework is symmetrical and balanced. It has been used by the AER and the businesses to adjust to changing market circumstances. Contrary to AER's assertion, most contested WACC issues have been settled once and not been subjected to continual appeals. The exception has been DRP.</p>	1, 8, 9, 10

Organisation	Issue	Substantive point being made	Page ref
		<p>DRP has been appealed a number of times because:</p> <ul style="list-style-type: none"> • there is continual uncertainty due to disruption of the debt market following GFC; • the AER not following previous Tribunal directions; and • the AER has made simple but fundamental errors of fact. <p>Additionally, the DRP rules setting out the methodology are not subject to the WACC process and, therefore the problems encountered cannot be ascribed to the Chapter 6 framework.</p>	
SP AusNet	WACC - AER rate of return framework rule change proposal	The AER's proposal of converging the three WACC frameworks does not allow the flexibility inherent in Chapter 6 of the NER and the NGR. The AER's proposal to bring forward WACC reviews cannot address GFC type events. If WACC review outcomes are binding, then problems experienced during GFC for cost of debt will still remain.	8
SP AusNet	WACC -CAPM / nominal post tax prescription	Current flexibility in the NGR should be retained for CAPM methodology.	9
SP AusNet	WACC - cost of debt	<p>The AER's rule change proposal provides it with unfettered discretion to determining DRP methodology. GFC has presented problems in estimating DRP, but it should also be acknowledged that other parameters on estimating cost of equity have also been affected. The current cost of equity does not reflect the true cost of equity faced by private NSPs. This is because short run MRP since the GFC is higher than 100 year average, and risk free rate is suppressed due to higher demand for Australian Government bond since the Euro debt crisis. Despite this, the AER has been cutting cost of equity post GFC.</p> <p>The EURCC proposal has merit, but details of the preferred option should be assessed carefully. EURCC proposal does not account for the actual debt raising practices of the private business. NSPs are more likely to maintain a portfolio of debt with varying maturity to minimise refinancing risk and not refinance their entire debt at the time of the regulatory determination. Majority of the debt is either fixed or floating rate debt which is swapped to floating rate at the longer maturity end. However, the mismatch between portfolio debt cost and cost of debt allowed in regulatory determination exposes NSPs to interest rate and credit margin risk. While NSPs can hedge against the interest rate risk by entering into fixed rate swaps at the time of the determination, it cannot hedge for credit margin risk. It is the credit margin risk that has been difficult to measure since the GFC. Consequently, at any point in time, the NSPs' total cost of debt is the sum of the risk free rate and the margin to swap as hedged at the</p>	11, 13, 14, 15

Organisation	Issue	Substantive point being made	Page ref
		<p>time of the determination plus the fixed credit margin which is the 10 year debt margin over the swap established at the time of issuing the debt. The credit margin risk cost the mismatch between the regulatory return on debt and the NSPs underlying cost of debt rather than the total.</p> <p>The EURCC has made an error in their analysis of the costs associated with term to maturity of debt. The CEPA report accompanying the EURCC proposal ignores the debt cost implications by confusing the remaining term to maturity with the term to maturity at issue of debt portfolio. Consequently, the EURCC's assumption that an efficient NSP would refinance 20% of its debt portfolio a year incurring the DRP associated with 5 year debt is incorrect. It will be impossible for an NSP to turn over such portion of their debt portfolio each year and maintain an investment grade credit rating because of the associated disproportionate and inefficient refinancing risk.</p> <p>Supports some elements of the EURCC proposal, such as backward looking approach with the Australian corporate bond benchmark concept. The proposal is more transparent and provides flexibility and predictability to deal with changing market conditions.</p>	
Tasmanian Council of Social Service	WACC - cost of debt for government-owned vs. privately-owned NSPs	The EURCC rule change proposal should be implemented because it will provide a fairer and more appropriate cost of debt allowance. Tasmanian NSPs are government-owned and have access to borrowing at cheaper government rates. Under the current rules, they are allowed significantly higher return on debt than is appropriate, which contributes to higher network prices for consumers.	2
Financial Investor Group	WACC - effectiveness of current rate of return frameworks	<p>There is no evidence that the persuasive evidence test at the time of distribution determinations has been misused. While DNSPs can and have debated WACC parameter values outside of the WACC review, the AER has not presented any evidence to show that this debate is unproductive. The success that gas and electricity businesses have had in appealing the AER's decisions indicates that on balance, there have been legitimate grounds for businesses to argue to depart from the WACC review outcomes and that the evidence to support this was persuasive.</p> <p>The AER has in the past applied the outcomes of the electricity WACC review in its gas access arrangement decisions citing the need for consistency between gas and electricity decisions. However, the AER has recently applied a value of 6% for the MRP in its access arrangement decision on Envestra's Queensland gas distribution network despite the fact that the current SORI value for the MRP</p>	32-36

Organisation	Issue	Substantive point being made	Page ref
		<p>is locked in at 6.5%.</p> <p>The AER has failed to consider the costs that have been avoided as a result of businesses having the opportunity to question the AER's decisions on WACC. Significant costs to regulated businesses have been avoided as a result of businesses contending the AER's decisions on WACC and pursuing merits reviews where necessary. A report by Ernst & Young estimates that the revenue impact to businesses at approximately \$725 million per annum. However, the true economic cost is the efficiency loss which flows from the distortion in investment decisions of the affected businesses. The costs of an incorrect rate of return therefore far outweigh the administrative costs of being in continual WACC review mode.</p> <p>There is no evidence that the persuasive evidence test has contributed to an asymmetric assessment of the overall rate of return. The AER has not provided any evidence to indicate that this risk has materialised. The AER's practice since issuing the 2009 WACC decision has been primarily to adopt the CAPM, post-tax WACC formula and SORI values for gas service providers as it does for electricity networks. The AER's decision to apply a similar approach has not resulted in appeals by gas service providers. It would therefore appear that at a practical level, the AER has not been constrained from achieving consistency at this level despite the different rate of return frameworks.</p> <p>The persuasive evidence test at the periodic WACC review is critical to achieving regulatory certainty. Without it, there would be no guidance on the threshold for the AER to exceed before implementing changes to parameter values.</p> <p>The problems which the AER has raised are not related to deficiencies with the rate of return frameworks of the electricity and gas rules. Rather, they reflect deficiencies in the AER's performance with respect to its ability to objectively assess the evidence that is put before it, and to demonstrate, via sound regulatory decisions, that it has exercised its regulatory judgment appropriately.</p>	

Organisation	Issue	Substantive point being made	Page ref
Financial Investor Group	WACC - AER rate of return framework rule change proposal	<p>Supports removing inconsistencies in the regulation of electricity transmission and distribution networks, and between gas and electricity networks. Where there are no sound administrative or economic reasons for such differences to exist and the differences result purely in inefficient duplication of effort, removal of such inconsistencies would lead to improved outcomes for regulators as well as NSPs. However, the AER has not provided any evidence on why the rate of return framework for gas service providers should be the same as for electricity networks.</p> <p>The AER's proposals will give it the discretion to set and lock in the rate of return for all regulated businesses, and will allow it to do so with significantly reduced levels of accountability. This is a fundamental change which is not warranted.</p> <p>There are very sound reasons for retaining the right to have decisions made subject to merits review. The indirect removal of rights to merits review on rate of return (and other) issues nor any proposals which would have the effect of increasing the AER's discretion is not supported. To date, the evidence strongly indicates that the AER has not demonstrated its ability to utilise its existing discretion appropriately. On this basis, there is no reason why the AER should be given wider discretion and to have this accompanied by significantly reduced accountability over its decisions.</p> <p>The AER's proposals will likely have a significant and negative impact on investor perception of the risk of investing in regulated assets. Due to the long term nature of infrastructure assets, investors require a reasonable degree of certainty in relation to the return on capital they can expect to receive in order to commit capital to such assets.</p> <p>There would be merit in considering a model which places a stronger obligation on the AER to test or cross-check calculated WACC outcomes against market evidence, perhaps not dissimilar to that which currently exists in the gas rules. This should apply both at the time it sets the parameters in the periodic WACC review and when deciding upon market-related variables at the time it makes its electricity distribution and transmission network determinations. The AER's recent draft decisions for Aurora Energy and Powerlink provide good examples of where attaching greater prominence to market evidence in regulatory decisions might assist in attaining more commercial outcomes on WACC.</p>	32, 34, 35, 37, 38, 40

Organisation	Issue	Substantive point being made	Page ref
		<p>Not opposed to retaining 5 yearly WACC reviews by the AER. However, there is a need to retain flexibility with respect to certain WACC parameters given the volatile market conditions which have prevailed since the GFC. This means that appropriate regard must be had to the need to achieve certainty by way of fixing the values of certain parameters in the periodic WACC review, as well as the need to ensure that the WACC that is subsequently determined set by the AER can respond to rapidly changing market conditions.</p>	
Financial Investor Group	WACC - cost of debt	<p>The AER currently faces significant challenges in measuring the cost of debt based on the benchmark characteristics which are prescribed in the NER. The problem relates to measurement, and has arisen largely due to the lack of data in the Australian corporate bond market on bonds with a tenor and credit rating matching the definition of the benchmark corporate bond in the NER.</p> <p>The problems associated with measuring the cost of debt are evident in the paucity of market data on 10 year BBB+ rated Australian corporate bonds. The evidence suggests that the current definition of the benchmark cost of debt in the rules was not inconsistent with the evidence on the debt tenor preferences of regulated NSPs at the time they were put in place. The GFC, however, has reduced access to long term debt and has necessitated shorter term debt issues for regulated NSPs.</p> <p>It is not clear whether shortened tenors are now a permanent feature of the Australian corporate bond market or whether this pattern reflects cyclical conditions. The former would imply that the problem is a systematic one and if so, it would be necessary to re-visit the definition of the benchmark cost of debt. However, the tenor element of the DRP is linked to the tenor of the nominal risk free rate, which in turn is set at 10 years based on widely accepted practice in calculating WACC on the basis of the CAPM. Consequently, changes to the tenor of the nominal risk free rate – which will remain unknown until the AER’s WACC review - will also affect the calculation of the expected cost of equity. This can have a material impact on the overall WACC and create significant uncertainties for investors. A shift to a shorter term nominal risk free rate has been a contentious issue for some time and the AER has not had any success to date in mandating its adoption. The Tribunal determined that a 10 year term should be used for the risk free rate throughout the CAPM formula.</p> <p>There are issues with the analysis presented by the AER on evidence that the allowed cost of debt, calculated by reference to the benchmark cost of debt in</p>	42, 44, 45, 47, 48

Organisation	Issue	Substantive point being made	Page ref
		<p>the NER, overstates the cost of debt that regulated electricity networks actually incur. In the current post-GFC environment, there can be significant re-financing risks associated with having to replace maturing debt more frequently. Such risk is ultimately borne by equity holders, who will raise their required return on equity to levels commensurate with the additional risk exposure.</p> <p>The AER has not provided any details about how it would seek to calculate the actual cost of debt. The EURCC's proposal is a move away from the current forward-looking model towards a historical based approach. A backward-looking approach has some merit provided that the concept of a 10 year "benchmark" (appropriately defined) is retained. However, to the extent a backward-looking approach is adopted, it would be necessary to ensure that the regulator would continue to commit to such an approach in a declining DRP environment.</p>	
Total Environment Centre	WACC - effectiveness of current rate of return frameworks	<p>The NER WACC provisions place too much emphasis on precedent, rather than prevailing market conditions and evidence. The WACC has proved to be well above the NSP's true cost.</p> <p>The AER has not used its discretion in the rules effectively to date. AER is not able to sufficiently correct unrealistic WACC settings.</p> <p>A WACC that does not reflect the true cost of NSP's borrowing adds a windfall to NSP's already considerable profits.</p>	1, 3, 4
Total Environment Centre	WACC - cost of debt	The EURCC rule change proposal supported compared to the AER proposal. The EURCC proposal better meets NEO by setting clear and fair rules from the outset to provide certainty and flexibility.	1
Total Environment Centre	WACC - cost of debt for government-owned vs. privately-owned NSPs	Government-owned NSP's cost of debt should be determined differently to privately-owned NSPs.	4
United Energy and Multinet Gas	WACC - general comments	It is important to set appropriate WACC in the context of promoting NEO/NGO. If WACC set too low, then efficient network investment will not occur as capital markets will not provide the necessary funding.	20

