Including distribution network resilience in the NER draft determination

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

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1. Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) Including distribution network resilience in the National Electricity Rules (NER) draft determination (the draft rule).

We support the intent to improve regulatory clarity regarding the proposal and assessment of resilience expenditure.

However, the proposed framework exposes consumers to significant risks of overinvestment and inefficient network expenditure. We are deeply concerned that including resilience expenditure factors in the NER as proposed would lower the bar for ex ante resilience expenditure and increase costs beyond what consumers are willing to pay.

While the frequency and severity of extreme weather events is increasing, such events are not intrinsically novel. Distribution businesses have long had to consider how to resist, manage during, and recover from severe weather events and continue to evolve their approach in response to experience. The proposal to formalise these activities under the aegis of 'resilience' through the inclusion of new expenditure factors creates the risk that consumers pay multiple times for services distribution businesses already consider and are already required to provide.

Resilience should emphasise readiness and recovery rather than risk reduction, as is currently proposed. Resilience remains insufficiently differentiated from reliability in the draft determination. The lack of regulatory clarity and formalisation of a definition of network service resilience in the context of a framework ostensibly intended to increase the likelihood that distribution businesses undertake such expenditure presents serious risks to consumers.

We question the assertion that establishing new resilience expenditure factors is necessary to ensure distribution businesses plan for and deliver these services, particularly given the existing regulatory framework already accommodates such expenditure. Given the ambiguous and open-ended framing of resilience under the expenditure factors creates a risk of further network gold-plating, the risks to consumers of a poorly framed decision now substantially outweigh the risks of delaying action to consider the question more fully.

Put simply, the risk to consumers from over-expenditure on resilience far outweighs the risk arising from the absence of an explicit requirement for distribution businesses to consider resilience.

The proposal to define resilience under a non-binding guideline rather than through a more prescriptive rule further exacerbates this risk. The new expenditure factors unavoidably and implicitly define network resilience in a manner that leaves significant room for interpretation and invites the risk of consumers carrying additional and unnecessary costs. If resilience is to be explicitly addressed, this must occur in a robust and consistent way that removes inappropriate discretion.

We reiterate the recommendation outlined in our previous submission[1] that the distinction between resilience and reliability be drawn by treating issues that relate to the frequency and duration of outages under the rubric of reliability and issues that relate to the experience of consumers during and immediately after an outage under the rubric of resilience.

2. A non-binding guidance note is not appropriate

Non-binding guidance presents risks to consumers

We do not consider it appropriate for directives that stand to have a material impact on consumer bills to be implemented through a non-binding guidance note.

The draft rule would require the AER to develop network resilience guidelines that meet a set of NER requirements, including:

- providing examples of resilience expenditure;
- providing examples of the types of information distribution businesses could include in their regulatory proposals to support forecast resilience expenditure, including information on climate change impacts;
- specifying information distribution businesses must include in their Distribution Annual Planning Reports on the performance of the distributor and outcomes for consumers in any severe weather events that occurred in the preceding year; and
- explaining how resilience expenditure will be addressed in the network incentive schemes developed by the AER.

The AER would need to have regard to the new resilience expenditure factors when assessing distribution business forecast capital and operating expenditure proposals. However, the new expenditure factors are of little value without guidance on how they are to be interpreted and applied. We understand this determination will be left to the AER's discretion through the guidance note.

The proposal to formalise a set of highly flexible resilience expenditure factors under the NER, while leaving more consequential guidance relating to the definition of resilience and interpretation of the expenditure factors outside the rules creates unnecessary material risks. This may lead to situations in which the open-ended expenditure factors are given precedence over more prescriptive but non-binding AER guidance. Any guidance relating to the definition of resilience and interpretation of expenditure factors should be implemented through more robust measures than a non-binding guideline.

Risk reduction is indistinguishable from reliability expenditure

Resilience should relate to the experience of consumers during and immediately after an outage. This should be clearly distinguishable from reliability, which relates to the experience of the network with respect to the frequency and duration of outages.

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1 See JEC submission to AEMC Including distribution network resilience in the NER consultation paper, pp. 5-7

The new expenditure factors as set out in clauses 6.5.6(e)(3) and 6.5.7(e)(3) frame resilience as the ability of a distribution business to ‘efficiently *reduce the risk* and impact on consumers of power outages caused by severe weather events’ (emphasis added). We are deeply concerned this framing will serve as a defacto definition of resilience.

Our experience has informed our view that meaningfully differentiating upfront resilience expenditure on risk reduction from reliability is not feasible. We strongly disagree with this framing of resilience as it further blurs the distinction with reliability and complicates the task of developing fit-for-purpose guidelines.

