SUBMISSION

NATIONAL ELECTRICITY AMENDMENT (INCLUDING DISTRIBUTION NETWORK RESILIENCE IN THE NEM) RULE

27 MARCH 2025

INTRODUCTION

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

Thank you for the opportunity to make a further submission on the Victorian Energy Minister's proposed resilience rule change. In our previous submission on the Consultation Paper, we argued that the long-term interests of consumers are best served by:

- Not including expenditure factors in the rules as proposed by the proponent, but
- Requiring a comprehensive binding AER Guideline, though substantially different in approach from the binding guideline proposed by the proponent

Our preferred approach would draw on the existing expenditure factors and other guidelines e.g. cost benefit analysis, to provide clear guidance to networks and their consumers on how to engage on, and build the business case for, resilience expenditure. Our concern was that the proposed rule change would lead to significant and unjustified costs for consumers without offsetting benefits with the potential for a repeat of the 'gold plating' resulting from tighter reliability standards.

It is important to remember that consumers will make trade-offs on resilience just as they do with reliability. While we have an initial estimate of the VNR, a significant amount of work still needs to be done to ensure this is a robust estimate of consumer preferences, including a robust estimate of willingness to pay. We look forward to further engagement on this.

Additionally, implicit in this discussion is the assumption that a demonstrable level of improved resilience is achieved. This is challenging to say the least and is one of the difficulties in determining the most appropriate settings and assessing prudent and efficient investment. We discuss these issues later in the submission.
The Draft Determination ('Draft') supports the inclusion of resilience expenditure factors (though different from the proponent's submission) to provide greater clarity and the development of a comprehensive non-binding AER Guideline that provides flexibility to networks that face a range of resilience issues.

This submission seeks to balance the need for clarity with flexibility in a new area that is developing fast as networks seek to understand the uncertain timing and impact of increased climate change weather events and consumers need assurance that approved expenditure will be prudent and efficient. We think that the long-term interests of consumers are best served by:

- Building on the Draft's argument for inclusion or expenditure factors to provide clarity, to argue that clarity also requires the inclusion in the rules of key definitions - 'resilience', 'prolonged outage' and 'resilience expenditure' and a requirement to show a direct causal link between climate risks and proposed resilience expenditure. These definitions would limit the exposure of consumers to paying multiple times for resilience, which is not in their long-term interests, and
- If the Commission declines to expand the Rules to cover these matters, to provide the required clarity, then it should provide more detailed specific guidance to the AER on what should be including in the non-binding Guideline. This is to ensure that the Guideline is both:
    - flexible enough to cater for the range of network resilience issues, and
    - prescriptive enough to give the clarity consumers need to have confidence on the role of consumer engagement and that the proposed expenditure will be prudent and efficient

Finally, we support Draft's exclusion of cyber security from this rule change and the proposed reporting in the DAPR. We make some suggestions on further matters to be included in the DAPR to ensure that it better aligns with the long-term interests of consumers

We would like to thank the Commission and the AER for their willingness to engage with us on many matters of detail as we have developed this submission.

The reasoning for inclusion of expenditure factors – what is meant by clarity and when does it start and finish in the rules?

While there was strong support in submissions for improved clarity, submissions favoured different answers on how – networks favoured inclusion of expenditure factors, consumers favoured a more explicit AER Guideline without the factors. The Draft argues that the inclusion of the factors will improve regulatory clarity by explicitly recognising resilience in the rules. Flexibility will come from a more comprehensive, but still non-binding, AER Guideline and planning and reporting requirements in the DAPR. Improving clarity was seen to be central to the outcomes for consumer who are affected by or at the risk of power outages (para 18 p iii).

So how has the lack of this regulatory clarity in the rules impacted on DNSPs ability to mount a case for resilience expenditure? Not much it seems from the evidence provided in Box 4 (p.18). Here we see that for NSW DNSPs in their 2024-29 reset, the AER approved 100% of Endeavour and Essential's proposed CAPEX and 34% of Ausgrid's for an overall success rate of 60%. The AER submission said they approved 81% of the ~$400m in total resilience-based expenditure in the 2024-29 NSW and Tasmanian revenue determination final decisions[1].