Organisation	Issue	Substantive point being made	Page ref
United Energy and Multinet Gas	WACC - effectiveness of current rate of return frameworks	<p>The AER's assertion that NSPs are cherry picking on WACC issues at the Tribunal appeal is rejected. It is not unreasonable for stakeholders to expect the AER to set all WACC parameters accurately and on an internally consistent basis. In a majority of cases, the Tribunal has found that the AER has made serious errors in relation to the WACC and has not complied with the rules. It appears that the AER is seeking to change the rules so as to provide them with more discretion so as to avoid appeals (ie bypass the merits review process) – and uses the guise of cherry picking by the businesses to do this.</p> <p>Tribunal appeals show that the AER has made a number of "errors of logic" or approach that needed to be corrected. It should also provide caution that providing the AER with more discretion and limiting access to merits review will lead to greater regulatory uncertainty and undermine investor confidence.</p> <p>Merits review is a fundamental pre-requisite for effective independent regulation. The appeal process should therefore be regarded as a normal part of the regulatory regime, rather than evidence of regulatory failure. The scope and frequency of merits reviews will decline in the future as precedents have now been established by the Tribunal in a number of areas and all parties still gaining experience in the interpretation and application of the rules.</p>	21, 22, 23
United Energy and Multinet Gas	WACC - AER rate of return framework rule change proposal	<p>Changes proposed by the AER will give it too much discretion and remove access to merits review. The AER has made many WACC errors that had to be corrected by the Tribunal. Giving the AER additional discretion will undermine investor confidence and increase the business risk and WACC.</p> <p>A one-size fits all approach to WACC may have the benefit of reducing the AER's resource requirements, but it runs the risk of determining a WACC that does not reflect the prevailing market conditions. These risks substantially outweigh the resource costs. Concerns of being in constant WACC review mode should not be a justification to remove scrutiny or to seek administrative ease.</p> <p>The AER's proposal to lock in WACC parameters will not meet the NEO as it may either result in WACC that is inefficiently high or low. The AER's case for increased regulatory discretion and removal of access to merits review is not established. Its proposed rules would only increase regulatory risk contrary to the NEO.</p>	20, 23

Organisation	Issue	Substantive point being made	Page ref
United Energy and Multinet Gas	WACC - cost of debt / DRP / EURCC proposal	<p>The EURCC has made an erroneous comparison of “weighted average margin” on debt issued by privatised NSPs (which it calculates to be 181 basis points) and the DRP determined by the AER (circa 385 basis points). The comparison is misleading because the EURCC calculates the 181 basis point margin with reference to the Bank Bill Swap Rate, whereas the AER allowance of 385 basis points is a margin over the (lower) risk free rate.</p> <p>The CEPA recommendation of using Australian corporate bonds for benchmark has merit. The 5 year rolling average approach is also appealing, but CEPA’s proposal to adopt a wide range of credit ratings from A to BBB is problematic. EURCC has not established why a simple average of the A to BBB rated bonds using Bloomberg’s Fair Value Market data will better achieve the NEO than the existing rules. Furthermore, it cannot provide consistency in relation to the assumed level of gearing and the value of the equity beta. It is questionable whether such a range is consistent with a benchmark approach to setting the WACC where a single set of consistent assumptions are required. For example, gearing assumptions and the value of equity beta must be consistent with the assumed credit rating. A credit rating of A implies a much lower level of gearing than a credit rating of BBB, which in turn implies different values for the equity beta. Inconsistent assumptions across these WACC parameters will not produce a reliable WACC estimate.</p> <p>Despite CEPA’s conclusion that the DRP for should be based either on a calculated corporate bond index or on the fair market value curves published by Bloomberg, EURCC’s proposed Rule makes no mention of using Bloomberg data. CEPA’s conclusion that Bloomberg fair value yield curves should be used does not sit well with the EURCC’s criticisms of their use in their rule change proposal. Given the complexity and potential controversy in estimating the DRP, it is incumbent on a rule change proponent to propose amendments that minimise uncertainty and ambiguity.</p> <p>The EURCC does not explain how its annual DRP indexation will be implemented in practice. Its proposal for updating the DRP annually is based on Ofgem’s approach that has yet to be implemented.</p>	25, 26, 28

Organisation	Issue	Substantive point being made	Page ref
United Energy and Multinet Gas	WACC - cost of debt for government-owned vs. private owned NSPs	Applying a lower cost of debt to government-owned NSPs would breach the competitive neutrality principle. Over the longer term, this approach will lead to material differences in network charges across the NEM. The EURCC incorrectly concludes that breaching this principle has no effect on competition because customers are unable to avail themselves of the services of a competitor. New generators and industrial/ commercial loads are able to make locational decisions in response to factors such as network charges. The EURCC's proposal will distort network prices and create a competitive advantage for customers and generators in government-owned networks. Over the longer term, sustained distortions in network prices will affect the location decisions of industrial / commercial loads and generation. Transmission and distribution network investment will also be distorted. Economic activity will tend to shift from states with privately-owned networks to those with government ownership. All of these outcomes are contrary to the NEO and the purpose of the competition policy reforms undertaken in in the 1990s.	25
Victorian Department of Primary Industries	WACC - general comments	The ability to depart from the parameters in the WACC review at each distribution determination was provided because of the pre-existing differences in WACC parameters across jurisdictions.	10
Victorian Department of Primary Industries	WACC - effectiveness of current rate of return frameworks	As the first cycle of revenue determinations for the DNSPs is almost complete, there does not appear to be any rationale for continuing to allow the parameters to be departed from as part of a revenue determination. Persuasive evidence test creates uncertainty. Undue weight should not be placed on consistency with previous regulatory outcomes at the expense of setting parameters that are appropriate or otherwise in accordance with the interests of stakeholders.	10, 11
Victorian Department of Primary Industries	WACC - AER rate of return framework rule change proposal	There appears to be no valid justification for having different NER and NGR provisions. Integrating WACC reviews for TNSPs and DNSPs will result in a more efficient process. Persuasive evidence test should be removed to allow AER to only have regard to the previously adopted value or method and the NEO.	10, 11
Victorian Department of Primary Industries	WACC - cost of debt	Current rules are too prescriptive and do not accommodate the changes in the financial markets. A more flexible approach might be to include principles in the NER and determination of the parameters as part of the WACC review. Cost of debt allowance should not reflect actual costs because it is characteristic	11, 12

Organisation	Issue	Substantive point being made	Page ref
		of a cost of service economic regulatory regime, which will provide no incentive for the NSPs to obtain a cost of capital that is less than the WACC decision. However, EURCC's proposal that the return on debt for privately-owned NSPs be based on an index of investment grade corporate debt issued in Australia warrants consideration as it may provide incentives for NSPs to control their debt costs.	
WA Office of Energy	WACC - effectiveness of current rate of return frameworks	In transitioning to the NGR, the WACC provisions from the Code were intentionally left unchanged in the NGR to ensure that rate of return was not restrictive. The recent appeals by gas businesses are the result of businesses establishing the limitations of the regulator's discretionary powers.	2
WA Office of Energy	WACC - AER rate of return framework rule change proposal	The AER's proposed changes to the NGR ignore the administration of the national gas regime by the ERA. The AER has not provided conclusive evidence that a 5 year review will provide greater certainty to the regulatory regime. It is more likely to inhibit the regulator to make decisions during times of market volatility. The regulator risks making WACC decisions that will not reflect prevailing market conditions.	1
WA Office of Energy	WACC -CAPM / nominal post tax prescription	Opposed on codification of post-tax WACC and CAPM. No material benefits stated by the AER and the proposed rules will undermine the ERA's independence and established methodologies on these issues.	2

Part IV Summary of issues about regulatory determination process

Organisation	Issue	Substantive point being made	Page ref
ActewAGL Distribution	Process - other	Given the timing of the ACT and NSW determination for the next regulated control period which will commence on 1 July 2014, and the time required to prepare NSP proposals, the current rules should apply to the NSW/ACT 2014-2019 DNSP regulatory determination.	3, 4
AEMO	Process - submissions on submissions	Agrees with AER proposal - allows AER to draft their decision accurately and within the appropriate timeframe.	2
AEMO	Process - confidential information	Agrees with AER proposal - enables stakeholders to engage more effectively in the regulatory determination process and ensures the process is consistent with the AEMC's original intention.	2
APA Group	Process - submissions on submissions	<p>Does not agree with AER that service provider's ability to make submissions incentivises them to not provide a complete regulatory proposal. Regulators are only required to place more weight on the service provider's proposal than with submissions. Concerned AER's curtailing rights of service providers to provide information to the regulator and stakeholders that is relevant to review process. Considers provision of public submissions and further information contributes to transparency and good decision-making.</p> <p>Also, making the subjective distinction between submissions on issues that are 'common' between proposals and those that are 'shared' between proposals creates uncertainty in the process and regulator's decision-making, with implications for the conduct of merits review proceedings which must be based on material properly before the decision-maker.</p>	35, 36
ATA	Process - submissions on submissions	Supports AER proposal	2

Organisation	Issue	Substantive point being made	Page ref
ATA	Process - confidential information	<p>Supports AER proposal - rules currently afford the DNSPs inappropriate rights to restrict the disclosure of information that is important for the AER and other stakeholders to view in order to be able to assess the reasonableness of their claims.</p> <p>For example, ATA has experienced problems with being able to engage in the AER process for determining charges for new excluded services for smart meters under the Victorian AMI program, due to confidentiality issues. It was not the AER, but the ATA who found miscalculation errors and false assumptions made in United Energy's submission to the AER, which were not marked confidential - this is in contrast to similar information marked as confidential by other DNSPs.</p> <p>Another example was Jemena, Citipower and Powercor's refusal to disclose assumed timing details and volume of service orders to support their cost estimates, which ATA cannot understand why these were classified as confidential.</p>	2, 3, 4
Aurora Energy	Process - submissions on submissions	<p>The proposed solution is inappropriate - it reduces transparency in the regulatory process through removing a DNSP's ability to respond to public submissions on its revised regulatory proposal.</p> <p>The fundamental issue is the shortness of time allowed for the NSPs to lodge a revised regulatory proposal and the AER to complete its consideration of submissions - it would seem more appropriate to alter the rules to allow more time.</p>	13, 14
Aurora Energy	Process - confidential information	<p>Does not agree with substituting "identify" with "indicate" to address the AER's problem. The AER has not provided analysis of the extent of the problem caused by its inability to disregard confidential information. Disclosure of confidential information could place DNSPs at a disadvantage in business negotiations and exploit intellectual property, may impact stock prices of listed companies. The AER's proposal would result in business loss of negotiating power/control of IP, or disregard of material information affecting expenditure/revenue.</p>	14
Aurora Energy	Process - time for WACC reviews	<p>Agrees with AER's assessment of the issues - the AER should be allowed sufficient time for a proper review.</p>	15
Aurora Energy	Process - material errors	<p>Agrees with AER's assessment of the issues.</p>	15

