

Summary of issues raised in submissions on the directions paper

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

Part I Summary of issues about capex/opex allowances

Organisation	Issue	Substantive point being made	Page ref
AEMO	Capex and opex allowances	Proposed in submission to Issues Paper that AEMO demand forecasts be utilised in revenue setting arrangements - which was not addressed in the Directions Paper. State there is an incentive for TNSPs to over-forecast demand so use of an independent forecast would be beneficial. AEMO national energy forecasting project should be reconsidered by the AEMC for the draft rule determination.	1-4
AER	Capex and opex allowances	Maintains position that current Rules should be changed as proposed as it imposes restrictions on departures from the proposal for an estimate of efficient costs and NSPs are incentivised to submit inflated forecasts. Proposes examples of when it has been constrained in the past in setting expenditure allowances. Clarifies that there is a two stage process – determining if the proposal is reasonable and then, if not, determining a substitute – and claims that the constraint applies at the second stage. The AER also proposes that the framework and approach stage should be expanded to allow consultation on the models to be used to assess expenditure proposals.	i, 3, 12, Appendix 2
AER	Capex and opex allowances	The AER is limited by the NER because it is tied too much to the NSP's proposal.	Supplementary submission, at 6.
AER	Capex/opex factors	Continues to press the approach raised in its rule change proposal.	15
AER	Rising electricity prices	Has conducted a P nought assessment to analyse for all DNSPs what the drivers of the P nought increase are from the previous period. Expenditure allowances are driving network costs, increases in forecast capex contributed 13.5% in real terms in the first round of regulatory reviews with opex being a further 4.8% increase. WACC increases are less significant but the AER has not taken into account increases in WACC due to Tribunal determinations.	Appendix 1, 3
Ausgrid	Rising electricity prices	Has a detailed submission on why Ausgrid's prices have increased. Tracks the key drivers of price increases, including low investment in previous periods, and shows these contributed significantly to price increases. It then gives more detail of why it increased investment, including evidence of failures of assets.	4, Attachment A
CALC	Capex and opex allowances	Support the AER's proposal and believe its experience is sufficient evidence for concern - urge the AEMC to consider the implementation of the NER as experienced by the AER - if don't cause detriment to consumers or conflict with NEO, AEMC should focus on improving Rules. Rules give NSPs upper hand - recommends that the AEMC changes the Rules to ensure greater onus placed on them to justify forecasts rather than the AER.	3-4
CUAC	Capex and opex	Clear that AER feels constrained - likely came to this conclusion as it acts on legal advice to make	3-4

Organisation	Issue	Substantive point being made	Page ref
	allowances	best decision within constraints of the rule whilst minimising change of appeal - should be given benefit of the doubt on some of its proposals regarding its discretion. The risk of serious regulatory failure extremely remote even with wider powers for the AER. Supportive of amendments to remove requirement of the AER to vary expenditure on the basis of the original proposal of NSPs, as well as reform to the burden of proof which make AER rejection difficult.	
CUAC	Rising electricity prices	Significant price rises affecting affordability - inefficient expenditure by NSPs as a result of an insufficiently robust regulatory regime has detrimental impacts on society - urges the AEMC to consider strong approaches to contain network costs to an efficient level.	2-3
ENA	Capex and opex allowances	Maintains its position in its first round submission that the rules and policy continue to be appropriate and the problem is the way the AER has applied the rules.	20
ENA	Capex/opex factors	Is concerned with two elements of the AEMC's directions paper in respect of capex and opex factors. Not appropriate to move the three "process" factors to the procedural sections since this would give them less weight, partly due to requirement to "consider" them rather than "have regard to". Second, the AER must consult with the NSP prior to the final determination on material that it proposes to rely on in that determination. It is not appropriate that the obligation is only to publish <i>with</i> the final determination.	39, 41, Appendix F
ENA	Rising electricity prices	Analyses P nought adjustment for DNSPs for previous regulatory period to current period. In most cases a large p nought adjustment has occurred. Concludes that WACC (especially DRP) is the most significant factor driving the increase from the previous period. For key NSPs has also provided further analysis on what the key drivers of capex and opex increases have been. Has also provided a critique of the Bruce Mountain paper which states that the paper is simplistic, and the efficiency analysis should also include matters such as energy distributed and peak demand. Responds to claims by Mountain that government ownership is a key driver of prices increases.	9, Appendix B, C
ENERGEX	Rising electricity prices	ENERGEX has provided details of drivers for its prices increases and identified WACC as having the biggest impact.	2
ESAA	Capex and opex allowances	State that the recent cost drivers are twofold: requirements for increased capital expenditure and a rise in the cost of capital. Capex driven by a number of factors, including ageing assets, peak growth, population growth and reliability standards. Cost of capital changes because prior to 2008 availability of cheap capital and GFC lead to increases in debt, fed through to regulated prices. AMI driving price increases in Victoria.	4, 7-8
ESAA	Capex and opex allowances	Forecasting opex/capex challenging, especially with new 'smart grid' technologies. AER approach to have engineering review problematic - may lack right kind of experience, pitting one engineering view against another. Uncertain circumstances and length of the regulatory period related - contingency provisions can help manage risks but appropriate to have an incentive rate and return on investment.	14-15
ETSA, CitiPower and Powercor	Capex and opex allowances	Benchmarking must take into account the circumstances of the NSP. The Tribunal has also noted this. It would be hard to set out in the NER an exhaustive list of the circumstances the AER must consider when benchmarking.	44
ETSA, CitiPower and Powercor	Capex and opex factors	It would be appropriate to move the procedural capex and opex factors.	46

Organisation	Issue	Substantive point being made	Page ref
ETSA, CitiPower and Powercor	Rising electricity prices	Quote an Ernst and Young report which states that in Victoria network costs have decreased in real terms recently. In South Australia there have been similar observations for particular years.	36
EUAA	Capex and opex allowances	Main problem with the framework is that the onus of proof that allowances are efficient rests with the AER rather than NSPs - one of the most important changes AEMC should make. Concerned that the AEMC has not supported the AER's proposed solution. Regulatory judgments likely to err on NSP's side given information asymmetries and current framework of propose-respond, which is compounded by merits review. Strongly support the AER's proposal to justify determinations with reference only to the proposals.	iv, 18-19
EUAA	Rising electricity prices	Australia has some of the most expensive electricity in the world and has declined in competitiveness relative to other countries since 2007 due to mainly rising prices in Australia - size of increases without historical precedent. Analysis shows that allowed revenues and RABs, particularly for government-owned businesses, have grown far more quickly than demand, new connections or length of network since 2006. Mountain (2011) showed the factors stated by the AEMC that lead to price rises only explained part of the increase but that government-owned NSPs spent much more to meet demand, etc than privately-owned. Similar conclusions in work on TNSPs done by AEMO re: private versus public efficiency. Agree with IPART report that governance arrangements in NSW and through the Rules at the expense of electricity consumers in NSW.	2-11
Ethnic Communities Council of NSW	Capex and opex allowances	Similar comments to the EUAA	2
SA DMITRE	Capex and opex allowances	Point out that the MCE SCO in 2006 did not seek to direct the AEMC in the decision making standard for the framework - i.e. leaving it open whether to apply 'propose-respond' or 'receive-determine' - but would ensure that the NSP had an opportunity to make a proposal at the start of the process. That decision was informed by the Expert Panel which said 'propose-respond' would over time lead to increases in the returns relative to 'receive-determine' model. Presumption in favour of accepting the forecasts is not desirable and reduces the effectiveness of the approval process - biased towards NSPs. To address, AER should receive proposal and determine if forecasts meet efficient expenditure investment in the long term interests of consumers under NEO - 'receive-determine' model. Supports the removal of any constraints that may limit the AER's ability to apply benchmarking.	2-3
Grid Australia	Capex and opex allowances	Concerned that if the reference to the individual circumstances of the business is removed may have impacts beyond just benchmarking.	6
IPART	Capex and opex allowances	Supports the AER's proposal to allow it to adopt its best estimate of efficient costs - concerned about unnecessary price increases. Support AEMC's direction to allow capex to reduce in the case of a change of reliability standards. Consider it appropriate to improve the wording of the NER to remove ambiguity and to better reflect the policy intent.	5-6
MEU	Capex and opex allowances	Regulation surrogate for competition - regulator must look at final price/quality of product - external benchmarking to assess if firm is operating at the efficient boundary - line by line to highlight specific areas where firm not at the boundary. Do not think AER determination right place to point	14-22