Having been intimately involved in the development of all three NSW networks' resilience proposals, the EUAA's observation is that the absence of resilience expenditure factors in the rules did not prevent networks from making their submissions on proposed expenditure. Ausgrid was unsuccessful in getting full approval because it failed to meet two of the three criteria in the Guidance note – 'identified need' and 'testing of the preferred option' in the business case analysis[2]. Ausgrid would argue that this failure was contributed to by the lack of detailed guidance on business case requirements. Our detailed observation of Ausgrid's process saw no impediment from the absence of

[1] See p. 2 https://www.aemc.gov.au/sites/default/files/2024-11/aer_0.pdf
[2] See the discussion at pp 21-31 https://www.aer.gov.au/system/files/2024-04/AER%20-%20Final%20Decision%20Attachment%205%20-%20Capital%20expenditure%20-%20Ausgrid%20-%202024%E2%80%9329%20Distribution%20revenue%20proposal%20-%20April%202024_0.pdf

expenditure factors. Just as the absence of expenditure factors did not prevent their submission on proposed expenditure on cyber security.

Nevertheless, if we accept the clarity argument for including expenditure factors, what is the extent of the clarity provided by the proposed expenditure factors? Our conclusion is - very limited. We understand there needs to be a balance between what is in the Rules and what is in an AER Guideline and that is a judgement call. Given the Commission's focus on the need to provide clarity in an area that is full of uncertainty and where all stakeholders are 'learning by doing' we think that some additional clarity would be appropriate in the rules rather than leaving it all to the AER to develop in their Guideline. We make the following recommendations for matters to be included in the rules to provide the clarity all stakeholders see as important and we see as necessary to give more confidence that the rule change will be in the long-term interests of consumers.

Include a definition of 'resilience' and 'prolonged outage'

The Draft describes a resilience event in a range of ways – 'an outage of any length caused by severe weather' or a 'prolonged power outage' (p. i) which is confusing. The proposed expenditure factors refer 'power outages (of any length) caused by severe weather events' (p.15) which is not a 'prolonged power outage'. Apart from being confusing about the required length of the outage, it suggests there is no difference between a 'reliability' outage and a 'resilience' outage. We think there is. The lack of as distinction risks an outcome that consumers end up paying a lot more than the efficient level of resilience costs.

We find it difficult to understand why the clarity argument supports inclusion of the resilience expenditure factors but no definition of resilience (or 'community resilience' as the term is used in the AER Guidance note) or 'prolonged outage'.

'Severe weather' is not a resilience event unless it results in a prolonged outage during a major event day caused by climate change weather event. Over summer in Queensland the BoM regularly issues 'severe weather warnings' including heavy rain, strong winds and possible hail from an afternoon thunderstorm. Only rarely do these events result in many customers losing power for longer than 12 hours. This is quite different from Cyclone Alfred.

Expenditure to reduce the impact of every afternoon thunderstorm that results in a power outage of any length should not be categorised as 'resilience expenditure'. Given the apparent confusion of how long the outage needs to be, one interpretation of the Draft is that the risk of an outage of one customer on a SWER line during a summer afternoon thunderstorm can be used to justify ex ante resilience expenditure. We hope that is not the Draft's intention.

But then every outage as a result of a cyclone should also not be categorised as a 'resilience event'. Ergon has been historically funded to help it maintain system reliability in the past based on its view of the frequency of cyclones. As we noted in our submission on the Consultation Paper, the level of resilience expenditure by Ergon is relatively small given their very large network area and the unpredictability of where a cyclone would pass the coast. This has led Ergon to focus on summer preparedness and quick recovery. The resilience expenditure questions for Ergon and Energex should be something like:

> "What is the likelihood of an increase in cyclones as a result of climate change, what will be its impact on the incidence of prolonged outages and how should the network respond?"

Energex would need to mount a case that in the future climate change will result in cyclones more frequently that every 50 years.

Application of the resilience expenditure factors should not expand the ability of a network to apply for additional expenditure to address reliability risks that have historically occurred and are funded out of existing REPEX and AUGEX. The absence of a definition of resilience event and the clear distinction between a 'resilience event' and a 'reliability event' means that networks could justify 'everyday' reliability business cases using the much higher VNR if the business case does not get over the line using VCR. Resilience expenditure should not be allowed to fix poor reliability on a worst served feeder. It should be designed to address the additional risk to that worst served feeder customers as a result of climate change weather events.

The definition of 'prolonged outage' should be an outage that occurs during a major event day.