Organisation	Issue	Substantive point being made	Page ref
Aurora Energy	Process - frameworks and approach paper	The AER has not demonstrated the benefit in reducing opportunities for stakeholder input on incentive schemes that have a large impact on future revenues. Agrees with AER's mismatch concern between service classifications and control mechanisms. However, the framework and approach paper is not binding upon either AER and DNSPs which provides a ready solution.	15
Aurora Energy	Process - timeframe for uncertainty	Agrees with AER's assessment of the issues.	16
Aurora Energy	Process - consequential amendments	The AER proposes to determine certain matters associated with the making of a distribution determination, rather than "approve" or "decide". This will give the AER more control over inputs to the revenue and expenditure forecasts - not certain that the policy intention of NEM was for the AER to dictate NSP revenues. The AER's role is to only ensure expenditure proposals are efficient, return on investment rates are reasonable and commensurate with the business operating in a free, competitive market.	16
Aurora Energy	Process - other	The AER's proposals to "determine" a proposal, expenditure forecasts and WACC parameters would result in the AER avoiding the need for extensive submissions with NSPs - this places the de facto responsibility for network planning and maintenance upon the AER and would fall outside the policy directions for the NEM.	18
Ausgrid	Process - submissions on submissions	Ausgrid's planning processes are less influenced by the AER proposal on NSP submissions on regulatory proposals. Supports and adopts the ENA's submission.	8, 34
Ausgrid	Process - confidential information	Ausgrid's planning processes are less influenced by the AER proposal on NSP submissions on restriction on considering confidential information. Supports and adopts the ENA's submission.	8, 34

Organisation	Issue	Substantive point being made	Page ref
Ausgrid	Process - frameworks and approach paper	<p>Supports the ENA's analysis and proposal for a more efficient and streamlined process of the framework and approach paper stage. The current provision creates the potential for a mismatch between particular service classifications and the form of control to apply to that service, because there is no flexibility to change the control mechanism. Agrees that the ability to move away from the framework and approach paper should apply to both service classification and form of control. Agrees for a need to balance between certainty and flexibility of service classifications, but not how the AER proposes to balance this.</p> <p>Concerned that the AER proposal inappropriately limits the DNSP's ability to request, and the AER's discretion to determine, to move away from the framework and approach paper.</p> <p>DNSPs should be allowed to propose any persuasive material to support the move from the service classification and control mechanism and for the AER to consider its proposal. Assessing whether circumstances were foreseeable (as the AER proposes) is too subjective, difficult and does not provide the right outcomes e.g. pending judicial decision on scope of distribution services, where the outcome may be foreseeable, should not be excluded.</p> <p>Preferred solution is to maintain the DNSP's ability to seek and AER's ability to consider the DNSP's request to move away from the service classification in the framework and approach paper, as well as amending the rules to extend this ability to the control mechanism where there are persuasive arguments or material to move away.</p>	34, 35
Australia & New Zealand Energy and Water Ombudsman Network	Process - submissions on submissions	The current process denies other stakeholders the opportunity to consider and respond to the detailed and often critical information contained in these network submissions, as they are all due at the same time. Supports any change that would allow consumer groups to more meaningfully engage in the process.	2
Australian Paper	Process - submissions on submissions	NSPs' strategic behaviour contravenes the standards expected of a transparent and accountable regulatory process and the AER's proposal to deal with this seems to be a reasonable and proportionate response.	25
Australian Paper	Process - confidential information	Similar comments to NSP submissions on regulatory proposals. Supports the AER placing less weight on confidential information provided to it by NSPs.	25

Organisation	Issue	Substantive point being made	Page ref
Brotherhood of St Laurence	Process - submissions on submissions	The AER's proposal will help ensure that the AER has sufficient time to review NSP proposals and submissions and for all stakeholders, including lower-income households, to have meaningful input into the regulatory determination process.	12
Brotherhood of St Laurence	Process - confidential information	The AER's proposal is likely to force NSPs to adopt a more reasonable approach to classifying confidential information in their regulatory proposals, and enhance stakeholder response to these proposals.	12
Consumer Action Law Centre	Process - confidential information	The sheer quantity and large amounts of information classified as commercial-in-confidence renders the information useless for external stakeholders to scrutinise and prevents a balanced process. Consumers are further limited by resources and time to appropriately address this information.	4
Consumer Utilities Advocacy Centre	Process - submissions on submissions	The AER proposal is a common sense approach to removing one avenue currently used to provide information in the most strategic manner possible.	4
Consumer Utilities Advocacy Centre	Process - confidential information	Similar to CUAC's comment on NSP submissions on their regulatory proposals. All information should be provided to the regulator on the presumption that it is public - stakeholders claiming confidentiality should provide grounds to the AER on why it should be confidential and avoid public scrutiny that would have ensured transparency.	4
Economic Regulation Authority	Process - submissions on submissions	The AER's proposed changes to the regulatory decision making process have strong merit. Believes that the ability of regulated entities to make submissions on their own revenue and regulatory proposals, and to make any information provided as part of those submissions confidential, frustrates the achievement of a transparent, efficient and timely regulatory process. There is a particular issue about ensuring stakeholders are able to receive timely information and to be able to comment. This problem was very apparent in the Authority's recent determination on the Dampier to Bunbury Natural Gas Pipeline.	2
Economic Regulation Authority	Process - confidential information	See Economic Regulation Authority's comment on NSP submissions on regulatory proposals.	2
ENERGEX	Process - time for WACC reviews	Concerned with the timing of the WACC review - any extension should be cognisant of the timing for submission of regulatory proposals to ensure sufficient lead time to review, assess and seek expert analysis of the AER's decision.	4

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - frameworks and approach paper	<p>Agrees there are problems with the framework and approach process which is an administrative burden for NSPs. However, the framework and approach paper may duplicate other processes such as on incentive schemes, and have further limited use with transitional issues regarding control mechanisms and service classifications.</p> <p>The framework and approach paper may still be necessary e.g. if a change in control mechanism is determined and time is required to allow businesses to prepare a regulatory proposal in response to that determination.</p> <p>Propose greater discretion to AER and NSPs to limit the framework and approach paper scope or bypass it - that is, ENA proposes that the framework and approach paper should be made optional and initiated by either the AER or NSPs, or otherwise bypass and maintain the previous arrangements for control mechanisms, service classifications and incentive schemes.</p>	20, 63, 64

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - submissions on submissions	<p>Does not agree with AER characterisation of NSP gaming the process because the submissions relate to matters raised in the AER's draft decision.</p> <p>For procedural fairness and robust decision-making, the submissions process provides NSPs with the opportunity to test and respond to the AER's analysis and reasoning (seen for the first time by NSPs). There may also be material information to the draft decision that arises after submissions close (but before submission of the revised proposal).</p> <p>Some reasons include external material circumstances to the regulatory process (e.g. the Victorian Bushfire Royal Commission), inability for NSPs to collect all relevant evidence to respond to AER draft decision (especially over the Christmas period), a new AER approach developed or new information relied upon by the AER that was not subject to consultation, and alternative approaches or evidence raised by stakeholders. These circumstances are supported by the Gilbert & Tobin report accompanying the ENA submission.</p> <p>The AER currently has discretion to place less weight to information submitted late and NSPs are strongly incentivised to submit earlier to maximise the chance of their information being considered. The AER also has discretion to place material weight if there are material circumstantial changes, new evidence, or responding to another stakeholder. Restricting the AER discretion is therefore unnecessary, and would only increase regulatory error.</p>	20, 56-60

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - submissions on submissions	<p>Experience indicates that NSPs may need to make further submissions in a range of circumstances, not limited to the one circumstance contemplated by the AER (i.e. commenting on differences between an NSP's proposal and that lodged by another NSP):</p> <ul style="list-style-type: none"> - to respond to matters raised in the draft decision that are not the subject of revisions to the DNSP's regulatory proposal - in particular, DNSPs wish to make further submissions in support of their original proposal in light of the AER's reasons for its draft decision, which allows the AER's evidence and reasons for rejecting the NSP proposal to be properly tested - in certain cases, this has exposed flaws in the AER's evidence or resulted in AER changing its approach between draft and final decisions; - the six-week timeframe for responding to the draft decision and revision of the regulatory proposal is difficult to meet, given that it runs over the Christmas/New Year period which limits NSP resources in collecting information and preparation of the revised proposal - DNSPs have had to provide an initial submission with their revised proposal followed by supporting submission on the due date for submissions on the AER draft regulatory determination; - DNSPs provide new information arising after submission of the regulatory proposal e.g. Victorian Bushfire Royal Commission final report came ten days after revised proposals were due; - DNSPs respond to stakeholder submissions where some raise significant new issues or proposed alternative methods for calculating various inputs e.g. EUAA proposed alternative methods for determining cost of debt and greater use of benchmarking for expenditure forecasts; and - DNSPs respond to new AER material or analysis introduced late in the process after the draft decision. <p>A list of case examples were provided of DNSPs previously providing submissions after the revised regulatory proposal where most would have been rejected under the AER proposal. The AER proposal would preclude submissions at the time of the revised proposal, to the extent that those submissions supported positions in the original proposal, and to any reasoning/evidence relied upon by the AER in reaching its preliminary decision and limiting the revised proposal to the AER's decision.</p>	Att D: 4-7

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - submissions on submissions	<p>The AER proposal is overly prescriptive and unduly restrictive, given the circumstances in which DNSPs may wish to provide submissions. Quality of the AER's decision-making would be reduced because there may be new and relevant information identified by the NSP, which would not be considered by the AER. Further, the AER often updates various inputs prior to making its final decision without consultation with NSPs or other stakeholders.</p> <p>For procedural fairness, NSPs should be entitled to respond to reasoning and evidence against its proposal by other stakeholders, especially with respect to appropriate level of costs for NSPs. Allowing NSPs and other stakeholders to scrutinise the AER's analysis and evidence allows for proper testing of its probative value and ensures as robust an analysis and evidence to form the determination, as opposed to opaque analysis and evidence risking flaws in evidence and reduction in robust decision-making.</p> <p>Reducing NSP opportunity to provide relevant information in the regulatory determination process does not address AER's concerns of deficient consultation and time for AER decision-making.</p> <p>If submissions are being withheld from the original submission (to be later submitted on the draft), then AER should use its existing discretion to give less weight to late or out-of-scope submissions where there is no sufficient justification and ought to have been included with the NSP regulatory proposal. This means instances where the information is relevant can have regard to.</p>	Att D: 7, 8

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - submissions on submissions	<p>NSPs cannot be expected to pre-empt or foresee what will be put against their regulatory proposal so in effect cannot be given an incentive to respond to the "unknown" in their initial regulatory proposals - NSPs being able to respond to the draft decision allows NSPs to consider and assess the reasoning and evidence the AER relied upon in its draft regulatory determination and identify deficiencies or errors.</p> <p>The AER's existing discretion allows it to give less weight to late information and the Australian Competition Tribunal under the merits reviews ability to refuse to grant merits reviews if NSPs conduct results in delaying the AER's decision-making - this incentivises NSPs to fully disclose all relevant information as early as possible.</p> <p>For reasons of procedural fairness, NSPs should be given the opportunity to respond to matters against their regulatory proposals and raised in the draft decision beyond aspects where it revises its proposal - this could expose errors or deficiencies in the AER's reasoning and evidence, and ensures appropriate and proper consideration of the final regulatory determination. Precluding any further NSP submission (other than revisions to the regulatory proposal) potentially diminishes the robustness of the regulatory process - the AEMC Chapter 6A rule determination and the recommendations of the MCE Expert Panel on Energy Access Pricing were cited to support this.</p>	Att D: 8, 9