Organisation	Issue	Substantive point being made	Page ref
		out problems with Rules. AER's record on LMR indicates sound reason for AER to have concern with its powers. Range not helpful in minimising debate and picking single number. In a competitive environment top down analysis is used to justify internal opex and capex forecasts. If AER unclear of discretion under rules, should be clarified. The fact AER reduced forecasts does not prove it has a problem with rules and could have reduced more.	
MEU	Rising electricity prices	Historically opex and capex growth was linked to demand growth rates - not so under new rules.	10
TEC	Capex and opex allowances	Believe there is a supply side bias in the NER to encourage greater capex - supportive of AER and EURCC rule change requests. Onus of proof for expenditure forecasts should rest with the NSP - no reason for AER not to implement this change.	4
UnitingCare Australia	Capex and opex allowances	Similar comments to the EUAA	36-41
UnitingCare Australia	Rising electricity prices	Similar comments to the EUAA.	23-31
Vic DPI	Capex and opex allowances	To the extent there is uncertainty regarding the AER's powers, NER should be changed to put matter beyond doubt and limit ACT challenges. Believe the LMR encourages 'cherry picking'. Re Yarrow paper, do not believe there is suggestion AER's proposed changes will enable unconstrained discretion. Further that the degree of 'balance' is not consistent with his view given the prescription in the NER and the level of judicial oversight.	2-4

Part II Capex incentives (and related issues)

Organisation	Issue	Substantive point being made	Page ref
Ausgrid	Capex incentives	Similar comments to the ENA	7
AER	Capex incentives	AER does not currently have ability to disallow expenditure that was included in a previous period's forecast - why it has not adopted an EBSS for capex. Would be open to consider applying EBSS if that problem could be resolved. Accepts the reluctance to prescribe an approach in the rules (e.g. 60/40) and prefers a more flexible mechanism that is capable of taking into account the context of the proposal.	20
AER	Depreciation	Agrees use of actual or forecast depreciation is part of the incentive framework - disagrees with the use of prescribing use of either in the Rules. Discretion required because there are important considerations that should be made when determining when to use either such as if there are differences driven by permanent efficiency improvements or reflect uncontrollable factors, etc	22
AER	Depreciation	Proposal for more discretion is consistent with the 'less detail in the rules' principles put forward in the NERA report for the ENA	23
AER	Depreciation	Does not think the incentive differences between short-lived and long-lived assets are material enough to warrant exclusion of actual depreciation from the incentive framework.	23
AER	Depreciation	Does not think that further guidance should be provided in the Rules - already in NEL. If principles are included they should be at a high level and direct the AER to consider the interactions with the overall capex incentive framework in the decision to use actual or forecast depreciation.	24
AER	Related party margins	Does not agree that an EBSS for capex will solve the incentive problem to capitalise opex savings. Believes that it should be able to include or exclude the margin in the RAB consistent with the decision at the start of the regulatory determination.	25-31
CALC	Capex incentives	Concerned that all capex can be rolled into the RAB. Does not share same concern over proposed 60/40 proposal. Supports ex-post prudency reviews. Supports IPART's view that a range of mechanisms be available to the AER.	4-5
SA DMITRE	Capex incentives	Supports development of EBSS by the AER through a guideline facilitated with principles in the rules. To address the supervision gap, supports a limited ex-post review mechanism for projects above a pre-determined threshold.	3-4
ENA	Capex incentives	Analysis undertaken by Mountain provides insufficient basis for conclusions on the efficiency of DNSPs.	16-18
ENA	Capex incentives	Supports use of incentive based mechanisms to promote continuous, effective and stable financial incentives for efficient capital expenditure such as the development and implementation of a symmetrical, principles-based capital expenditure incentive mechanism. This is preferable to ex-post prudence assessment processes as the disadvantages of those tests include a capacity to distort efficient investment and increase regulatory risk.	25-26
ENA	Capex incentives	NSPs may overspend relative to the forecast because of regulatory error (process of having expenditure forecasts cut by AER); the need to meet additional output requirements and	26-28

Organisation	Issue	Substantive point being made	Page ref
		obligations (forecast may be established 5-7 years out from the time of making investment decision, and so information may change and factors such as economic conditions, service standards or other policy can affect the cost or timing of program); and/or service incentive schemes (effects of s-factor or STPIS).	
ENA	Capex incentives	The design of an EBSS is a complex matter and so is suited to development by the AER through a guideline rather than specified in the rules. Due to the complexity, the AER should retain discretion to apply. Refer to joint expert report's criteria to provide for detailed guidance to the AER in developing the scheme.	29-30
ENA	Capex incentives	Ex-post prudency tests do not add any additional benefit compared to a well-designed ex-ante regime and there are negative impacts of it such as increased regulatory risk. Focus should therefore be on improving ex-ante regime. In the event that the AER is given this discretion it should only be able to undertake when a NSP spends more than its allowance and should only be able to disallow up to the amount of any expenditure above the allowance from entering the RAB. Also set out a number of additional requirements/principles for ex-post reviews.	31
ENA	Capitalisation policy changes	Provision already in place that removes potential for gains from changes. Appropriate for AER to retain ability to calculate gains under any EBSS without effect of policy changes.	35
ENA	Depreciation	Under an actual depreciation approach, the penalty from spending more on assets with a short economic life is inappropriately large compared to longer lived assets. This means there is a relative disincentive for NSPs to incur additional expenditure on assets with a short economic life relative to those with a longer economic life (e.g. IT). Application of actual depreciation is likely to lead to sub-optimal investments in short-lived assets.	33
ENA	Depreciation	Recognises incentive to inflate forecasts arises as regime provides rewards and penalties for differences - comprehensive assessment and scrutiny is the appropriate mechanism to address, reducing power of incentive not generally the appropriate response. Use of actual depreciation does not resolve the issue of the strength of the incentive declining over the regulatory period - recommend EBSS to address declining incentive.	33-34
ESAA	Capex incentives	Does not support ex-post reviews because it is difficult to fully account for all the uncertainties faced by the NSP at the time it made the decision. Does not support AER 60/40 proposal	Attachment 1
EUAA	Capex incentives	Disagrees with the AEMC's analysis of the problem - believes differences in actual WACC and regulated WACC (especially for Government-owned NSPs) should be examined, as well as the significant overspends of Government-owned businesses as evidence of a problem.	21-23
EUAA	Capex incentives	Do not believe that capex incentives with constant incentive powers are preferable to ones with declining powers - reasons for constant incentive in opex different because of the use of last year opex to forecast. Key issue is the different incentive powers may encourage NSPs to inefficiently substitute between opex and capex.	23
EUAA	Capex incentives	An ex-post review should not exclude projects that were the subject of regulatory investment tests - can still be inefficiently incurred (eg TransGrid MetroGrid project).	24
EUAA	Depreciation	Appear to support the use of forecast depreciation.	25
EUAA	Related party margins	Agree with the analysis of Related party margins - what price charged matters - use of benchmarks could be utilised to avoid intrusive contract evaluation by the regulator.	26

Organisation	Issue	Substantive point being made	Page ref
Ergon Energy	Capex incentives	Similar comments to the ENA	5-8
Ergon Energy	Depreciation	Similar comments to the ENA	7
Essential Energy	Capex incentives	Similar comments to the ENA	6-8
Ethnic Communities Council of NSW	Capex incentives	Efficiency incentives need to be strengthened and shareholders, rather than consumers, bear the risks of lax expenditure controls	3
ETSA, CitiPower, Powercor	Capex incentives	Efficient deferral of capex into future regulatory control periods is in the long term interests of consumers and this incentive is constrained by the STPIS. It considers that the current EBSS criteria are appropriate.	25-28
ETSA, CitiPower and Powercor	Capitalisation policy changes	Decisions as to the inclusion of overheads in the RAB roll forward should be based on whether they were allocated to capex consistently with the capitalisation policy of the NSP at the time of the determination.	33
ETSA, CitiPower and Powercor	Depreciation	Depreciation based on actual capex strengthens an NSP's incentives to incur only efficient capex. Strongly supports providing for discretion on the part of the AER to apply forecast or actual depreciation - particularly important where no EBSS is applied to capex but is applied to opex. The efficiency imbalance can be addressed by using an actual approach in favour of a forecast approach.	29, 30
ETSA, CitiPower and Powercor	Depreciation	Any argument that applying actual depreciation leads to over forecasting is misplaced as assumes forecasts are accepted by the regulator. Actual capex constrained by allowance, therefore not surprising actual closer to allowance than proposal forecast.	29
ETSA, CitiPower and Powercor	Depreciation	The incentives to incur capex efficiently are stronger under an actual depreciation approach as the benefits of an underspend extend beyond the regulatory period in which the savings are made.	Appendix A
ETSA, CitiPower and Powercor	Related party margins	Rules should provide for related party margins to be rolled into the RAB provided they are consistent with the framework established in the determination. Decision to use related parties driven by desire to take advantage of greater potential for cost efficient provision of network, telecommunication and back-office services and to allow NSPs to focus on long term asset ownership and performance. The capex incentive regime does not impact on the decision to use related parties for efficient service provision.	33
The Financial Investor Group	Capex incentives	The FIG is opposed to ex-post reviews suggesting that there is no evidence of a capex overspend problem outside of governance issues.	17-18
Grid Australia	Capex incentives	There are benefits in addressing the issue of declining efficiency incentive. Does not agree that there is a supervision problem. Other comments were similar to ENA.	6-7
Grid Australia	Depreciation	Well-designed capital incentive should be first preference - best achieved with EBSS and using forecast depreciation. Using actual as incentive mechanism delivers a disproportionately large incentive against additional expenditure on short lived assets.	8
IPART	Capex incentives	It is important that the regulatory framework does not exacerbate the weaknesses of the governance arrangements. Supports the use an ex-post review mechanism to ensure only efficient expenditure included in the RAB.	7
IPART	Depreciation	Including assets on actual depreciated basis offers a better capex incentive than forecast.	8,9