Provide a definition of 'resilience expenditure'

The DD provides for expenditure to maintain the safety, reliability and security of supply which are part of the capital and operating expenditure objectives in the NER. We think that this is potentially confusing. A network is required to provide a reliable service as a core part of its BAU business. Addressing resilience risks is part of the overall obligation to provide a reliable service. We think it would be confusing for consumers if there is not a clear statement on the role of resilience expenditure vs reliability expenditure to contribute to overall system reliability. Our approach would be to link resilience expenditure to a reduction in the length and incidence of major event days. This is important to the networks' valuation of the benefit of resilience expenditure – when is the business case for resilience expenditure to be built on VCR or VNR?

The other advantage of a definition in the rules is that it helps define the scope for networks' resilience expenditure – where it ends and where other entities e.g. Councils and Governments, roles start.

Include a requirement that networks show a direct causal relationship, within the constraints of climate science at the point in time, between the proposed expenditure and the expected increase in extreme weather events

In our submission on the Consultation Paper, we noted that while climate science is reasonably confident about its forecasts of what might happen over the next 30 years, it is much less confident about where (i.e. what part of a distribution network) and when (what is the risk in the next reset period). This does not mean that networks should not be able to use climate modelling to support their expenditure proposals. Just that the rule should provide clarity on the requirement to show a connection. Below we discuss what should be in the AER Guideline on how that causal link should be demonstrated.

The Commission should provide more detailed and comprehensive direction to the AER on what the Guideline should include

In our earlier submission we favoured a binding Guideline because it provides clarity around what is expected from networks as they undertake their consumer engagement and develop their business cases. For example, the binding Guideline would set out clear requirements:

- The requirements for consumer engagement consistent with the Better Resets Handbook and how this engagement would be balanced against the business case analysis
- Business case requirements e.g. when networks use VCR and when they use VNR at the same time as giving networks some degree of flexibility on how they develop their resilience proposal reflecting their particular situation.

Following discussions with the Commission and the AER we have come to the view that a non-binding Guideline can effectively achieve the same objectives. While it does give some discretion to the network, it gives ultimate discretion to the AER which is itself not bound by its Guideline. The requirements under Chapter 6A mean that if the AER makes a distribution determination that is not in accordance with the Guidelines then it has to state the reasons.

There are many aspects of non-binding Guidelines that have the effect of being binding as networks regularly follow them. An appropriate level of detail in a Guideline can have a similar effective impact as a binding guideline where the AER 'guardrails' for a network can be narrow with little flexibility possible. An example of the former is the AER's 'Industry practice application note – asset replacement planning' which provides specific assumption to be used as a guide including some assumptions like VSL and VCR that are regularly updated[3]. While networks can propose other values in their proposals to the AER, we are unaware of any case where the AER has accepted higher values e.g. the ALARP disproportionality factor.

Other parts of a non-binding Guideline would have wider guardrails which allow greater flexibility for the networks to provide the information the AER requests in a form acceptable to the AER. In the last couple of years, we have seen networks engage comprehensively with the AER prior to their revenue submissions as they have sought to meet the existing Guidance Note requirements. We can also see the benefits of a non-binding guideline where networks and the AER can adapt to differing resilience challenges, developing climate science and changing consumer preferences.

While Section 3.2.5 of the Draft sets out that resilience proposals would continue to be assessed using existing expenditure assessment arrangements including cost benefit analysis and stakeholder engagement, we think that some additional guidance from the Commission on what should be in the AER Guideline, is required. We agree with the list in Section 3.3.2 and would add the following to further the long-term interests of consumers.

- If not in the rules, then the network is required to demonstrate a causal relationship between the proposed resilience expenditure and the expected increase in extreme weather events (as is the case in the current Guideline)
- Provide examples of how this causal link should be demonstrated e.g.
    - what the guardrails should be e.g. use the NARCliM climate model[4] with specified SSP scenarios
    - how to adapt 30-year climate modelling to assess risks by location in the 5 year revenue period
- The scope of a network's allowable resilience expenditure e.g. what is a network's obligation to provide 'community resilience' and when does it stop and other stakeholder such as telcos, Councils and State and Federal Governments step in?