The draft rule may effectively result in resilience being interpreted as a 100 percent reliable network. This stems in part from the existing resilience guidance note which presents resilience as an input to or subset of reliability[2]. Recent revenue determinations featuring resilience expenditure proposals suggest that this positioning of resilience against reliability is neither in the interest of the business proposing the expenditure or the consumers paying for it.

Clause 6.4.6(a)(1)(i) of the draft rule indicates resilience expenditure may be classified as ‘expenditure to assist distribution network service providers to continue to adequately provide network services despite severe weather events’. In our previous submission we reasoned the provision of network services need not flow from the network and could involve non-network alternatives such as back-up generation and storage services.

We welcome this change. However, we note this framing rests on concerning assumptions, namely that:

- a completely reliable network (i.e. one in which consumers experience no outages) is both feasible and desirable; and
- the objective of resilience expenditure is to improve reliability.

We do not support building a resilience framework a top these flawed assumptions. Resilience should be separated from reliability to the greatest extent possible and recognised as a qualitatively different concept to ensure that expenditure on it can be consistently assessed for its prudency and efficiency and responsiveness to consumer preferences.

Clear criteria for declaring ‘resilience events’ are needed

A resilience event should not be classified based on the source of the outage. Applying this scope would make reliability expenditure indistinguishable from resilience. Instead, the Commission should consider linking to declared ‘resilience events’, for instance according to the clearly defined threshold of ‘major event days’ related to severe weather.

The draft rule does not outline how ‘severe weather events’ are delimited. We understand this definition can vary between jurisdictions and that the NER relies on ‘local instruments’ to declare such events. The AER should assess and reference the appropriate local instruments in its

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2 See AER Guidance note on network resilience p. 6

guidance note to minimise confusion and provide stakeholders with clarity around what constitutes 'severe weather'.

We welcome the proposal to exclude other catastrophic events such as cybersecurity breaches or acts of terrorism from the scope of the resilience expenditure factors. However, we do not support the proposal to link resilience 'to power outages (of any length) caused by severe weather events'.

3. Annual planning and reporting requirements should promote accessibility, accountability, and transparency

We support implementing new annual planning and reporting requirements relating to resilience as part of the Distribution Annual Planning Report.

As part of the planning requirements, distribution businesses should be required to identify risks of power outages caused by severe weather events on their network and engage with non-network providers and consider the full range of non-network options and stand-alone power systems for addressing these risks. They should also be required to assess qualitative measures which may not reduce the risk of outages but improve the scope to respond quickly and restore service.

This reporting should serve to identify opportunities to minimise the impact on consumers from outages due to severe weather events. Resilience related planning should not be a speculative exercise in network hardening to pre-empt tail-risk events.

These requirements could be bolstered by requiring distribution businesses to consider the broader resilience landscape in their network area. That is, consider the wider factors influencing the consumer experience of and recovery from 'resilience events'. This could include liaising with critical service providers to identify vulnerabilities, strengthen emergency planning, and improve coordination and information sharing arrangements.

Distribution businesses should also be required to assess the extent to which customers in their network area have already invested in their own resilience solutions, where these are important potential determinants of an impacted community's experience during and after a 'resilience event'. Affording distribution businesses greater visibility of the low-voltage network by facilitating access to smart meter data, improving visibility of CER[3], and strengthening compliance with relevant standards would help progress this objective.

As part of the reporting requirements, distribution businesses would be required to:

- include information on their performance and outcomes for consumers (as specified in the guidelines) for any severe weather event that occurred in the preceding year.

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3 This should include consideration of synergies with AEMO's DER register and CER data exchange and the NSW Government's CER installer portal.

- specify the amount and nature of the resilience expenditure which occurred in the preceding year (if any), and the amount and nature of planned resilience expenditure in the forward planning period.
- describe the risks of power outages caused by severe weather events identified in the Distribution Annual Planning Report in terms of their impact on the network.
- explain how they account for the risks of power outages caused by severe weather events when developing and implementing their asset management and investment strategy.

These requirements are critical to ensuring distribution businesses are accountable for and transparent about their resilience expenditure. Our preference is for distribution businesses to publish these disclosures as part of the Distribution Annual Planning Report rather than in Regulatory Information Notices to improve accessibility for stakeholders.

4. Continued engagement

We welcome the opportunity to meet with the AEMC project team and other stakeholders to discuss these issues in more depth. Please contact Jan Kucic-Riker at jkucicriker@jec.org.au regarding any further follow-up.