Organisation	Issue	Substantive point being made	Page ref
		Recommend including a range of instruments to provide the AER with options to develop an appropriate regulatory framework, including the discretion to choose depreciation methods.	
Jemena	Capex incentives	Similar comments to the ENA	18-19
Jemena	Capitalisation policy changes	An EBSS can address the incentives to capitalise opex inefficiently	25
Jemena	Depreciation	Use of forecast depreciation provides for financial capital maintenance - RAB increases in the next period by full amount of actual capex (would not if used actual depreciation and spent different to forecast). If no capex EBSS and actual depreciation is used - outcome for NSP is a function of actual expenditure at the asset class level rather than at the aggregate level - spending on short lived assets early in the period is particularly penalised	22
Jemena	Depreciation	Appropriate EBSS can address current incentive to defer capex within regulatory period however would not address unfavourable relationship between outcome and asset life if/when actual depreciation is used	23
MEU	Capex incentives	Agrees with the AER that there is an incentive to overspend - supports ex-post scrutiny. However, sees problems with AER's 60/40 rule - stresses importance of developing better option to address overspending in the rules.	26
MEU	Depreciation	Should not be discretionary so as to allow to change from one period to the next. Preferred approach should be set when EBSS determined.	46, 47
SP AusNet	Capex incentives	Does not agree that there is a supervision problem. Other comments were similar to ENA.	2-3
SP AusNet	Depreciation	Similar comments to the ENA	4
TEC	Capex incentives	Efficiency incentives need to be significantly strengthened.	4
UE and MG	Capex incentives	Referred to the ENA submission	2-4
UE and MG	Depreciation	Similar comments to the ENA	3
UE and MG	Related party margins	Regulatory framework should focus on providing incentives for efficient outcomes rather than regulating the inputs - real risk that in regulating contracting arrangements preclude efficient outcomes	4-7
UnitingCare Australia	Capex incentives	Similar comments to the EUAA.	44-50
Vic DPI	Capex incentives	Not convinced that an EBSS will be in the long term interest of consumers. Problems of project deferrals would need to be addressed. Supports use of ex post reviews.	5-6
Vic DPI	Depreciation	Agrees in principle with example included in Directions Paper but not convinced that use of actual depreciation protects the interests of consumers more than forecast. Any underspend incentive benefit may be off-set by over-forecasting because regulatory depreciation has a disincentive effect on over-forecasting because RAB will be written down more quickly. Strongly supports the use of forecast depreciation to balance capex efficiency incentives and to not over-forecast. But may be different for other jurisdictions - AER requires discretion.	7-10
Vic DPI	Related party margins	States that there is an incentive to utilise related party arrangements to roll margins into the RAB and not share efficiency gains with consumers. This undermines the incentive-based regime.	10-13

Part III Summary of issues about WACC

Organisation	Issue	Substantive point being made	Page ref
AER	Rate of return - AER rule change proposal	No objection in principle to merits review. However, the persuasive evidence test restricts the AER's ability to adopt the best estimate possible and should be removed. Does not support the use of ranges for parameter estimates.	51-54
AER	Rate of return - common framework	Supports a common framework across the three sectors. The rules should define the process for conducting WACC reviews (which, ideally, should be held at least every 5 years but alternatively at least every 2-3 years) and should establish high level principles to be applied in the WACC review. But the WACC review is where all the values and methods for individual parameters should be established. Determinations should then apply these values and methods without amendment.	iii, iv, 36-51
AER	Rate of return - EURCC rule change proposal on cost of debt allowances	AER maintains that the methodology used to determine the DRP, including the definition of the benchmark, should be determined during the WACC review. The AER should not be as restricted, as it currently is, in its ability to define and measure the benchmark together and should have the power to consider alternative methods proposed by others at the time of the WACC review. It also should have the ability to use different terms when measuring the cost of debt and cost of equity. The current benchmark is incomplete for describing the factors that affect yields and does not reflect the actual debt financing of NSPs. Benchmarks have been prescribing debt margins considerably higher than actual NSP costs (even allowing for increased refinancing risk).	iv, 54 - 61
AER	Rate of return - EURCC rule change proposal on cost of debt allowances	AER considers that a trailing average of cost of debt is likely to still represent a forward looking rate (in so far as the actual debt costs of a business would comprise debt that will mature in the future). The AER submits that the EURCC proposal has received a substantial range of support and, as such, the AEMC should amend the rules to remove any ambiguity preventing such approaches being considered.	61
APA Group	Rate of return - effectiveness of current frameworks	APA agrees that the electricity transmission framework has limitations and advocates the current NGR as a good model should a common framework be implemented. The NGR are consistent with benchmarks of efficiency, promoting efficient investment and the opportunity for a sufficient return. They allow methods for parameters to be driven by principles and reflect current best practice. APA suggests that there is an opportunity for the level of guidance on the use of alternative models to be enhanced. NGR allow flexibility to deal with changing market conditions and are consistent with recognising interrelationship between parameter values. APA state that currently the more flexible gas regime is invariably overridden by the more prescriptive electricity regime. NGR are consistent with accountability as the regulator has 'full discretion' but merits review is available.	1-4
APA Group	Rate of return - AER rule change proposal	AER proposal has the consequential effect of removing access to merits review on cost of capital matters. This is because SoCC would not be a "reviewable regulatory decision" under s71A of the	7

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		NEL or s244 of the NGL. APA concerned about the repeated commentary of users and AER suggesting "cherry picking" behaviour. To the extent that AER believes that the business is being selective in the matters raised or believes the matter raised has consequential effects on another matter it is free to raise these matters as provided for in s258 of the NGL and s710 of the NEL. To APA's knowledge while the AER has repeatedly commented on the interrelated nature of the regulatory decisions, the AER has never availed itself of these opportunities.	
APA Group	Rate of return - further consultation on cost of debt issues	Understands the motivation behind the QTC proposal and would support a rule that provides optionality for a business to choose a cost of debt approach relevant to its business.	1
Ausgrid	Rate of return - AER rule change proposal	Recommends that AEMC look at developing a framework that would allow an expert panel to engage in significant and important detail regarding issues of both cost of debt and cost of equity. This would be consistent with AEMC's view that the rule enforcer should be guided in its discretion of interpretation of the rules, and would potentially overcome the observation noted in the CEG report that the AER seeks to use the rules to adopt the lowest possible rate of return outcome.	8
Ausgrid	Rate of return - AER rule change proposal	Specifically identifying the links between parameters to be considered and requiring consistency based on these inter-relationships may not always result in the best estimates on the available evidence. A better approach may be for specific relationships between parameters to be considered at the time of a WACC review or a determination based on the best available at that time. Current electricity distribution provides consistency across parameters because it is a relevant factor that is considered based on the best available evidence at the time of the WACC review or at the time of an individual determination.	10-11
Ausgrid	Rate of return - EURCC rule change proposal on cost of debt allowances	Considers that the regulator or DNSP should not be constrained from considering both forward looking and historical estimates of parameters when setting a forward looking rate of return. A rate of return often requires relying on historical data for different parameters. At any time the best available evidence for a particular parameter may be historically based or it may be a forward looking estimate (or combination of both). Given market conditions, the circumstances of Ausgrid and necessary financing arrangements for a large debt portfolio, Ausgrid considers that the short term averaging period approach currently employed by the AER results in too much risk to investors and regulated businesses.	10, 13-15
AER	Rate of return - further consultation on cost of debt issues	There is merit in further exploring trailing average approaches, however should be considered outside of the rule making process (i.e. WACC review) - detailed approach in NER not consistent with previous AEMC view of appropriate codification/discretion. Further, markets are dynamic so not appropriate to 'lock-in' approach and data issues not settled (no clear consensus among stakeholders to estimate cost of debt). Raises a number of practical considerations for implementing annual updates, eg pricing approval process too short for consultation. Also, one day quarterly averaging period may flood market - converts 1 day averaging period to 40 days. Giving NSPs option to select approach may lead to windfall gains/losses - needs consideration to avoid.	2-9
APIA	Rate of return - CAPM/nominal post-tax	There is no need to mandate a particular post-tax or pre-tax WACC version, or a normal or real WACC, in the rules.	16-17