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - submissions on submissions	<p>The AER's proposal may not be a proportionate solution and operate to reduce the efficacy and robustness of the decision-making process. NSPs propose an alternative process to address the AER's perceived concerns while promoting robust decision-making: augment the consultation process; and include greater scope for stakeholder participation and/or safeguards to ensure that the AER has sufficient time to consider all submissions.</p> <p>NSPs propose a process of submissions and cross-submissions on the draft decision and revised regulatory proposal (like by New Zealand Commerce Commission), where provision for submissions on the draft decision and revised proposal by all stakeholders (including the NSP) would remain and there would additionally be an opportunity for cross-submissions shortly after this. Cross-submissions could be limited to responding to matters raised in primary submissions and could therefore be due a short time after primary submissions (say, two weeks afterwards). This would allow all stakeholders to consider/respond to the reasoning/evidence with respect to the AER draft decision, and both the NSP's regulatory proposal and further NSP submissions responding to the draft decision, and allow the NSP to respond to any third party submissions on its regulatory proposal. This may require adjustment to the decision-making timeframe for an extra two weeks for cross-submissions. However, there may still be late submissions and the AER should use its existing discretion to deal with late submissions on a case-by-case.</p>	Att D: 9, 10

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - submissions on submissions	<p>To improve stakeholder participation in the consultation process, this would be better achieved through greater use of AER's existing discretions and/or alternative amendments to the submission procedure. Proposes an alternative process of cross-submissions to address issues transparency issues in the determination process. The new submission/cross-submissions stage following the draft decision and revised regulatory proposal would better address AER's concerns, without changing the level of AER discretion. This has been applied by NZ Commerce Commission. However, late submissions may still arise and AER should be given the discretion to determine whether weight should be placed on these. ENA's proposal would require an additional two-week period for cross-submissions following submissions on the revised regulatory proposal. Further time (e.g. two weeks) would also be required for the revised proposal to be submitted. The NSP would also submit its revised regulatory proposal with its submission on the draft decision. Overall, this would greatly improve stakeholder engagement.</p>	20, 59-61
Energy Networks Association	Process - confidential information	<p>Gilbert & Tobin did not find any instances in the AER's electricity distribution and transmission determinations of examples where the AER has referred to any restriction on its ability to test the veracity of confidential information due to confidentiality restrictions, and has considered itself "unable to determine the weight" that should be afforded to that information, and whether it has found NSPs have made excessive confidentiality claims. Further, no public evidence has been found of the AER indicating confidentiality claims being excessive and exercising powers to require disclosure of that material. The only example found was the AER expressing concern with confidential information (not in the regulatory proposal) in a dataset that the AER erroneously made public from EnergyAustralia.</p> <p>Business information from a NSP compelled by statute to disclose in revenue determinations is more likely to be confidential by increased risks and sensitivities, involving forward-looking cost and revenue data, than information voluntarily provided by another stakeholder. The current regulatory framework provides strong protections for the NSP for this reason. Therefore, treatment of confidential regulatory proposals from NSPs is different to treatment of confidential submissions from other stakeholders.</p> <p>The AER can weight the probative value of information (regardless of its source) by reference to whether the AER is satisfied that the information has</p>	Att D: 14-19

Organisation	Issue	Substantive point being made	Page ref
		<p>been thoroughly tested and is reliable. Legislative authority is not required, but is an obvious and necessary part of any decision-making process where the veracity of information needs to be established.</p> <p>For instance, the AER has previously indicated that where it may be restricted from testing the veracity of information that is subject to a claim for confidentiality it may be necessary to give less weight to the information in making its decision e.g. the AER's 2007 AER Regulatory Test Dispute Resolution Guidelines and 2009 AER Access Arrangement Guideline.</p> <p>However, the AER's ability to weigh confidential information on what it is unable to test is not proposed in the AER proposal - the AER proposal appears to give the AER unconfined discretion to assign weight to confidential information where it has not formed a view on its reliability, and the AER could disregard relevant information due to its status as confidential and not because it lacked relevance, reliability or probity. The AER proposal would compromise the AER's ability to reach a correct and preferable decision.</p> <p>The AER's existing powers to compel disclosure of confidential information is superior to the AER proposal as it allows the AER to disclose information in the public interests and directly addresses the AER's problem of transparency. In contrast, the AER proposal indirectly encourages disclosure by altering the AER's substantive decision-making processes.</p> <p>An alternative solution is the use of limited disclosure to third parties via non-disclosure agreements which have been used by regulators in other industries including the ACCC - the AER has never approached an electricity NSP and proposed such a solution. The AER has previously recognised (in TransGrid's 2007 regulatory determination) that it is inappropriate to apply a fixed rule to weighting confidential information and limited disclosure regimes are possible.</p>	

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - confidential information	<p>Does not agree with the AER that the NER is deficient in relation to confidential information. NSPs are appropriately protected and the AER is able to test veracity of confidentiality claims under the current NER and NEL in a number of ways. The AER has the ability to request NSP consent to disclose information (NEL s28X) or unilaterally decide to disclose information if it is of the opinion that the public benefits outweighs the detriment of disclosure (NEL s28ZB).</p> <p>Other alternatives to the AER proposal is to include limited disclosure regimes where NSPs and interested parties enter into confidentiality arrangements regarding sensitive information (for example, the ACCC arrangement in telecoms regulatory processes).</p> <p>Further, the current different treatment of NSP and third party confidentiality claims are appropriate - NSPs information are costs and other business information which may be highly confidential; whilst third party information impacts on NSP's costs and allowable revenue going forward which needs to be interrogated by the NSP. However, third parties' commercial interests may also be directly affected and should be protected and not discounted.</p> <p>The amount of confidential material supplied by the NSP will not be changed if the AER's discretion is increased - instead, it would undermine the integrity of the decision-making process where the AER can disregard or give less weight to probative and confidential information.</p>	61, 62

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Energy Networks Association	Process - time for WACC reviews	<p>Agrees that inconsistency between transmission and distribution consultation procedures is undesirable and creates difficulty for complex and highly contentious issues requiring extension of time. Agrees with the proposed amendment to clauses 6.5.4(a) and 6A.6.2(f). WACC review process would be even more significant if rate of return issues are removed from the determination process (which is not supported by ENA). Supports the AER proposed 100-day cap for the timeframe between draft and final decisions, with no ability to extend the timeframe. Certainty in the final decision for NSPs is as equally important as providing sufficient time for AER consideration of all evidence. Therefore leaving the final decision open to extension in the WACC review may result in uncertainty on its application to the regulatory determination process which may follow shortly afterwards.</p> <p>Alternatively, the AER currently has discretion to engage in extensive consultation prior to issuing a draft decision e.g. an initial positions paper, industry forums, and/or informal conference or expert panel process. This could potentially reduce the workload between draft and final decisions by addressing key issues earlier in the process.</p>	67, 68
Energy Networks Association	Process - material errors	<p>Does not consider there is any deficiency in the current NER. There is a prescribed list of errors in Chapter 6 that the AER can refer to in making corrections, which provides the appropriate balance between clerical/typographical error corrections and providing certainty and finality in the regulatory determination process. Expanding the list would be equivalent to a broad ex post amendment of regulatory determinations, leading to lack of finality and uncertainty. There is no evidence provided from the AER of any other errors to justify expanding the existing scope.</p> <p>ENA's Gilbert & Tobin report does not support the notion that the AER or ACCC did not have the power to revoke and substitute any past determinations - this is yet to be tested by the AER. There have been previous situations where the AER should have invoked its existing powers to amend distribution regulatory determinations, but did not do so (e.g. the AER conceded to the Australian Competition Tribunal that it should have corrected a material error in its calculation of the DRP). Therefore, this does not support a need to expand the scope when the AER does not use its existing powers.</p>	65, 66

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - material errors	Agrees for a need to align Chapter 6 and Chapter 6A. Chapter 6 providing for correction of errors adequately strikes the balance for discretion to correct errors, with the need to preserve the finality and certainty of the final determination. Any expansion of the existing discretion at the expense of finality and certainty would not be appropriate. Rule 6A.15(a) should be aligned with rule 6.13(a) in matters that may be corrected for in a regulatory determination.	66, 67
Energy Networks Association	Process - material errors	Does not consider any practical difference between "amending" and "revoking/substituting". Therefore it should not be amended.	66

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - material errors	<p>Not clear from the AER proposal that the existing drafting in the NER is deficient in that the AER does not identify any "error" in a distribution or transmission determination that it considers it would have been appropriate to correct, but that it did not have the power to do so.</p> <p>Gilbert & Tobin reviewed the history of the application of the power to revoke and substitute for material error under Chapter 6A and its predecessor provision in the National Electricity Code and distribution determinations - the review does not indicate that there have been circumstances in which the ACCC or AER considered that it would have been desirable to revoke and substitute a determination, but it did not have the power to do so.</p> <p>There are examples where NSPs have requested the AER to revoke and substitute, but the AER did not do so e.g. 2010 Victorian distribution determination where the AER made a calculation error of the debt risk premium (yet to be determined in the merits review).</p> <p>The AER proposal would remove the constrained list of deficiencies and introduce significant uncertainty as to the potential operation of the revocation and substitution power.</p> <p>The AER proposal to Chapter 6 removes the kinds of material errors or deficiencies that may be corrected in order to expand the circumstances, but these circumstances are unknown. Extending these material errors to deficiencies makes it also unclear. This leads to uncertainty on the scope of the AER's power to revoke and substitute.</p> <p>The AER proposal to amend new regulatory determinations would remove existing safeguards where it may not be subject to a merits review - this is in contrast to revoking and substituting regulatory determinations which could be subject to a merits review.</p> <p>The AER's proposed amendment to rule 6A.15 with respect to the AER revoking and substituting a regulatory determination which was based on false and misleading information to the extent necessary was originally intended by the AEMC to encourage TNSPs to provide accurate information to the AER. The absence of such a restriction is likely to be implied by the NEO and RPP. This issue does not appear to be of particular importance (relative to the other AER issues raised on revocation and substitution).</p>	Att D: 23, 24, 25

Organisation	Issue	Substantive point being made	Page ref
Energy Networks Association	Process - timeframe for uncertainty	<p>Agrees that the current fixed timeframes may not be sufficient in all cases. Future cost pass through applications of increasing complexity may warrant more detailed and careful consideration. The AER's proposal does not address the problem properly as the AER would have broad discretion to extend the timeframe to 100 days without scope to extend further if cases are sufficiently complex, consultation with stakeholders is required, further information is required, or an associated process needs to be completed.</p> <p>A better option would be to consider a "stop the clock" approach to address the AER's problem. The "stop the clock" approach would limit the extended time to the time for the AER receives information after its request, receipt of submissions following initiation of consultation, or conclusion of an inquiry following initiation.</p>	20, 68, 69
Energy Retailers Association of Australia	Process - submissions on submissions	Supports AER proposal so NSPs will no longer be able to make submissions on their own regulatory proposals or on the AER's draft decisions. Otherwise, NSPs withholding information until submissions are due clearly runs counter to the intent of the regulatory process.	2
Energy Retailers Association of Australia	Process - confidential information	Supports AER to have discretion to give 'such weight as it considers appropriate' to confidential information contained in regulatory proposals, given that the information has not been made publicly available and publicly scrutinised. NSPs operating in monopoly markets should need to keep very little information in a regulatory proposal confidential, unless it relates to the terms of commercial third party contracts.	2, 3
Energy Retailers Association of Australia	Process - timeframe for uncertainty	Supports AER proposal for yearly reopener provisions and contingent projects framework, subject to AEMC addressing deficiencies in the pricing approval/notification process. The proposal would exacerbate pricing risk for retailers.	2
Energy Users Association of Australia	Process - submissions on submissions	Supports the AER proposal - the AER provided clear evidence of strategic behaviour by NSPs in their provision of information to the AER. The NSPs have undermined the lodgement of revenue or regulatory proposals by making submissions that should have been included in their proposals. This contravenes the standards expected of a transparent and accountable regulatory process.	25, 26
Energy Users Association of Australia	Process - confidential information	Supports the AER proposal - monopoly businesses should have limited reasons for providing confidential information.	26