[3] See Table 10 https://www.aer.gov.au/system/files/2024-07/AER%20-%20Industry%20practice%20application%20note%20Asset%20replacement%20planning%20-%20July%202024.pdf
[4] https://www.climatechange.environment.nsw.gov.au/narclim/about-narclim

- The reliability benchmark for resilience expenditure. We have seen networks use two approaches to the resilience benchmark used to assess proposed expenditure:
    - Ausgrid 2024-29 – selected the three LGAs based on a number of criteria e.g. the worst reliability and greatest risk from climate change events and sought to develop a suite of capex/opex projects that stopped the three LGA's level of reliability from getting any worse that current
    - AusNet 2026-31 - decided to not proceed with the level of network hardening they believed required to fully mitigate the additional outage risk caused by climate change by 2031[5]

  The existing AER Guidance note makes it clear that the aim (consistent with Clause 6.5.6 (a) (3) on opex and Clause 6.5.7 (a) (3) for capex) is to 'maintain' service levels, not improve. We think this is important to repeat in the Final Determination.
- How the AER will assess the balance between ex ante and ex post investment which the AER says '…will be a significant and difficult exercise'[6]
- In applying the CBA Guideline, what changes might be required e.g.:
    - whether the existing guideline provides sufficient scope for the uncertainties in assessing resilience expenditure; especially, as noted above, around how to apply the results of climate science that cannot forecast risk down to a feeder level in the next 5 year period
    - when the network is to use VCR and when VNR is to be used

  The Draft (p.21) did not see this as required citing other Guidelines in Chapter 6 where the AER is not required to explicitly set out how VCR or VER are taken into account in assessing DNSP expenditure proposals.

  Our response is that the absence of clear guidance will contribute to confusion in consumer engagement and not work in the long-term interests of consumers. Ausgrid's experience in it 2024-29 resilience consultation is that it presented a 'shopping trolley' list of possible expenditure options based on their interpretation of the AER's Resilience note that did not have the explicit examples the proposed Guideline will now provide.

  Consumers supported particular items only to find that they did not survive the AER's business case analysis. When Ausgrid informed these consumer groups of the AER's decision, their response was a variant of 'Why did I waste my time being involved in the engagement?'

- How networks are to assess an efficient choice between capex (e.g. network hardening) and OPEX (e.g. hazard tree removal) when they are addressing the mitigation options for the same risk
- That a network's pass-through applications will be examined in the light of their ex ante resilience investment – how to avoid consumers paying multiple times. We note the Commission's comment on p. 14:

  > "Under the current NER, in assessing a cost pass through application, the AER must take into account whether the costs of the pass-through event have already been factored into the calculation of the DNSP's annual revenue requirement for the regulatory control period (i.e. ex ante expenditure) in which the pass-through event occurred or the DNSP's annual revenue requirement for a subsequent regulatory control period."

See discussion in Section 6.12 pp 174-194 https://www.aer.gov.au/system/files/2025-02/ASD%20-%20AusNet%20-%20EDPR%202026%20-%202031%20Regulatory%20Proposal%20-31%20Jan%202025%20-%20PUBLIC.pdf

[6] See p. 3 of the AER's submission on the Consultation Paper https://www.aemc.gov.au/sites/default/files/2024-11/aer_0.pdf

This suggests that if a network hardening investment is destroyed in a storm but it contributed to lessening the resilience impact, the network cannot get a pass through to pay to restore it to its original position. This issue deserves further discussion.

- How the Better Resets Handbook will apply to resilience engagement and how the AER will weigh the outcome of that engagement vs the network's business case in assessing proposed expenditure
- Requirement to show how the network proposes to mitigate the risk of consumers paying multiple times e.g. routine reliability investment, ex ante investment, ex post pass through, private investment in generators and GSLs.

We agree with the proposed new annual reporting requirements in the DAPR and would add more

The proposed additional reporting will be important to provide transparency and accountability to consumers who are paying for the resilience expenditure. It should be annual and include ex ante and ex post expenditure, length of outages, customers impacted and major event days at least. We suggest that the AER develop standard templates for the reporting of this information to ensure consumers have easy to understand data.

We would recommend that this goes one step further to require formal post investment reviews to be undertaken on past resilience expenditure. The AER would set the criteria to define when the PIR would be completed e.g. how frequently e.g. as part of each reset proposal includes an assessment of the previous 5 years' investments, the minimum capex level and whether OPEX measure should be included. The PIR would examine issues like:

- Actual vs proposed expenditure and implementation timetable
- What impacts advances in climate science since the proposal mean for investment assessment e.g. would the network have made that investment with current climate science knowledge
- Drawing on evidence of climate events since the expenditure was commissioned on whether the how the expenditure improved consumer resilience

We should take advantage of the flexibility of a non-binding Guideline that can change as evidence emerges on what works and what does not work.

We agree with the exclusion of other catastrophic events

We agree with the exclusion of outages caused by cyber security or terrorism given the existing obligations on DNSPs. We agree with the implementation and transitional arrangements.

The EUAA welcomes further discussions with us and our members around the issues raised in this submission.

Andrew Richards
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