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	prescription		
APIA	Rate of return - common framework	Merits Review is essential to good decision making and to sustaining an environment of confidence to invest. If framework is to have the attributes identified by AEMC it cannot include a 5 yearly review of WACC parameters in which they are in any way locked in. It would also have to consider other financial models. Only two parameters may be considered as "stable" - equity Beta and gamma (however these parameters suffer from problems of statistical uncertainty and utilisation of any new data can assist in determining a higher quality estimate). Although it may be possible to lock-in those parameters and apply a persuasive evidence test APIA sees no benefit in doing so.	21-24
APIA	Rate of return - common framework	APIA believes that the NGR provide the most consistency with the attributes identified by AEMC (and supplemented by APIA) and should therefore form the basis of any common framework. Since other sectors may value predictability and find it too difficult to adjust to the flexible NGR framework, it may be preferable to continue with two separate frameworks with some common features (such as the availability of merits review and the requirement to consider a range of financial models). Differences seen as beneficial, such as the treatment of tax and inflation in the WACC formula and prescription around particular financial models, could therefore be retained. If NGR are considered on their own, they should be amended so that the regulator is required to apply the full flexibility available in the NGR.	3-4, 12-17
APIA	Rate of return - EURCC rule change proposal on cost of debt allowances	There is no need to prescribe a cost of debt methodology or model in the rules. The evidence continues to support the use of 10 year debt as the efficient benchmark for pipelines. In considering alternative approaches, the best answer is for the regulator to seek out independent estimates (as opposed to attempting a do-it-yourself approach).	17-18
APIA	Rate of return - EURCC rule change proposal on cost of debt allowances	APIA does not endorse a historical trailing average approach. Such an approach should only be considered if it is likely to be a better forecast than the cost of debt at the time of the regulatory decision and the APIA believe that there is a low likelihood that the EURCC proposal will achieve this.	19-21
APIA	Rate of return - further consultation on cost of debt issues	Recommend that the best rate of return requires consideration of multiple sources of evidence. Use of expert market service to estimate the cost of debt has significant advantages over 'do-it-yourself' estimates. Benefits of QTC approach include reduced uncertainty regarding debt refinancing and less need to hedge entire portfolio during one program; however disadvantages include assumption that debt is fully hedged does not provide flexibility; and potential changes to risk management policies requiring financier consent. If adopted, may encourage smoother debt maturity profile - but effect on cost of equity difficult to quantify. May be some merit for some NSPs or gas service providers but inherent risk remains - one size fits all won't deliver required flexibility within NEL/NGL. If adopted, would prefer dollar-weighted average calculated annually. Does not think QTC approach better than forward looking - any optionality should rest with NSP.	1-4
CALC	Rate of return - AER rule change proposal	Framework does not need to prescribe methodology with values for parameters if the access to merits review is removed. NEL provisions that enable network businesses access to merits reviews in relation to price determinations should be repealed. If access is upheld, rules should be amended to exclude "decisions by the AER on whether or not persuasive evidence has been	1-2, 6

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		established in relation to a particular parameter value, method or credit rating". The SCER review into the merits review regime is noted. Appeal arrangements should not be considered entirely separately from the overall regulatory framework but they should complement it.	
DBP	Rate of return - AER rule change proposal	DBP supports the AEMC's Directions Paper position that for a third party access regime to best promote the NGO and NEO, the rate of return framework must provide for criteria to be met for the rate of return in the form of a set of principles or objectives, rather than a prescriptive, detailed criteria. The regulator must have regard to all available evidence that points to what value meets the criteria, rather than a single, one size fits all, theoretical financial model. Rates must be set at same time as tariffs are set, not through a separate process that is undertaken at another time. Concerned at having too many objectives in the NGR to guide the regulator as this creates uncertainty for regulators and potentially competing objectives which could negatively impact on investment incentives. The NGR framework was designed specifically to overcome those problems that existed in the Gas Code.	1, 4
ENA	Rate of return - effectiveness of current frameworks	Agrees with the AEMC's identification of significant flaws in the approach of fixing parameter values within the rules framework. This approach manifestly failed to promote forward looking cost of capital decisions taking into account the best available evidence during a time of significant disruption in capital markets. Believes AEMC has established a sound set of initial principles - to which they should add "certainty". The central purpose of the 'persuasive evidence' test and its emphasis of promoting evidence led assessments of the empirical basis for any departures should continue to be a feature of the regime. Specific recognition of the inter-relationships between parameters may also be a valuable enhancement of the clarity of the regime. Supports allowing the full information content and value of applying alternative cost of equity estimation or asset pricing models to be applied, particularly in the testing of regulatory or NSP proposed WACC values against the 'overall WACC' principles.	43
ENA	Rate of return - effectiveness of current frameworks	Does not support fixing WACC parameters, as there is no individual WACC parameter that does not rely on market-based evidence for reaching decisions about its appropriate value. The experience of the last 3-5 years highlights the dangers of fixing parameters. The ENA supports the need for framework flexibility to deal with changing market conditions. It is not practicable to define two classes of WACC parameters. There is no value in scheduling periodic reviews of the methodologies and parameter values that can be presumed to apply in subsequent regulatory determinations - there are good administrative reasons for maintaining such a practice.	44
ENA	Rate of return - common framework	Supports the adoption of an approach based on the current Chapter 6 framework, although this regime would be improved by setting out the overall objective and nature of the cost of capital estimate being sought and allowing estimates flowing from the application of or departure from a regular Statement of Cost of Capital to be 'tested' against an overall WACC principle on a consistent basis. This would improve certainty around the operation of the 'departure criteria'. The removal of the Chapter 6A approach would be a positive outcome of the rule change process, given the practical deficiencies that have arisen in applying it. There is no need for significant change in the gas regime.	2
ENA	Rate of return - EURCC	Considers that a benchmark approach to cost of debt estimates must remain an underpinning	2, 50

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	rule change proposal on cost of debt allowances	feature of the regulatory framework and that the current DRP benchmark remain appropriate. The proposition that the current benchmark systematically overstates prevailing conditions in the market and creates a 'windfall' gain to regulated entities is not consistent with a full assessment of the financing opportunities and risks of these entities. A range of regulatory and appeals processes have demonstrated that the existing clauses are workable. Issues that have arisen have been AER implementation issues, which they are capable of addressing.	
ENA	Rate of return - EURCC rule change proposal on cost of debt allowances	Supports giving further consideration to the trailing average approach. The ENA also propose an alternative approach, which would be consistent with the current financing strategies of most privately owned NSPs, that involves calculating a trailing average of the DRP while fixing the risk-free rate at the start of each regulatory control period. The trailing average approach is a regulatory design issue of complexity and involves substantial adjustment to the debt risk profile of some NSPs. The merits of averaging proposals should be carefully considered as should transitional arrangements. A change to trailing average approach is significant change since it cannot be undone, involves significant implementation issues and requires significant restructuring to the rules. The ENA is strongly of the view that it should be considered as a separate review process since there are substantial changes involved.	56
ENA	Rate of return - EURCC rule change proposal on cost of debt allowances	Supports the key elements of a benchmark approach and believes that the currently specified DRP remains appropriate and reflects the characteristics of current financing practices and policies of NSPs. The proposition that it systematically overstates prevailing market conditions and creates "windfall" gains to regulated utilities is not consistent with a full assessment of the financing opportunities and risks of these entities. Does not agree that the apparent short-term divergence between the actual and benchmark cost of debt evidences any deficiency in the NER since they require a forward-looking estimate of the return on capital commensurate with prevailing conditions in the market for funds and 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. By not recognising the distinction between the current cost of debt and embedded debt costs, the EURCC proposal mischaracterises the issue of current borrowing rates being above historical averages.	50-55
ENA	Rate of return - EURCC rule change proposal on cost of debt allowances	Alternative approaches (e.g. IPART & ERA) have material practical and theoretical weakness. There has been no evidence presented by the AER that current benchmark credit rating is no longer appropriate. ENA rejects all but one (company specific features) of the 'other factors' that AER suggest should be included in addition to term to maturity and credit rating. The appropriate place to take account of such matters is the benchmark estimation process and not the benchmark itself.	50-52
ENA	Rate of return - EURCC rule change proposal on cost of debt allowances	Agrees that the NER definition of the DRP could be improved. The restrictive language of the definition and ambiguity have 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	45-47, 51