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Energy Users Rule Change Committee	Process - submissions on submissions	Supports the AER proposal - the AER provided clear evidence of strategic behaviour by NSPs – particularly DNSPs - in their provision of information to the AER. Such strategic behaviour contravenes the standards expected of a transparent and accountable regulatory process and the AER's proposals to deal with this seem to be a reasonable and proportionate response.	iv, 22
Energy Users Rule Change Committee	Process - confidential information	Supports AER proposal - this will help to provide appropriate incentives on NSPs to not abuse the opportunity to provide information in confidence to the AER.	iv, 22
Ergon Energy	Process - submissions on submissions	<p>The AER proposal is not equitable as DNPs have one opportunity to review and respond to the AER's assessment of their proposals while the AER has two opportunities. This reduces the number of opportunities for DNSPs to respond to new information, alert the AER to any errors that it may have made. DNSPs should also be given the opportunity to respond to submissions from other stakeholders, and respond to the AER's draft decision. This will provide procedural fairness and robust decision-making. Due to limited timing in the NER (six weeks and during Christmas-New Year holiday period), DNSPs may not be able to collect all evidence and have enough key resources to respond in its revised regulatory proposal.</p> <p>Supports ENA's proposal for a new process of submissions and cross-submissions on the draft decision and revised regulatory proposal.</p>	15, 16
Ergon Energy	Process - time for WACC reviews	Supports AER proposal for extending the timeframe, but should consider timeframe for lodging regulatory proposals - allows businesses to review, assess and seek expert analysis on the AER decision. The AEMC previously acknowledged providing sufficient time for NSPs with a one-off month extension for submitting regulatory proposals for 2010-15 revenue determination process, following the extension for the AER for the 2009 WACC review.	16
Essential Energy	Process - other	Does not completely agree with the problems characterised by the AER. Considers some minor amendments could enhance the efficiency of the regulatory process and is currently considering these further.	8

Organisation	Issue	Substantive point being made	Page ref
ETSA, CitiPower and Powercor	Process - confidential information	<p>Does not agree with the AER's proposal. An overwhelming majority of the material in support of the businesses' proposals were made publicly available. The existing regime strikes the correct balance between preserving the confidentiality of sensitive information and ensuring transparency in decision-making.</p> <p>The existing regime correctly distinguishes between confidential information from NSPs and other stakeholders. The NSPs' confidential information relate to key information to the AER's determination of efficient expenditure forecasts. Risk of regulatory error would increase if the AER is given discretion to place less weight on confidential NSP information as the AER would not adequately take confidential information into account, which would reduce efficient investment and recovery of efficient costs.</p> <p>The AER's information gathering powers provide the AER with confidence in confidential information from NSPs via the regulatory information notice.</p> <p>The AER's range of existing powers allow the AER to disclose confidential information from NSPs to test its veracity and provide for transparency in decision-making e.g.: if the public benefit to disclose information outweighs the detriment of disclosure; the information provider gives written consent; the information is provided to a person authorised to perform or exercise a function or power on behalf of the AER; and if the information is disclosed that would conceal the identity of the person whom the information relates to.</p>	35, 36, 176-179
ETSA, CitiPower and Powercor	Process - material errors	<p>Rejects the AER's proposal as it would significantly reduce regulatory certainty and eliminate finality in decision-making (citing the AEMC 2006 Transmission Rule Determination). Due to the uncertainty as a result of the proposal, incentives are reduced on regulated NSPs to take measures to reduce expenditure and potential to deter efficient capex on networks and efficient increases in opex. Although the current rules may lead to certain errors being uncorrected, limiting the AER's ability to correct material errors is also likely to create advantages and disadvantages to the DNSP. The businesses were not sure why the AER is proposing to be able to "amend" distribution determinations when it can use its current power to "revoke" and how this would reduce uncertainty. DNSPs consider that the current rules have clearly specified and limited scope to revoke distribution determinations provide greater regulatory certainty.</p>	38, 39, 190-192

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ETSA, CitiPower and Powercor	Process - timeframe for uncertainty	<p>Given the complexity and close reliance on administrative processes (such as government inquiries), the businesses consider that cost pass through applications will generally take longer than 40 business days to consider and consult upon. The AER's proposal for the AER to be able to extend to 100 business days may prevent the AER from determining efficient levels of investment and efficient costs associated with operating the network, due to a restricted timeframe.</p> <p>They propose a draft decision to be published and consulted upon by the AER, and a 'stop the clock' mechanism to be introduced to allow the AER to exclude from the timeframe for waiting on information from third parties or DNSP or a relevant administrative process that would impact on the relevant pass through event.</p>	40, 196, 197
ETSA/CitiPower/Powercor	Process - submissions on submissions	<p>Does not object to the AER proposal to prevent DNSPs from making submissions on their own initial regulatory proposals, but reject the AER's suggestions that they undermined the NER by making submissions after the revised regulatory proposals which should have been included in the revised proposals. Further, the AGS drafted amendments were based on the AER's perceived problems.</p> <p>The AER proposal would deny the DNSPs the opportunity to make submissions in respect of key parts of the determination relating to them before that determination is made. NSPs would be deprived the opportunity to inform the AER of issues relevant to the AER determination, preventing the AER to be in a position to make a full and thorough assessment, and leading to increased risk of regulatory error. Further, the AER has the power not to take into account material that is not provided to it in a timely fashion where it is reasonable to do so. This would not likely to contribute to the NEO, and inconsistent with the RPPs, NEL ss16 and 28ZC, and procedural fairness principle, as well as the AER's other proposed rule changes (i.e. replacing the 'propose-respond' model for opex and capex with a 'receive-determine' model, the AER is not tied to making a determination in response to the NSP regulatory proposal). Neither the AER nor AGS has addressed the inconsistencies of the AER proposal with the NEL.</p> <p>The NER contemplates the ability to provide submissions in addition to the revised regulatory proposal in response to the draft regulatory determination. The NSPs' legitimate reasons for making submissions include: NSPs providing information that was not available at the time the NSP lodged its</p>	33-35, 161-170, 173-175

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		<p>regulatory proposal; and the NSP may not be able to obtain information from third party experts in sufficient time until after the 30 business day timeframe for submitting the revised regulatory proposal. The 30 business days is not sufficient for NSPs to prepare a response and mitigate regulatory error. An example was provided where CitiPower and Powercor did not have sufficient time to provide supporting material from third parties regarding early refinancing costs.</p> <p>The AER can decide when to publish its draft regulatory determination which impacts on the time the AER has to consider DNSPs' revised regulatory proposals and submissions, and making its final regulatory determination e.g. for the Victorian and SA distribution regulatory determinations.</p> <p>Firstly, if greater consultation is desirable, they propose amendments to the NER to allow DNSPs to provide submissions to the AER with respect to their revised regulatory proposals for the following circumstances: responding to stakeholder submissions on the initial regulatory proposal; supporting the initial regulatory proposal; responding to aspects of the AER's draft regulatory determination; and regarding any changed circumstances or other developments not reflected in the initial regulatory proposal. Secondly, they propose extending the period for DNSPs to prepare their revised regulatory proposals from 30 to 40 business days, given the insufficient time for DNSPs to prepare all material to respond to the AER draft determination within 30 business days. Thirdly, they propose introducing a 10-business day cross-submission' period following the closing of submissions on the draft regulatory determination and revised regulatory proposal, in which all stakeholders are permitted to make submissions on issues raised in any other submissions to made to the AER.</p>	

Organisation	Issue	Substantive point being made	Page ref
ETSA/CitiPower/Powercor	Process - time for WACC reviews	<p>Agree that a consultation period of longer than 80 business days is required in order to reduce the scope for regulatory error when the AER undertakes a WACC review. However, the additional time should not be solely reserved for the AER. The extended timeframe should increase both the timeframe for the making of stakeholder submissions and the making of the AER's final decision, to also reduce regulatory error. This will facilitate a thorough analysis of the materials which is more likely to ensure the NSPs recover their efficient costs of capital.</p> <p>The NSPs' ability to respond to the AER's proposed WACC has been compromised due to the Christmas/New Year period which limits its resources, including engaging with third party experts. The businesses propose (in addition to the AER's proposed increase to the total time for making the AER final decision after the NSP proposal is released): increasing the total time for the making of stakeholder submissions from 30 to 45 business days; and exclusion of the period between 25 December to 14 Jan from the time attributed as "business days".</p>	39, 193, 194

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ETSA/CitiPower/Powercor	Process - frameworks and approach paper	<p>Agree that the AER should have some flexibility to revisit the formulaic expression of the control mechanism for each determination. The AER already has the power to make such amendments and has amended the control mechanism formulas in past determinations. If there is a desire to clarify this, the type of control mechanism that will be applied in the determination prior to the lodging of the regulatory proposal needs to continue to be locked in. The AER proposes to fundamentally change the type of the control mechanism which would create an unacceptable degree of regulatory uncertainty for DNSPs (reason SCO locked this in), potentially impose a prohibitive administrative burden on DNSPs (including temporal constraints in place after regulatory proposals are submitted), and may constrain DNSP ability to properly assess any new proposed type of control mechanism as DNSPs need time to consider whether any new control mechanism does not result in unintended and perverse outcomes and whether it impacts on other parts of DNSP regulatory proposals (e.g. ESCOSA's implementation of a 'Q factor' impacted on other parts of ETSA's regulatory proposal).</p> <p>Agrees with the AER to reduce inefficient consultation, but proposes for removal of potential future inefficiencies where the framework and approach paper would only be published in certain circumstances where: no distribution regulatory determination applies to the NSP; the DNSP owns, controls or operates dual function assets; or either the AER or DNSP gives notice to the other 25 months before the end of the current regulatory control period that a control mechanism and/or service classification materially differs from the current control mechanism and/or service classification, or that adjustment for the fair sharing of the profits from the provision of services (other than standard control services using assets forming part of the RAB between DNSP and users) may be required.</p>	36-38, 181-185
Financial Investor Group	Process - other	<p>Welcomes changes to the regulatory processes that would assist the AER in improving its performance. However, this is subject to views of its members' asset companies and associations familiar with the regulatory determination process, and a change in the approach of the regulator.</p>	60
Grid Australia	Process - submissions on submissions	<p>The AER proposal is overly prescriptive and restrictive - increases the risk of it having insufficient key network business information to make a decision and regulatory error, leading to an otherwise avoidable appeals process.</p> <p>The current framework provides NSPs with sufficient discretion to provide</p>	6, 7, 74-77

Organisation	Issue	Substantive point being made	Page ref
		<p>relevant information to the AER to inform its decision making. The AER also currently has the discretion to consider any submission after the time for making submissions has expired - this disciplines NSPs to comply with formal timeframes for proposals and submissions whenever possible. Therefore, it is not clear what benefit can be obtained in prescribing a requirement to ignore a submission when the AER already has the discretion to do so.</p> <p>Does not agree with the AER's characterisation of the problem and proposed solution. There are legitimate reasons for network businesses providing information outside the formal regulatory proposal periods e.g. new information arises relating to capex or opex; further clarity sought from the AER on the AER's reasons for its decision; other stakeholder issues requiring the NSP's response; and NSPs commenting on the AER's draft regulatory determination.</p> <p>The AER proposal restricts the NSPs' ability to provide the regulator with robust information or new information as it comes to hand, especially following a draft regulatory determination, and will increase the risk of regulatory error and diminish the quality of regulatory decision-making. Errors in regulation can lead to significant costs being incurred, particularly if they are material enough to warrant the use of the merits review process.</p> <p>The AER has previously made regulatory errors by refusing to consider relevant late information. For example, TransGrid tried to present late information to the AER Board on AER calculation errors on forecast operating costs, but the AER had refused to consider. This matter was taken to the Australian Competition Tribunal who made a decision in TransGrid's favour.</p> <p>Supports ENA's proposed solution for a process of submissions and cross-submissions. Further, the 30 business day timeframe to respond to the draft regulatory determination and prepare the revised regulatory proposal is extremely tight (especially over the Christmas/New Year period) and should be extended for the benefit of TNSPs and other stakeholders. The AER should also be required to release all information that the AER uses to support its draft regulatory determination, in order for network businesses to provide complete revised regulatory proposals.</p>	