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		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.	
ENA	Rate of return - EURCC rule change proposal on cost of debt allowances	Adopting the EURCC proposal by altering one element without a full consideration of how this affects the overall WACC may run counter to the NEO. The EURCC has provided little evidence to contend that the term to maturity should be lower and the credit rating band broader. 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.	45-47, 51
ENA	Rate of return - further consultation on cost of debt issues	Range of views exists as to the merits of adopting a trailing average approach - supportive of developing approach. If option adopted, number of issues to be resolved - timeframe within current rule change process insufficient, risk that important transitional issues overlooked, no specific rule change to contemplate yet. Remainder of submission comments (re: QTC details) similar to Grid Australia.	1
ESAA	Rate of return - EURCC rule change proposal on cost of debt allowances	Government-owned argument (lower rate for government-owned entities) is false. Trailing average approach is backward-looking and may not reflect forward looking cost of capital. Setting the cost of capital every 5 years does not allow for consideration of relevant material changes in financing conditions in the interim. There is no need to change the Gas rules.	1-2, 16
EJAA	Rate of return - effectiveness of current frameworks	Not necessarily a problem that Chapter 6A prevents implementation of Tribunal decisions until the next WACC review as the Tribunal is not necessarily right since they are exercising judgement on issues on which there are differing views. It is quite possible 'better' outcomes would have been achieved without the Tribunal. It is important to consider the incentives that the merits review process places on the NSP and the regulator, as well as the lack of consumer involvement in ACT processes, and calls for a detailed assessment of past Tribunal cases in terms of the objectives of economic regulation and the NEO and NGO. WACC reviews allow for public and transparent assessments, consultation with all stakeholders and involvement by consumers to a far greater extent than for any ACT decision. More consideration needed of the impact of changes on consumers and their ability to contribute to WACC decisions. The perpetual review of Chapter 6 has played to the NSPs' advantage to the extent that such perpetual review has placed greater strain on consumers' ability to contribute to price review decisions.	27-28
EJAA	Rate of return - AER rule change proposal	A rate of return determination by the AER through a review every five years that is not subject to merits review will resolve shortfalls in the current framework, such as the ability of DNSPs to determine individual rate of return during each review (whereby the AER is precluded from assessment of overall reasonableness), as well as to cherry-pick WACC parameters during each review. Disagrees with the AEMC's response to the 'cherry-picking' argument. The flexibility of Chapter 6 is problematic, in that DNSPs have attempted to re-open consideration of several parameters that have been debated many times and considered exhaustively. This consumes resources often for little purpose other than to fend-off unreasonable rent-seeking for NSPs. It is not reasonable to point to the significance of the rate of return for NSP revenues and profile (as AEMC does) as justification for the perpetual review of cost of capital parameters under Ch 6. The	27-28

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		Persuasive Evidence Test is problematic to interpret.	
EUAA	Rate of return - EURCC rule change proposal on cost of debt allowances	The cost of debt should be specified in the rules as doing so has the potential to reduce disputes during price control determinations and provide greater certainty to the industry and its consumers and may also reduce need for ongoing consumer advocacy during each price/revenue determination. The cost of debt is amenable to observation and there is no reason why the formula for its calculation should not be specified in the rules.	30-31
EUAA	Rate of return - EURCC rule change proposal on different cost of debt allowance for Government-owned NSPs	The treatment of the cost of debt should be evaluated against the NEO having regard to the extraordinary profitability of the NSPs to their government owners. Arguments against lowering the allowed debt to government owned entities have not been strong.	31
EURCC	Rate of return - EURCC rule change proposal on cost of debt allowances	Regulation of cost of debt should be specified in the rules. This is because the cost of debt is observable within a reasonable range, and because the rule change process facilitates more consumer engagement than in an AER review, and because it is an issue of regulatory design which should be accountable to the NEO. Consideration of cost of debt should be elevated to a discussion of regulatory economics rather than narrow financial analysis.	2, 4
EURCC	Rate of return - EURCC rule change proposal on cost of debt allowances	It is not clear why consumers should be paying a premium to reflect the preference for longer dated debt if NSPs are raising cheaper shorter term debt. Also not clear that the allowed return on equity does not already reflect appropriate compensation for refinancing risks. The NSP argument that even if actual debt costs are below the allowed cost of debt there is no gain overall since equity holders are exposed to higher risks is not supported by the evidence, and the theory assumes liquid, fully functioning and deep financial markets which don't exist in Australia currently.	5-6
EURCC	Rate of return - EURCC rule change proposal on cost of debt allowances	The appropriateness of the EURCC proposal should not be judged on their consistency with the current practices of privately-owned NSPs since the proposition that regulatory incentives should be decided around the risk management practices of NSPs is not necessarily consistent with the long term interests of consumers. The resolution of the regulatory determination of the cost of debt needs to have regard not just to the broader WACC calculation but indeed to the whole regulatory design thus the AEMC consideration should be based on broader assessment of regulatory economics.	7
EURCC	Rate of return - EURCC rule change proposal on different cost of debt allowance for Government-owned NSPs	Rejects the AEMC's dismissal of its proposal on the cost of debt for government-owned NSPs. Claims of resource allocation distortions cannot be sustained. While it is the government's right to charge NSPs that it owns whatever it chooses to, this does not confer an obligation on users to pay those fees. The charges to users should reflect the NEO. AEMC's claims of geographical distortions that would arise with different allowances for the cost of debt are without foundation. AEMC's claim that its proposal would dissuade jurisdictions from divestiture of their NSPs is not correct and the design and implementation of the regulatory framework should not be influenced by policy considerations either for or against divestiture. Taxes on the profits of the NSPs owned by governments are effectively a return on the government investment in their NSPs and should be counted as such in consideration of the appropriate cost of debt.	2, 8-15

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Ergon Energy	Further consultation on cost of debt - QTC proposal	Generally supportive of the QTC proposal but are concerned with transitional issues, especially because no fully defined rule and still consulting on potential models - should be pursued outside the AER/EURCC rule change requests. Supports option that best suits needs - should continue to be reviewable. Proposed approach would reduce overall level of risk - if so, should be visible in equity beta. Further, moving average approach may be more appropriate for consistency. Agrees with QTC's proposal and prefer the effective interest rate approach as it more accurately reflects forward looking cost of debt. Supports annual calculation using quarterly data not done at the end of the month to avoid potential market volatility. Should be an option.	3-5
Ethnic Communities Council of NSW	Rate of return - general comments	Agree with AEMC that arrangements for the determination of rate of return should be subject to review like other AER regulatory decisions. However, believe that elements of the rate of return that can reasonably be specified in the rules, should be so specified as this would promote investment and price certainty; and would simplify the regulatory process and guard against further dispersal of end user advocacy.	3
ETSA, CitiPower and Powercor	Rate of return - effectiveness of current frameworks	The current framework is flawed in that SORI is not subject to merits review. If SORI/SOCC could be appealed investors/customers would be provided with greater certainty and it would prevent multiple appeals. If non-binding guidelines are substituted in, then regulatory certainty would be compromised.	12
ETSA, CitiPower and Powercor	Rate of return - AER rule change proposal	AER has not presented sufficient evidence to justify a departure from existing rules or demonstrated that its proposed form of the rules would better achieve the NEO and RPPs. Suggest existing process be amended so that the persuasive evidence requirement becomes a 'test' or 'threshold' (rather than a mandatory consideration), and the AER is required to have regard to the inter-relationships between parameters, and overall checks on cost of debt and cost of equity can be considered in deciding whether there is persuasive evidence justifying a departure from the value, method or credit rating.	5, 11
ETSA, CitiPower and Powercor	Rate of return - CAPM/nominal post-tax prescription	No need to change vanilla post-tax WACC. CAPM should continue to be the primary model but AER should have discretion to use models and approaches other than CAPM in cross-checking the cost of debt and cost of equity in determining whether there is persuasive evidence justifying departures from SORI/SOCC. No reason why same parameter values need to be applied across the businesses and any framework should offer the AER flexibility to apply different WACC parameter values to each. Chapter 6 would allow for this.	17 -19
ETSA, CitiPower and Powercor	Rate of return - EURCC rule change proposal on cost of debt allowances	Alternative rule change for the cost of debt differs from the rule change set out in the EURCC in that, it only prescribes a trailing average in respect of the debt margin not the total cost of debt, does not prescribe the term of the debt margin in the rules, and explicitly recognises other efficient debt costs, such as early refinancing, hedging and debt raising costs which can be material. Support the AEMC's initial view that the AER should not be constrained and have access to a wide range of data in estimating DRP. Any changes to the cost of debt parameters should not diminish existing merits review. Trailing average on debt margin is more consistent than on debt. Do not consider a trailing average approach could be incorporated as an option for determining the DRP (i.e. in addition to existing provisions). Could result in opportunism.	20-24
ETSA, CitiPower	Rate of return - further	Strongly support QTC approach but note may not be appropriate for all businesses - advocate for	2, 4-9

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and Powercor	consultation on cost of debt issues	choice. QTC proposal better than EURCC because based on 10 year yield to maturity - Businesses proposal rectifies problems though with QTC. Annual updating of the WACC could lead to significant changes that currently wouldn't be subject to LMR - doesn't promote NEO/RPP. Trailing risk free rate increases cost of managing interest rate risk - because needs to be done quarterly rather than every 5 years. Approach may reduce overall level of risk by aligning with actual debt financing practices but not clear how will effect cost of equity - QTC moving average approach likely improvement on AER's but problems likely remain - rule which allowed long term market risk premium to be combined with long term risk free rate could improve on both. If QTC approach adopted should be based on dollar-weighted average and calculated using a quarterly rate.	
Grid Australia	Rate of return - effectiveness of current frameworks	Members are also members of ENA and generally endorse the positions taken in that submission. Changes should only be made to the rules for those aspects where there is a compelling case to do so. Strongly supports the AEMC's findings that the transmission framework to estimate the rate of return has a number of significant deficiencies - most notably the transmission framework does not provide flexibility to adapt to changing conditions or a process of merits review to correct for errors. Best approach to resolving these deficiencies is to adopt the Chapter 6 framework for transmission along with a number of enhancements. To the AEMC's identified attributes of a good framework add "Certainty". The cost incurred in installing regulated network assets typically recovered over 40 years or more. It follows that investors are not just concerned about the return the regulator may offer over the next 5 year period but also in the outcomes of the 7 or more regulatory periods thereafter. Important that regulatory risk and uncertainty be minimized to the extent possible.	1-3, 9-11
Grid Australia	Rate of return - EURCC rule change proposal on cost of debt allowances	Supports the continuation of a benchmark approach to estimate cost of debt. Does not agree that the current approach systematically overstates the cost of debt. Nevertheless merit in undertaking further analysis of a historical trailing average approach to debt cost or elements of debt costs. Should the AEMC decide to progress with further investigation of a historical trailing average approach, it is best considered in a separate process to the current rule change assessment.	11
Grid Australia	Rate of return - further consultation on cost of debt issues	Preferred approach to implementing a trailing average likely varies across businesses so would be desirable to have both options, as well as the option to remain with existing approach. Appropriate for a trailing average period to match the tenor of benchmark debt of 10-years. Preliminary assessment is for average to be calculated annually using daily data. Agree with the weighted average proposal. If cost of debt in period not subject to LMR should be set at the beginning of the regulatory control period. Transitional arrangements critical - should eliminate ability to benefit from nomination inconsistent with long term interest of end-users by requiring nomination for the following period at the start of current (i.e. 5 years in advance). Timeframe for assessment short - should be considered separately from the AER/EURCC rule change.	1, 7, 9, 10
IPART	Rate of return - common framework	Some WACC parameters are more stable and can be reviewed less often. The AER could still undertake periodic WACC reviews but WACC parameter values in price reviews should be updated for new evidence, if there is a material impact on the cost of capital estimate. This approach balances certainty for business and price stability with the need to estimate a cost of	11-12

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		capital from the best available evidence. The AER should adopt a range for WACC parameter values where appropriate to address uncertainty in WACC parameter estimates. The rules should recognize the inter-relationships between parameters to ensure changes to individual parameter values take into account the full impact on the WACC estimate. A common WACC framework is feasible, but it is not necessary to prescribe a specific approach or require specific values to be used for all industries. A regulator needs a WACC framework that can adjust for industry specific factors. CAPM meets this requirement as it allows the regulator to take into account industry specific factors through assumptions on beta and gearing values. It is also a well-tested model commonly used by regulators.	
IPART	Rate of return - EURCC rule change proposal on cost of debt allowances	The issue of maturity profile need not be prescribed in the rules. IPART moved to 5 year maturities as the reference rate in 2011. This is based on arguments that the primary asset of a regulated entity is the revenue stream for the regulated period and that adopting a maturity that matches the regulatory period ensures the firm can achieve NPV neutrality. Recognise that regulated firms may wish to use longer or shorter maturities, hence the maturity of a benchmark firm may differ from the regulatory period. This is a relevant factor that the regulator may wish to consider.	13
Jemena	Rate of return - common framework	Benchmark efficient firm should continue as it is good for incentives and efficiency. Supports an approach that would be more iterative than the current 5-yearly review. Define high-level methodologies in the rules, with the details of these methodologies to be set out in a binding document (such a guideline or a SoCC) that evolves iteratively though its application to price reviews and is updated on, perhaps, an annual basis. Current level of prescription, in the distribution framework, should remain largely unchanged, though it could benefit from additional discretion to consider cost of equity models other than CAPM. Does not support the use of ranges for parameter values unless high-prescription, low-discretion rules set out exactly how the AER must select a point estimate within the range. Notes that the NZ Commission apply the 75th percentile of a range - explicitly recognising the fact that the costs of any under-investment, due to under-estimating the WACC, are likely to be higher than the reverse.	35-40
Jemena	Rate of return - common framework	Propose that all electricity NSPs' price reviews be aligned into an annualised calendar. This would enable AER to issue with its final decisions each year, an incremental update on its position on WACC methodologies and parameters. An annual statement on the cost of capital, the update would occur at the same time every year and take account of current and emerging market conditions. This should avoid the potential for significant unexpected changes in the WACC methodology and parameters from year to year, while allowing for new insights and data to be incorporated progressively.	36
MEU	Rate of return - AER rule change proposal	MEU agrees simple framework should apply for rate of return. Framework should be based on estimating WACC for an efficient firm tested in wider market, including account to be taken of special position of Government-owned networks. Needs to be less prescription in the WACC setting but it needs to be tested against a much wider range of actual WACCs seen in the competitive market place and ensure outcome is efficient.	4-5
MEU	Rate of return - common framework	The current regulatory frameworks in setting WACC are not satisfactory and a single framework is preferable. The framework should be based on estimating WACC for an efficient firm, but this	4, 29

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		benchmark must be tested in a wider market, including taking account of the special position of government-owned networks which are able to access debt at lower rates. There needs to be less prescription in the setting of WACC. Five years is too long for parameters to remain fixed. Does not agree that the use of a range of parameter inputs will improve the process. The inflexible approach of Chapter 6A has created certainty but it has also created anomalies. Gas rules are flexible but AER uses some regulatory precedent but concern with one-way flexibility. If external benchmarking applied then may be merit in different approaches, but to permit flexibility without any external benchmark to show that the outcome is efficient will open the entire WACC assessment to increased debate. NSPs should not have ability to have a 'second bite' on every issue via the persuasive evidence test.	
MEU	Rate of return - EURCC rule change proposal on cost of debt allowances	Shares with the AER, AEMC, EURCC a view that the current approach to cost of debt delivers outcomes that do not reflect the cost of debt incurred by NSPs and that change is needed to ensure efficiency. Agrees with AER and AEMC that assessing the cost should not be hardwired into the rules and that the AER should have discretion as to what allowance should be used. The rules should provide guidance that cost of debt be efficient and reflect likely costs of entity in sourcing its debt. Increasing the averaging (trailing) period does not appear to provide a disincentive to using a large period and perhaps provides a more consistent outcome.	5, 36
MEU	Rate of return - EURCC rule change proposal on different cost of debt allowance for Government-owned NSPs	The cost of debt incurred by government owned NSPs is substantially lower than the cost of debt incurred by privately owned NSPs. The rules should provide guidance to the AER that the allowance should reflect the likely costs that the NSP would face.	36
NSW Minister for Resources and Energy	Rate of return - general comments	Any network appeals regarding the determination process should clearly take into account all factors which contributed to the cost of capital decision.	2
NSW TCorp	Rate of return - EURCC rule change proposal on cost of debt allowance	Supports the proposal to use long term historical trailing average approach for cost of debt as it provides a better estimate of future rates of return than 20 day moving averages. Evidence to support that claim. Rejects the suggestion that any shift to long term averaging would unfairly discourage new entrants since the reality of the energy industry is that it is an industry of incumbents and the loss of regulatory neutrality is not likely to have significant consequences. Short term averaging introduces an unwelcome volatility to consumer prices. For large government-owned utilities the debt portfolios are very large such that there is simply not enough swap market liquidity to adequately hedge the portfolio's risk-free rate to the regulatory benchmark within the 20 day observation period. Further there are no market instruments that allow the DRP to be adequately hedged. Short term averaging introduces unwelcome arbitrariness in the timing of observation period and also burdens the regulator with the need to closely analyse, weight and trade a specific portfolio of illiquid corporate bonds over the regulatory observation period.	1-5
NSW TCorp	Rate of return - EURCC rule change proposal on	Effect of GFC is temporary and empirical evidence suggests long dated is appropriate benchmark. The post- GFC debt issues not reflective of long term debt financing and any potential short term	1