Organisation	Issue	Substantive point being made	Page ref
Grid Australia	Process - material errors	<p>Agrees with the need for certainty in finality of regulatory determinations, but the AER proposal provides an inconsistent approach.</p> <p>The AER has not experienced constraints on its ability to revoke and substitute a regulatory determination. Therefore, this would not require the need for the AER to also be able to amend regulatory determinations.</p> <p>Further, allowing the AER to amend a regulatory determination means that the part of the regulatory determination affected by the error would not be subject to the same type of process as the original regulatory determination. This also means that the safeguard (ie, merits review) would be removed.</p> <p>Supports proposed alignment between distribution and transmission relating to correcting material errors. However, such changes should not be made absent a full consideration of the implications such actions and the differences that already exist between the frameworks.</p> <p>Agrees with the AER's proposed amendment to clause 6A.15(c) to align this with the corresponding provision in Chapter 6 of the NER.</p> <p>Agrees with correcting for errors only to the extent necessary preserves the finality and certainty of the final determination.</p> <p>Does not support the AER's proposed extension of the scope of matters subject to a revocation and substitution of a regulatory determination to a "deficiency" (in addition to "material error"). The AER would have increased discretion, leading to decreased certainty and finality of the regulatory determination, and increased risk for NSPs.</p>	7, 77-79
Grid Australia	Process - timeframe for uncertainty	<p>Agrees some assessments are complex and may need more time under the current framework. However, considers the AER proposal to be over-prescriptive and restrictive - no flexibility to properly assess cases requiring more than 60 business day delay and for cases requiring more than 100 days. For example, it may relate to a cost pass through event that is dependent on another body decision. Instead, supports the ENA's proposed "stop the clock" approach.</p>	80, 81
Jemena	Process - submissions on submissions	<p>The current regulatory process does not provide enough time or opportunity and created difficulties for the AER, DNSPs and other stakeholders to consider all the material the AER may take into account when making its determinations. Agrees that current regulatory process can be amended to improve transparency and consultation, and therefore robust decision-</p>	88, 89, 91, 92, 93, 98, 99, 102

Organisation	Issue	Substantive point being made	Page ref
		<p>making.</p> <p>DNSPs have valid reasons for making submissions after revised regulatory proposals. The issue is the need for all stakeholders to have an adequate opportunity to review and comment upon information which the AER will rely for its final regulatory decision, including analysis conducted by or for the AER itself.</p> <p>Jemena describes its engagement with the AER during the determination process to support its argument that it was committed to actively inform and participate cooperatively in the process, and to put information to the AER in the timeliest manner. There was no evidence that it strategically withheld information.</p> <p>The AER relied on substantial additional material that it commissioned after its draft regulatory determination but did not consult with stakeholders. Proposes changes to the regulatory process to address this: AER holding a public forum to discuss additional information; allow stakeholders to express their views on additional material; extend the timeframes for all stakeholders to respond to AER draft regulatory determinations to allow stakeholders an adequate opportunity to consolidate their supporting material in reply; a requirement on the AER to announce when it might decide to adopt a different approach, data or expert report to that previously indicated, and to consult on that different approach; a time period in the regulatory process for stakeholder to cross-submit on one another's submissions; and a requirement that "completeness" in NSP submissions should also apply to AER draft decisions.</p> <p>The AER proposal to prescribe the process limits the AER's discretion to not consider late submissions/proposals, which may be highly relevant, and is unnecessary and counterproductive. This will lead to increased regulatory error.</p> <p>Agrees with ENA that an alternative means would be to introduce a new process of submissions and cross-submissions on the draft regulatory determination and revised regulatory proposal to allow stakeholders the opportunity to be consulted upon. The AER would still need the discretion to consider late submissions.</p>	

Organisation	Issue	Substantive point being made	Page ref
Jemena	Process - confidential information	<p>The current NER and NEL appropriately provide protection for DNSPs' confidential information and allows the AER to test their veracity.</p> <p>Where the AER considers that information is not genuinely confidential, the AER currently can request consent from the DNSP to disclose or unilaterally decide to disclose if it is of the opinion that the detriment of disclosure does not outweigh the public benefit. The AER has adequate scope to address a claim for confidentiality of information submitted by all stakeholders, including DNSPs, and therefore the current provisions do not need revision.</p> <p>In contrast to other stakeholder submissions, DNSPs are currently compelled to submit extensive core business information that is confidential to support its proposal.</p> <p>The AER proposal would allow the AER to potentially ignore significant confidential information, and not reduce the amount of NSP confidential information.</p> <p>The AER may be experiencing administrative problems which can be dealt with in other ways such as a public forum.</p>	89, 90, 94, 99, 102
Jemena	Process - time for WACC reviews	<p>Agrees inconsistency between transmission and distribution consultation procedures is unnecessary - may cause difficulties with respect to WACC reviews requiring time extension. Agrees with the timeframe to be capped at 100 days between draft and final decisions.</p> <p>NSPs need certainty on when the final decision will be made. Suggests introduction of further consultation steps prior to the draft decision where key issues can be consulted upon, in order to meet the 100-day timeframe.</p>	91, 100, 103

Organisation	Issue	Substantive point being made	Page ref
Jemena	Process - material errors	<p>The current NER preserves the finality of decisions, provides certainty for all stakeholders, and empowers the AER to re-open a determination if needed. In particular, rule 6.13(a) provides a clear and targeted list of errors that may be corrected for, while preserving the finality of the determination.</p> <p>Agrees there is a problem with the Chapter 6A provisions for correcting errors in that the AER's capacity to amend or substitute a decision to correct for material errors should be limited to the extent necessary to correct for those errors.</p> <p>Not clear from past experience and no evidence that the AER's ability to revoke and substitute a regulatory determination has been obstructed to correct for errors. Therefore, no need to allow AER to amend a regulatory determination.</p> <p>Describes Jemena's experience that the AER has been reluctant to use the opportunities that it has under rule 6.13 e.g. after the AER determination on 29 October 2010. Therefore, it is unclear why the AER's current discretionary power should be broadened.</p> <p>The AER proposal would create significant uncertainty and unacceptable risks to NSPs on when AER may use its discretion to amend a regulatory determination for material errors or deficiencies.</p>	90, 94, 95, 99, 100, 103
Jemena	Process - frameworks and approach paper	<p>Agrees with AER that the current framework and approach paper stage has limited use and could be streamlined. The time for this stage could be better resourced to earlier finalisation of the RIN.</p> <p>In Jemena's experience, the framework and approach paper added little value to the preparation of its regulatory proposal in respect of service classification. Jemena had disagreed with the proposed service classification in the framework and approach paper which was later changed.</p> <p>Greater discretion could be given to the AER and DNSPs to initiate and reduce the scope of the framework and approach paper. Agrees with ENA that the F&A paper should be optional and initiated by either the AER or NSP, and bypassed if not initiated and maintain the status quo with respect to control mechanisms, service classifications and incentive schemes.</p>	90, 94, 99, 102

Organisation	Issue	Substantive point being made	Page ref
Jemena	Process - timeframe for uncertainty	<p>Agrees certain pass through assessments in future may be complex and need more time for AER to address them. Agrees fixed timeframes may not be sufficient for all cases.</p> <p>However, the AER proposal does not adequately address the problem. Extending the timeframe to 100 days may not be sufficient for cases requiring further time. Supports ENA's proposed "stop-the-clock" mechanism for such cases.</p>	91, 100, 103
Major Energy Users	Process - submissions on submissions	Strongly agree with the AER proposal. There is an increasing trend of NSPs lodging significantly increased claims (coupled with extensive documentation) in revised applications and in responses to the AER draft regulatory determinations. In some cases revised (increased) claims have been submitted subsequent to the closing times of stakeholder submissions. This places undue pressure on the AER to greatly reduce timeframes and denies stakeholders the ability to scrutinise these claims and to provide any input to assist the AER in its assessments. This implies that: NSPs are using this practice as a form of regulatory gaming; or NSPs have not devoted sufficient resources to preparing its application and/or the NSP is unable to properly identify its future costs in its initial application (thereby signifying that much of the data in the applications might be incorrect).	9, 23
Major Energy Users	Process - confidential information	Agrees with the AER proposal. Frequent and extensive use of "confidential" information has prevented stakeholders from better involvement in the regulatory determination process and in scrutinising the relevant issues. Information involving related party transactions should be exposed for public scrutiny, which has been typified by the recent Victorian electricity distribution regulatory determination.	8, 23
Major Energy Users	Process - time for WACC reviews	Agrees with the AER ability to extend the timeframe on certain activities other than regulatory determinations.	8
Major Energy Users	Process - material errors	Agrees with the AER ability to accept, modify or reject material errors	8
Major Energy Users	Process - timeframe for uncertainty	Agrees with the AER ability to extend the timeframe on certain activities other than regulatory determinations.	8

Organisation	Issue	Substantive point being made	Page ref
Michael Cunningham	Process - confidential information	<p>Public would benefit from the AER publishing the basic financial accounts of the regulated NSPs and accompanying statistical information. Stakeholders would be better informed, leading to improved submissions and analysis.</p> <p>There is a discrepancy between the amount of information published by the ACCC for businesses subject to price surveillance (CCA 2010 Pt VIIA) and the limited information published by the AER (NEL s28ZB and NGL s329). There should be no difference in the degree of transparency.</p> <p>Suggests the AER: establish a policy on confidential information outlining the kind of information it would be of public benefit to disclose; and that policy should provide for the annual publication of standardised financial and statistical information similar in detail to that produced for the airports.</p>	24, 25, 27
Origin Energy	Process - confidential information	Supports the AER's proposal for less weight to be given to NSPs' commercially sensitive information. Third parties should be able to review all information from NSPs to support their regulatory proposals. Rarely should the information be commercially sensitive because the NSPs are monopoly businesses.	3
Public Interest Advocacy Centre	Process - confidential information	Supports the AER proposal. This would reduce the incentive for NSPs to claim confidentiality, contribute to a more transparent process, provide greater accessibility to information for effective and efficient engagement, and allow the AER discretion in weighting confidential information contained in submissions and proposals equally.	1, 2
Southern Sydney Regional Organisation of Councils	Process - submissions on submissions	Supports the AER proposal. Similar comments as with respect to confidential information. When NSPs provide substantial information in its submission, PIAC cannot make an informed decision and cannot make the most cost effective and efficient use of its resources.	1, 2, 3
Southern Sydney Regional Organisation of Councils	Process - confidential information	SSROC is at an information disadvantage to have a meaningful role in the process when key information is withheld in the process as commercial-in-confidence. It experienced this in the NSW street lighting pricing review. Urges that a complete street lighting cost model and all key financial and technical assumptions are publicly released for future pricing reviews so it can be reviewed by the public.	2, 3