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	cost of debt allowances	savings are offset by higher refinancing costs.	
NSW TCorp	Rate of return - EURCC rule change proposal on cost of debt allowances	Averaging period should match the ten year prudent financing period which would deliver secure funding, more stable regulatory prices and better allocative efficiency. Preference is for the Ofgem framework with a ten year average of ten year debt for both risk-free rate and DRP, updated annually. A mechanism that updated 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. Further, it would remove the two sources of potential conflict between the regulator and NSPs around short-term observation periods. Annual updates would mark a shift from the current framework that establishes a constant rate for each year of the regulatory period and the impact of such a shift would need to be considered further.	3-4
NSW TCorp	Rate of return - EURCC rule change proposal on different cost of debt allowance for Government-owned NSPs	The EURCC proposal to determine government-owned NSPs' cost of debt is not supported as it would result in a fundamental breach of the Competition Principles Agreement (CPA), cause inappropriate discrimination between NSPs based on ownership, taxpayers would no longer receive appropriate compensation for the risk of lending to NSPs, and it would cause a reduction in allocative efficiency as a result of distortions in resource allocation. The EURCC claims for the profitability of government owned NSPs are incorrect. 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.	2-7
QTC	Rate of return - common framework	Periodic WACC review should be undertaken but values should be updated as required. Parameters should not be fixed but rather estimated as part of a periodic WACC review. The AER should be required to produce the best estimate of each WACC parameter and not be required or permitted to produce a range. Rather than recognising specific inter-relationships the rules could require all WACC outcomes to be tested against the fundamental principle that higher risks must be compensated by higher expected returns. Testing WACC outcomes against this principle will avoid the counter-intuitive outcomes that can arise when CAPM is applied mechanistically, such as the cost of debt being set above the cost of equity. Stability is a positive feature but prescription can, in some cases, prevent the WACC estimates being developed. Different approaches to the risk-free rate can be useful - vanilla post-tax nominal WACC provides a reasonable framework to estimate the required rates of return for regulated NSPs.	1-6
QTC	Rate of return - common framework	The framework should recognise the interactions between the regulatory process of setting the return on capital and the actual circumstances of regulated NSPs. The stability of the framework allows regulated NSPs to maintain relatively high credit ratings and a relatively low equity beta. Primacy should be given to the observed funding practices of NSPs. Framework should always be based on the assumption of the benchmark efficient firm.	6-7
QTC	Rate of return - EURCC rule change proposal on cost of debt allowances	For problems with risk-free rate and DRP, such as those experienced during GFC, the solution should be based on adopting a different proxy for the risk free rate or making an explicit adjustment to the Commonwealth bond yield, as adjusting the risk-free rate is simpler and more	2-3

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		transparent than attempting to adjust the MRP. The current approach of developing a DRP estimation methodology during the determination process does not afford the NSP or other stakeholders sufficient time to develop a proper response. The Tribunal has been critical of this. It would be useful if the AER published guidelines on how it intends to estimate parameters for which values are not specified in a WACC review such as the DRP. Developing estimation methodology guidelines as part of a consultative process is likely to produce higher quality outcomes and should reduce the number of matters that are taken to merits review.	
QTC	Rate of return - EURCC rule change proposal on cost of debt allowances	DRP benchmark could involve a high level of estimation error. The actual and benchmark DRPs should be averaged over common time periods to reduce the effect of market movements. DRP on long term higher than shorter term borrowing but current equity beta does not compensate for the higher refinancing risk associated with shorter term debt. Survey data results suggest NSPs have not been overcompensated for the higher refinancing risk on their short term debt issues. Market analyst reports should be treated with caution. A formal survey approach of Debt Capital Market specialists may assist in developing high quality estimates. The use of a 5 year benchmark is not supported by debt issuance practices.	1, 10-11, 19-22
QTC	Rate of return - EURCC rule change proposal on cost of debt allowances	EURCC's trailing average cost of debt should not be adopted. The current five-yearly reset creates interest rate risks which are increasingly difficult to manage. The current approach disadvantages NSPs with larger asset bases - because of the resulting large volumes of debt or derivatives that must be transacted during that period to minimize interest rate mismatch risk. QTC supports the use of a Moving Average approach to update cost of debt and cost of equity on an annual basis, to reduce the interest rate risk that arises due to the 5-yearly rate reset process. The resulting return on capital would provide potentially less volatility in network prices and returns and the moving average still provides strong incentives to networks to efficiently manage their funding costs and does not increase the potential for investment distortions.	27-44
SA DMITRE	Rate of return - general comments	The AER should specify the method for DRP. AEMC should ensure the rules provide sufficient detail for networks to be able to present DRP values in their regulatory proposals from a consistent source of debt indicators determinations by AER. There is no reason for a persuasive evidence test in the rules and would support either the AER or EURCC proposals for the DRP. Supports a merits review process applying to the WACC parameters as errors can be made and parameter values are of the utmost importance. Notes and supports the AER's contention that the current limited merit review process allows for the cherry picking of parameters for review. One option would be for the Tribunal to identify issues with the AER's determination of WACC parameters, however rather than determining the current values of these parameters where an issue has been identified, to return the matter with guidance to AER to determine final values. Supports the establishment of a central consumer group.	4
SA DMITRE	Rate of return - common framework	There should be a common framework for WACC applying over all networks and the basis should be Chapter 6. The framework should have the values of parameters removed from the rules and be determined once every 5 years by the AER's SOCC. Some parameter values will need to be updated for current market conditions at the time of each regulatory determination. These could be reflected in the AER's framework and approach paper that precedes each regulatory	4

Organisation	Issue	Substantive point being made	Page ref
		determination.	
The Financial Investor Group	Rate of return - effectiveness of current frameworks	Broadly agrees with AEMC's initial position and is supportive of many of the proposals. Supports the use of a single rate of return framework across electricity distribution, transmission and gas. A properly designed framework should allow recognition of real differences between each of the sectors. To promote confidence in regulator decision-making (certainty / predictability) support a framework where, outcomes are subject to a market test, adequate guidance is provided for determinations to provide a suitable degree of regulatory certainty and predictability, merits review remains an essential element of the framework. Ultimately, application of the framework must ensure that rate of return reflects NSP's efficient financing costs at the relevant time the decision is made. If it cannot do this it cannot contribute to meeting the NEO or the NGO.	1, 4, 7
The Financial Investor Group	Rate of return - AER rule change proposal	Concerned that AEMC's initial position may be quickly reduced to technical debate over models and parameters and reintroduce inflexibility evident in current frameworks. Stress the primacy of the market test: once NEO and NGO are seen as governing design of the framework, methods of WACC calculation and estimation of parameter values become subordinate to the outcomes to be achieved. Market testing would require the regulator to consider not only a range of market evidence and commercial considerations relevant to the determination of the rate of return in each particular case, but also the way in which market experts deal with problems relating to data and limitations in underlying approaches and financial models. Current gas rules provide a potential model for the market test but are not ideal as there is ambiguity.	1, 4, 7
TEC	Rate of return - AER rule change proposal	WACC and rate of return are amenable to specification in the rules and should be so specified. This creates certainty and simplifies the process.	3
TEC	Rate of return - EURCC rule change proposal on different cost of debt allowance for Government-owned NSPs	Government-owned companies are able to leverage a superior credit rating to obtain finance at much more advantageous rates. This should be accounted for in WACC determinations.	3
UE and MG	Rate of return - further consultation on cost of debt issues	Has not formed a view. Concurr with the QTC premise for the proposal that refinancing once every five years is distortionary. ETSA proposal demonstrates a full understanding of the hedging strategies of regulated businesses. If ETSA proposal adopted, businesses would not need to alter current strategies but QTC proposal would affect incentive to hedge (benefit). ETSA remedies disconnect between actual and regulatory at outset whilst QTC progressively addresses. Prefer immediate implementation based on rolling average LR DRP and facilitate a transition to the QTC approach - precise details should be determined in separate consultation. Implementation may reduce risk but do not believe equity should be affected - but there is rationale for adopting a long term average for the risk free rate if the CAPM is implemented with a fixed market risk premium. Dollar weighted average would be appropriate and quarterly approach is reasonable. Support option subject to not promoting gaming.	1-7
UE and MG	Rate of return - CAPM/nominal post-tax	No compelling reason to depart from the post tax nominal vanilla definition. However, using other methods to estimate cost of equity may be useful. Currently the AER does not have a fair and	9