Organisation	Issue	Substantive point being made	Page ref
SP AusNet	Process - submissions on submissions	<p>As the NSP's regulatory proposals are the core document under review, other submissions will always comment or raise new issues with respect to these. NSPs should be able to allowed to respond to new information, especially in correcting errors of fact.</p> <p>In SP AusNet's experience, NSPs also provide late submissions after becoming aware of late changes to the AER approach on a matter that have not been previously raised that are controversial and material.</p> <p>The AER proposal would: remove scrutinisation of late regulatory decisions; deny natural justice for NSPs; and allow AER to make fundamental changes after its draft regulatory determinations without stakeholder consultation. For example, in the recent EDPR process AER consulted on two material issues that were not flagged in the draft regulatory determination - this consultation allowed businesses to respond on changes that had a material cost in value.</p> <p>The AER already appears to have discretion in placing weight on late information. Endorses industry association changes that provide clarity on the AER's ability to reject new information without making wholesale changes to the regulatory determination process.</p>	21, 22
SP AusNet	Process - confidential information	<p>The AER already appears to have discretion with regards to the weight to be given to information provided confidentially. SP AusNet has always accommodated AER requests to present information in a form that can be released wherever possible. Unaware of any instance where SP AusNet has refused information being published where it has been requested by the AER (although it has made presentational changes where necessary – for instance, redaction to prevent the identification of customer information).</p>	22
SP AusNet	Process - frameworks and approach paper	<p>Endorses the industry associations' alternative proposed process rule changes which address issues with respect to the framework and approach paper requirements.</p>	22
SP AusNet	Process - timeframe for uncertainty	<p>Endorses the industry associations' alternative proposed process rule changes which address issues with respect to the timeframes for complex pass through applications.</p>	22
SP AusNet	Process - other	<p>Many of the process issues are of the AER's making rather than inherent in the framework itself.</p>	3

Organisation	Issue	Substantive point being made	Page ref
United Energy and Multinet Gas	Process - timeframe for uncertainty	The process for re-opening a distribution determination will create additional administrative costs and project delays. The AER proposal for extending this timeframe to make a decision by up to 100 business days for re-opening determinations is impractical and may impose substantial costs on customers. This would be a direct consequence of the AER taking responsibility for capital expenditure forecasting.	9, 10
Victorian Department of Primary Industries	Process - submissions on submissions	Agrees that voluminous material during determination process does not allow for effective consultation, but concerned the AER proposal may not allow for due process. Considers the main impediment to effective consultation is the volume of information from NSPs. Proposes an amendment to the timeframe for the determination process to allow for the introduction of an mandatory issues paper from the AER early in the process (say, prior to the draft regulatory determination), which summarises key information provided in regulatory proposals and identifies key issues to be addressed. The Victorian economic regulatory experience found stakeholders were engaged more effectively.	12, 13
Victorian Department of Primary Industries	Process - confidential information	Agrees that the AER should have discretion to place lesser weight on any confidential information that is not subject to public scrutiny. The AER needs to take care in this discretion as there could be genuinely commercially sensitive information from NSPs.	13
Victorian Department of Primary Industries	Process - time for WACC reviews	Supports the AER proposal to align timing of WACC reviews for TNSPs and DNSPs for efficient process. Supports the AER's proposed extension from 80 to 100 business days for WACC reviews due to complexity and materiality of that review.	11, 14
Victorian Department of Primary Industries	Process - material errors	Agrees with the AER's identified issues and proposal.	13
Victorian Department of Primary Industries	Process - frameworks and approach paper	Does not support removing the requirement to consult on the application of each incentive scheme in the framework and approach paper - concerns with the level of consultation as part of the regulatory determination process, would be further reduced if this was removed. Supports the pragmatic approach of allowing the service classification and form of control mechanism to be amended after the framework and approach paper.	13

Organisation	Issue	Substantive point being made	Page ref
Victorian Department of Primary Industries	Process - timeframe for uncertainty	Supports the AER proposal to change the timeframe for making determinations on cost pass through events, contingent projects and capex reopeners to 40 business and a maximum of 100 business days. This addresses more complex decisions requiring an extended timeframe.	14
Victorian Department of Primary Industries	Process - consequential amendments	Agrees with the AER's consequential amendments to process matters in the NER arising from the AER's proposed changes.	14

PART V Summary of other issues

Organisation	Issue	Substantive point being made	Page ref
ActewAGL Distribution	Miscellaneous issues - transitional issues	It proposes that the current rules should continue to apply for the 2014-19 ACT determination. It is concerned by the procedural fairness caused by the uncertainty about the rules that will apply due to the timing of the proposed changes for the ACT and NSW NSPs.	2,4
APA Group	Miscellaneous issues - merits review	APA Group is concerned that the AER's Rule change submission does not acknowledge the clear implications of its proposal for merits review of cost of capital decisions. This requires a separate process, conducted at the ministerial level.	22,23
Ausgrid	Miscellaneous issues - transitional issues	It is particularly concerned by the transitional arrangements the AER has proposed, which if adopted would apply to Ausgrid's upcoming 2014-19 distribution determination. The key principles here are the need for certainty and predictability in the regulatory framework and procedural fairness in the application of the rules. The AER has proposed significant changes to the decision making framework for determining capital and operating expenditure forecasts as well as the process for determining the regulated cost of capital. This introduces significant uncertainty for Ausgrid in preparing its regulatory proposal for the 2014-19 distribution determination.	1
Ausgrid	Miscellaneous issues - transitional issues	It considers that any changes to the rules which could impact on the preparation of our regulatory proposal should not apply to the upcoming regulatory determinations of NSW and ACT distributors. It submits that the AEMC should not subject Ausgrid to any changes to the Rules regarding WACC and instead let the current rules apply to NSW and ACT.	10, 20
Australia & New Zealand Energy and Water Ombudsman Network	Miscellaneous issues - consumer involvement	Support any change that would allow consumer groups to more meaningfully engage in the process of the network pricing consultations.	2
Australia & New Zealand Energy and Water Ombudsman Network	Miscellaneous issues - affordability	Recent energy price rises have contributed to fuel stress for low income and disadvantaged consumers. Fuel stress is evidenced by the steady rise in complaints to jurisdictional Ombudsmen about affordability issues. Complaint statistics are available in the Annual Reports of the participating jurisdictional Ombudsmen.	1
Australian Council of Social Service	Miscellaneous issues - affordability	The actual dollar outlay is significant in low income households. Rates of disconnection from supply for non-payment of bills, one metric of vulnerability to hardship, are on the rise in at least some NEM-participant jurisdictions and cause for concern to ACOSS, ombudsman and regulators alike. Households that rely on low, fixed and unreliable incomes are exposed to and adversely affected by even relatively small increases in prices. The Australian Bureau of Statistics (ABS) reports that in the period 2000 through 2010 electricity prices increased by 87.4%	2,3

Organisation	Issue	Substantive point being made	Page ref
		<p>while over the same period the single age pension increased by 73.2% and the single unemployment benefit increased by 39.6%.</p> <p>The ABS Household Expenditure Survey 2009-10 reports on a series of indicators of financial stress experienced by respondents over the preceding year. One of those indicators is 'could not pay gas, electricity or telephone bill on time'. This indicator was reported by 17.9% of respondents in the lowest quintile, by 14.9% of respondents the second quintile and by 12.5% of all respondent households.</p>	
Australian Pipeline Industry Association	Miscellaneous issues - merits review	APIA is particularly concerned that the AER's proposal would remove a service provider's access to merits review under the National Gas Law. Currently the decision of the regulator about the rate of return in an access arrangement decision is subject to a merits review application under the NGL. A rule change which has the effect of excluding a merits review of these decisions is inconsistent with the scheme established under the NGL and with the NGO, particularly in circumstances where the regulator has full discretion.	1,34
Australian Pipeline Industry Association	Miscellaneous issues - merits review	The need for merits review of decisions on cost of capital matters is well founded in both public policy grounds and administrative law grounds. Firstly it is an appropriate check and balance to have merits review of decisions by regulators, particularly where there is a wide discretion afforded to them. Secondly, the record shows that the AER has made errors in its cost of capital decisions in the past, and that those errors are material. Thirdly, there are significant impacts to businesses caused by incorrect decisions on rate of return. Fourthly, the MCE indicated in its decision on review of decisions that it would review the effective operation on the merits review provisions within the first seven years of their commencement. It would be therefore be premature for the AEMC to make a decision that would have the effect of changing the merits review regime under the NGL in relation to rate of return decisions in isolation of a more complete review being undertaken.	36,37
Brotherhood of St Laurence	Miscellaneous issues - affordability	There have been a number of indicators which show that a growing number of residential consumers are experiencing financial difficulties in paying for their energy and are at risk of fuel poverty. This includes the growing trend in electricity and gas disconnections by residential customers, the increasing number of emergency grants to cover energy costs and complaints to utility ombudsmen as well as the existence of hidden energy hardship.	8-10
Brotherhood of St Laurence	Miscellaneous issues - affordability	<p>The proposals from the AER and EURCC will have significant benefits:</p> <ul style="list-style-type: none"> - Improved electricity affordability, particularly for low-income households; - More efficient investment in network infrastructure; - Greater participation by stakeholders in the regulatory process. - Less litigation. 	12

Organisation	Issue	Substantive point being made	Page ref
Brotherhood of St Laurence	Miscellaneous issues - affordability	There is also compelling evidence of energy hardship being suffered by low-income households - that is, there is a growing number of residential consumers experiencing financial difficulties in paying for their energy and at risk of fuel poverty. Simshauser et al. estimate that around 33% of low-income households, or 6.6% of the total households in New South Wales and Queensland, will be in fuel poverty by 2015. Energy hardship among low-income households is demonstrated by a number of different sources of evidence. First, there is a growing trend in electricity and gas disconnections by residential customers. There is evidence across Victoria, Tasmania and Queensland. Second, the number of emergency grants to cover energy costs is also growing. Thirdly, complaints to utility ombudsmen have been increasing in most jurisdictions. At least some of these complaints relate to electricity prices and demonstrate growing anxiety about rising electricity prices. Finally, there is anecdotal evidence of the existence of hidden energy hardship. Some households are likely to restrict heating in winter and cooling in summer to the detriment of their comfort and, at times, their health and wellbeing.	8
Brotherhood of St Laurence	Miscellaneous issues - affordability	The burden on low-income households is likely to increase unless the deficiencies identifies by the proponents in the NER are addressed. The solutions proposed by the proponents will help to alleviate the burden while furthering the National Electricity Objective. Accordingly, the BSL urges the AEMC to accept the proposed rules changes.	13
Business Council of Australia	Miscellaneous issues - consumer involvement	There is a need for the rules and the institutions to facilitate effective engagement with energy users during the regulatory process. In addition, there remains opportunity for privatisation of state government electricity assets and there are foundational steps that governments can take to begin to facilitate greater demand side participation.	1,2
Consumer Action Law Centre	Miscellaneous issues - consumer involvement	The report 'Barriers to fair network prices' from Consumer Action and the Consumer Utilities Advocacy Centre found that, despite what the NEL states about consumers being able to intervene in that process, it is impossible to do so. The report described insurmountable barriers caused largely by the significant information imbalance and the costs risks to consumer organisations. The Commission needs to consider the current process for the AER and recognise the constraints on consumer advocacy - with the goal of seeking an outcome that sufficiently addresses the AER needs, and which holds the business accountable. Consumer interests need to be adequately provided for and protected, within this process, regardless of the level of consumer participation.	2,4
Consumer Action Law Centre	Miscellaneous issues - consumer involvement	CALC supports the initiatives about the consumer engagement in price review processes from Rod Sims, Chairman of the Australian Competition and Consumer Commission:	4

Organisation	Issue	Substantive point being made	Page ref
		<p>- consumer engagement should begin before the regulated business makes its submission, not after as is usually the case; and</p> <p>- responsibility for initiating this engagement rests both with the regulator and the business.</p> <p>CALC urge for these to be included in the outcomes of these rule changes as a means to increase the level of consumer engagement in the process, given consumer advocates and other stakeholders have only a short amount of time to participate in the review, in addition to being resource constrained.</p>	
Consumer Action Law Centre	Miscellaneous issues - merits review	The report "Barriers to fair network prices" argues that the merits review process should be abolished and businesses should only be able to pursue judicial review of the AER's economic regulatory decision.	2
Consumer Action Law Centre	Miscellaneous issues - merits review	If there remains a merits review process then it is likely to be more appropriate that the AER is granted more discretion. However if the merits review process is to be abolished, they think a more prescriptive approach might be better. Generally speaking, it is harder for businesses to appeal a wide discretion under merits review.	2
Consumer Utilities Advocacy Centre	Miscellaneous issues - merits review	Appropriate to acknowledge the inadequacies in the current merits review appeals mechanism. Necessary for the AEMC to consider the interaction that any changes it makes to the rules will have with current and prospective appeals mechanisms that may emerge from the SCER review.	3
Consumer Utilities Advocacy Centre	Miscellaneous issues - merits review	CUAC is firm in its view that the merits review appeal process should be excised from the electricity and gas laws leaving only judicial review as the avenue for reopening a regulatory decision.	5
COTA Australia	Miscellaneous issues - affordability	COTA is increasingly concerned that the rising costs of essential services such as energy are affecting the health and wellbeing of older Australians. Due to this concern COTA is active in energy policy debates and regulatory decisions through submissions and its membership on the AER Consumer Consultative Group (CCG).	1
Energy Networks Association	Miscellaneous issues - consumer involvement	Consideration should be given to enhancing the capability of the AER including through additional resources, and enhancing consumer participation including the development of a well-funded, national centralised consumer advocacy body.	7
Energy Networks Association	Miscellaneous issues - AER resources	The ENA considers that there are a number of mechanisms beyond the current rules framework which provide potentially more effective means of building confidence in the regulatory process, such as the provision of stronger resources and capability to enable the AER to more completely analyse, assess and weigh information provided to the AER through existing regulatory information powers.	2
Energy Retailers Association of Australia	Miscellaneous issues - pricing	Retailers broadly support the AER's rule change request. However, further rule changes in relation to the distribution pricing approval process are warranted.	1,2

Organisation	Issue	Substantive point being made	Page ref
	approval process	The current price approval and notification processes do not support the interest of network users, nor do they support the efficiency of the regulatory process, the NEO or NGO. Retailers provide support for the additional measures the AER has proposed for dealing with uncertainty in relation to distribution capex. However, it is conditional on the AEMC also addressing the deficiencies in the pricing approval and notification process.	
Energy Retailers Association of Australia	Miscellaneous issues - pricing approval process	<p>Retailers propose further amendments to the rules, such that for both electricity and gas distribution:</p> <ul style="list-style-type: none"> - The AER has time to consult on the pricing proposals of distributors, at a minimum two weeks to seek, receive and consider input from major network users. - The timelines for approval of final network prices allow sufficient time for a firm obligation to be placed on distributors to release their final and approved prices six weeks before they apply, in time of retailers to: <ul style="list-style-type: none"> - use these as inputs to their retail price models when developing retail prices; and - notify regulators and customers of their final retail prices as required by jurisdictional pricing regulation (noting that retailers face obligations to notify their retail prices up to a month ahead of when they apply, depending on the jurisdiction). <p>Timelines should be adjusted so the distributor would be required to provide their pricing proposal to the AER two months before the tariffs apply, allowing two weeks for receiving and considering short submissions from major network users, and six weeks for retailers to review the finalised prices, feed these into retail prices and make notifications of retail prices.</p>	2-4
Energy Supply Association of Australia	Miscellaneous issues - consumer involvement	It can be difficult for customer representative organisations to fully engage in these processes, given the level of technical detail required to understand the process and the cost drivers. The Association recognises that the question of how such groups are organised and resourced will likely require addressing if this approach is to be explored further.	7
Energy Supply Association of Australia	Miscellaneous issues - AER resources	Stronger resourcing of the AER itself is a consideration for policymakers, in order to ensure that it has the analytical capacity to regulate effectively and efficiently. Better resourcing would minimise the risk that the regulator makes mistakes, and thus in turn reduce the resources required for appeals processes for the regulator, the industry and other stakeholders.	8
Energy Users Association of Australia	Miscellaneous issues - merits review	The EUAA believes that the existing merits review appeal mechanism has flaws which need to be corrected. It strongly supports the need for a change to the merits review process. It understands that merits review is set out in the National Electricity/Gas Law and would require a change to the relevant Acts to achieve	29,30

Organisation	Issue	Substantive point being made	Page ref
		<p>this. The matter is out of the AEMC's jurisdiction.</p> <p>Urge the AEMC to bring to the attention of the SCER the fact that the problems identified with the existing Rules have links to the merits review mechanism and the two issues should be considered more-or-less simultaneously.</p>	
Ethnic Communities Council of NSW	Miscellaneous issues - consumer involvement	The current regulatory framework is failing consumers and consumer advocates are unable to become involved in the determinations. The proposals submitted to the AER by the network and distributor business are both detailed and complex requiring expensive expertise to assess the information provided. Distribution businesses need to assist consumers in understanding their proposals early in the process to demonstrate that business proposals are in the interests of consumers.	1,2
ETSA, CitiPower and Powercor	Miscellaneous issues - merits review	The Businesses submit that the AEMC should be wary of making rule changes that confer additional discretion on the AER or reduce the potential for the correction of regulatory error through the availability of merits review.	13
ETSA, CitiPower and Powercor	Miscellaneous issues - merits review	Convergence of WACC determination framework for transmission and distribution is desirable in principle but should be based on Chapter 6 not Chapter 6A. The values of some WACC parameters are relatively stable and slow to change; and certainty and predictability in the return network service providers can expect to earn on their investments is desirable for the creation of incentives for , and the promotion of, efficient investment and , thus, the achievement of the NEO. However, it follows that the AER's proposed Rule change would have the effect of removing the existing flexibility under Chapter 6 to respond to changes in market conditions in estimating WACC for individual distribution determinations and foreclosing merits review on decisions on WACC occurring in WACC reviews. Note that merits review by the Tribunal is available only for 'reviewable regulatory decisions', according to section 71B of the Law.	105
Independent Pricing and Regulatory Tribunal	Miscellaneous issues - affordability	Analysis indicates that, for Sydney and surrounding areas, the vast majority of household's electricity bills are likely to make up 4% or less of their disposable income but affordability is becoming a key concern for some vulnerable groups of customers.	4
Jemena	Miscellaneous issues - consumer involvement	The most beneficial improvements is to increase stakeholders' confidence in rule outcomes. Jemena strongly supports better resourcing for consumer groups so they can be more a part of the price review process from start to finish, have a much deeper level of understanding of the issues, and provide meaningful input into the AER's decisions being made on consumers' behalf.	6
Michael Cunningham	Miscellaneous issues - merits review	Suggests that reform of the merits review process is needed. The proposed SOCC should be subject to merits review at the time it is made.	25,26
Origin Energy	Miscellaneous	The current Rules in relation to regulatory process do not guarantee a workable	4

Organisation	Issue	Substantive point being made	Page ref
	issues - pricing approval process	price setting process, particularly in terms of the timeliness and consultation. The rules do not provide retailers sufficient time to review prices, to model retail prices, and to notify increases in retail prices as required by law and regulation, and the rules are not strictly followed. In addition, the rules do not allow retailers or other industry bodies an opportunity to respond to the proposed prices.	
Origin Energy	Miscellaneous issues - pricing approval process	Discrepancies between the X factor and final prices arise due to re-balancing and because there are elements in the price formula other than the X factor. A primary example is the carryover from previous periods. Furthermore, there are features in the rules that exacerbate the discrepancies between the change as expressed in the weighted average price cap formula and the final price outcomes: side constraints, Appendix J of the NSW distribution network revenue decision allows for networks to take into account transfers, and the level of individual tariffs. The Rule should require that a customer be assigned to a tariff class based on all three of the criteria in the NER, rather than any of those criteria, as is now the case. This will make the side constraint more effective. Also, the rules should require the AER to give close attention to circumstances where there may be double counting of tariff transfers or nominations of tariff transfers that never occurred, or where volumes are understated.	5
Origin Energy	Miscellaneous issues - pricing approval process	The current distribution price approval process is not in the interests of customers, since the risk will tend to lead to higher price outcomes than would otherwise be the case. It would seem more reasonable to delay the increase in network prices, since the delay stems from the network pricing process. Alternatively, the rules could require the AER to work within timetables for approving pricing proposals that guarantee a window before the beginning of the regulatory year for network users to analyse prices. Origin believes that the pricing proposals should be made available to industry prior to their approval with retailers and large users given an opportunity to comment on these.	6-8
Origin Energy	Miscellaneous issues - pricing approval process	Origin believes that the pricing proposal should be made available to industry prior to their approval with retailers and large users given an opportunity to comment on these: <ul style="list-style-type: none"> - Insert rules to ensure that the AER will have finalised its decision on network revenue with a lead time of at least two months between a 'draft decision' on prices and the first day the prices will apply. - Insert a rule requiring the AER to hold a consultation period on the draft pricing decision, including: <ul style="list-style-type: none"> - one week for users to comment upon new prices; and - one week for the AER to consider these submissions. - Insert a rule requiring the AER to publish the final price decision six weeks prior to the date the new prices will apply; - Insert a rebalancing constraint to limit rebalancing in the first year of a revenue 	8

Organisation	Issue	Substantive point being made	Page ref
		determination; and - Insert a rule such that where the result of an appeal to the Australian Competition Tribunal becomes known during the last two months before a network tariff increase it cannot be applied until the following year.	
Origin Energy	Miscellaneous issues - pricing approval process	It believes that to address regulatory inefficiency identified by the AER the AEMC must also address the price approvals process. Additional rules changes are required in relation to pricing proposals and approvals. It is an unreasonable quirk of the NER as they have evolved that retailers carry the risk associated with delays in the distribution price setting process.	1,3
Public Interest Advocacy Centre	Miscellaneous issues - consumer involvement	It pointed out Rod Sims, who was Chairman of the IPART, noted that while consumers could play a vital role in regulatory processes, these processes had become "increasingly technical and impenetrable to outsiders". Mr Sims also noted that this complexity gave rise to processes that were dominated by the well resourced industry participants, who can effectively engage in matters of technical detail that are beyond the expertise and resources of consumer groups. In addition, the scarce resources of consumer advocates and advocacy grants cannot be used in the most cost effective and efficient manner.	2,3
SP Ausnet	Miscellaneous issues - consumer involvement	Support changes to the existing framework that aids consumer representation in regulatory process whether through improved resourcing to groups capable of this sophistication or improved opportunities to interact in the existing framework.	23
SP Ausnet	Miscellaneous issues - merits review	Emphasise the important linkage between the Rules and the current merits review framework. If the scope and form of the review were modified as a result of the review to be undertaken at SCER level during 2012, the company's positions may change.	1
WA Office of Energy	Miscellaneous issues - other	The WA Office of Energy is concerned that in relation to WACC, a subject matter which is so fundamental to the pricing principles under the NGL, that should the AEMC decide to implement changes in the Eastern states and not in Western Australia there would be a discrepancy would upset the notion of a national gas regime. It also submits that a discrepancy between regimes could increase regulatory burdens for companies operating nationally as they would have to administer two different regimes on a fundamental level.	3
WA Office of Energy	Miscellaneous issues - other	As the Australian Competition Tribunal will review two fundamentally different provisions in relation to WACC, one which reflects the prevailing market conditions and the other which is reviewed on a 5 yearly basis, the OOE is concerned about the potential uncertainty. The discrepancy between the regimes may not only negatively affect the ERA's independence as a regulator but also affect the Western Australian regulated assets by increasing uncertainty for service providers and investors.	3