Organisation	Issue	Substantive point being made	Page ref
	prescription	reasonable framework for assessing and comparing differences between asset pricing models. Alternative models should not be subject to more exacting tests than those to which the Sharpe-Lintner CAPM is itself exposed.	
UE and MG	Rate of return - EURCC rule change proposal on cost of debt allowances	ACT has consistently concluded that AER has erred in various approaches that produced an artificially depressed cost of debt benchmark - debates have not been focused on an appropriate term to maturity but rather construction of an appropriate market measure. Regulators should be cautious in developing their own benchmark in preference to Bloomberg (that have credibility and widespread use in financial markets). The benchmark DRP allowance will change over time in response to changes in market conditions. Task in designing regulatory framework is to ensure that it is effective in all market conditions, not just those that prevail today. The challenge is to develop a workable approach that does not introduce excessive complexity.	10
UnitingCare Australia	Rate of return - further consultation on cost of debt issues	Undue weight should not be placed on actual borrowing practices - should have an incentive to minimise borrowing costs and risks. Important that assessment explicit in the impacts on end-users and disclosed. Rolling average should apply to the full cost of debt to avoid measurement problems and to more accurately reflect actual costs. Do not support transitional arrangements. Do not support NSP discretion for approach. AER discretion should be limited with fundamental architecture specified in the NER. If necessary, any option should be exercised by users. Do not believe QTC proposal seeks to achieve long term interests of end-users. Believe reducing risk should not be objective - should be about setting suitable benchmark. Approach to risk free rate should be addressed at same time - not fully considered yet but rolling average of yield to maturity on CGS would be appropriate.	1-3, 5-6
WA Public Utilities Office	Rate of return - AER rule change proposal	Does not support the AER's proposed amendments to the NGR as it considers that the AER has not made a convincing case that the current rate of return framework in the NGR needs to be changed on the basis that it doesn't meet the NGO. The new gas regime has only been in operation since 2008 and only about half of Gas Service Providers have had experience under the current framework, so it seems premature to change the rules. The proposal that three frameworks move to a single rate of return framework approach would not be appropriate for adoption in WA. The AER has conceded that imposing a WACC review and other provisions would not be justified for the four gas pipelines it regulates.	1-2
WA Public Utilities Office	Rate of return - CAPM/nominal post-tax prescription	The codification of a nominal post-tax framework restricts regulators and SPs unnecessarily. Pre-tax and post-tax frameworks produce equivalent outcomes (provided that the effective company tax-rate is accurately calculated). There is no benefit in constraining the NGR to require the use of CAPM.	3-4
WA Public Utilities Office	Rate of return - effectiveness of current frameworks	Electricity transmission framework is problematic on a number of fronts. It prohibits the identification of the true WACC parameters since they are unable to be reassessed at each individual determination. It was developed with the aim of mitigating the under-investment problem. It does not allow for WACC parameters to be adjusted for any errors that are clearly made when estimating the parameter values at the time of each WACC review and WACC reviews not subject to merits review under the NEL.	2
WA Public	Rate of return - general	The NEO, NGO and RPP set out the requirement to obtain the best possible regulatory estimate	4

Organisation	Issue	Substantive point being made	Page ref
Utilities Office	comments	of WACC. Consideration should be given to allowing regulators the flexibility to adopt the parameter estimates that they believe to be most appropriate for the particular network or pipeline in question rather than being constrained to adopt the same parameter estimates for all. Consideration should be given to allowing regulators the flexibility to adopt the parameter estimates that they believe to be most appropriate at the time of each determination.	

Part IV Summary of issues about regulatory determination process

Organisation	Issue	Substantive point being made	Page ref
AER	Process - confidential information	<p>Prescribing the ability for the AER to weight confidential information is consistent with the NEL and common law to discourage blanket confidentiality claims.</p> <p>"Stop the clock" can be used to also give the AER more time to assess confidentiality claims.</p>	71
AER	Process - frameworks and approach paper	<p>The framework and approach paper should be optional, with consultation triggered by the AER or NSP.</p> <p>New proposal for consulting and locking in forecast expenditure models in the paper. The models can be varied following AER approval prior to submission of regulatory proposals. The paper could still be optional - triggered by a substantive change from a previous framework and approach paper.</p> <p>The control mechanism should be locked in the framework and approach paper, but the formulaic expression can be changed for unforeseen circumstances. The same test would apply for a change in service classification.</p>	v, 12-14, 63, 73
AER	Process - material errors	<p>The broader Chapter 6A provisions over the Chapter 6 provisions will allow correction of errors outside the merits review process (which is less likely to be available under Chapter 6). Proposes a 6 month period for correction of material errors following the making of the final regulatory determination - provides greater finality and avoids a merits review.</p>	63, 74
AER	Process - submissions on submissions	<p>Complete regulatory proposals should be made upfront to provide other stakeholders with time to make submissions and reduce NSP providing late information in tight timeframes.</p> <p>AER's proposed restriction of NSP submissions is not inconsistent with the NEL. However, proposal can be modified so that NSPs are no longer restricted from making submissions on the draft regulatory determination or late submissions that may be inconsistent with the NEL. NSP submissions must be within scope of draft regulatory determination.</p> <p>Supports commencing the regulatory determination process 3 months earlier - allows more time for an issues paper, assessing confidentiality claims and consulting in the framework and approach paper on expenditure forecast models.</p> <p>The issues paper should remain optional as it may not always add value for stakeholders.</p> <p>New proposal for giving the AER power to "stop the clock" to assess incomplete or deficient regulatory proposals (similar power under the NGR).</p> <p>Does not support cross-submissions proposal - it may be administratively burdensome by</p>	v, 62, 65-69

Organisation	Issue	Substantive point being made	Page ref
		<p>increasing the number of submissions and cross-submissions, and not incentivise complete regulatory proposals upfront and not reduce late information.</p> <p>Does not support delaying the making of the final regulatory determination - it would create uncertainty on the incentives for NSPs to delay, difficult for the AER to plan its resources, impact on the commencement of the next regulatory control period, and the annual pricing proposal process and subsequently lead to potential price shocks on consumers.</p>	
CALC	Process - confidential information	Supports AER proposal. AEMC should introduce measures to minimise NSP risk to expose commercially sensitive information e.g. non-disclosure agreements.	7
CALC	Process - other	Propose the inclusion of a formal requirement for AER to consult with consumer groups during the regulatory determination process	7
CALC	Process - other	<p>Disagree with placing emphasis on improving consumer involvement as a solution to solve all flaws in the regulatory framework. Need to improve regulator's ability to make determinations according to the NEO.</p> <p>Consumer groups unlikely to have resources to effectively participate, and there is not one single consumer voice. AER is the consumer's proxy, but not the arbitrator between NSPs and consumers.</p>	7-8
CALC	Process - submissions on submissions	Supports AER proposal	7
CUAC	Process - submissions on submissions	Propose option to impose a pecuniary penalty on NSPs for late submissions, equivalent to cost of assessing additional information, incorporating into the regulatory determination and disincentivising NSP gaming.	4
ENA	Process - confidential information	<p>Proposes non-rule based solution such as a confidential information protocol (e.g. limited third party disclosure agreements) and standard form of confidentiality undertakings. This includes a list of suggested key elements to make up this protocol, and the categories of confidentiality that would indicate how confidential information should be handled by NSPs.</p> <p>Does not object to AER's proposal for NSPs to identify parts of their regulatory proposals NSPs consider being confidential.</p> <p>Does not consider any benefit in clarifying NER to reflect NEL and/or common law position in AER's ability to place weight on NSP confidentiality claims in regulatory proposals.</p>	67-71
ENA	Process - frameworks and approach paper	<p>Framework and approach paper should be optional, with the process triggered by the AER or DNSP in specified circumstances.</p> <p>The control mechanism should be locked in to provide regulatory certainty to DNSPs and avoid administrative burden on DNSPs if there's a change to the control mechanism</p> <p>Departing from service classifications or formulaic expression of control mechanisms should be</p>	71-76

Organisation	Issue	Substantive point being made	Page ref
		<p>based on DNSP material justifying a departure and the AER to determine whether it agrees - this avoids the uncertainty created by the AER's proposed foreseeability test.</p> <p>Departure in the final regulatory determination from a matter addressed in the framework and approach paper could only be sought by the DNSP with supporting evidence. An exception to this is with respect to the formulaic expression of the control mechanism.</p> <p>The AER should take into account interests of stakeholders for the need of a framework and approach paper.</p> <p>A mandatory requirement for incentive schemes in the paper is unnecessary, given that these schemes have now matured.</p>	
ENA	Process - other	Proposes an AER-stakeholder working group to comment on implementation issues related to the AEMC's preferred rules on regulatory process.	59
ENA	Process - submissions on submissions	NSPs should be able to make late submissions to the draft decision where there are legitimate reasons. Disagrees that restricting NSP submissions would lead to complete regulatory proposals - the incentive already exists through decision-making rules on expenditure forecasts and not being given leave for merits review.	62-63
ENA	Process - submissions on submissions	Most of the issues will be addressed by commencing the regulatory determination process earlier by 2-3 months and adding an additional six weeks to the duration of the current timeframe. This would allow: NSPs to prepare their revised regulatory proposal to ENA's proposed 45 business days (from 30 business days); stakeholders to make submissions on the AER draft decision, NSP's revised regulatory proposals and NSP's draft decision submissions within 20 business days; cross-submissions following stakeholders' draft decision submissions where all stakeholders respond to each other's submissions within 15 business days after the draft decision submissions close; and NSPs additional time to determine pricing for services following the final regulatory determination (with a new NSP proposal for the AER to complete its final regulatory determination 3 months prior to the commencement of the next regulatory control period).	63-65
ENA	Process - submissions on submissions	Delaying the final regulatory determination will delay the annual price change in distribution, and reduce the AER's time to assess the annual pricing proposal. This is less of an issue in transmission.	65
ENA	Process - submissions on submissions	Non-rule based requirements at beginning of the regulatory process for: AER to clarify its schedule and key issues; NSPs to identify possible areas of uncertainty and submissions; and engagement between NSPs, the AER and other stakeholders in reaching a common understanding of the regulatory proposal and potential issues.	65
ENA	Process - submissions on submissions	Supports a mandatory issues paper - allows for efficient stakeholder engagement at the beginning of the regulatory process and identification of key issues, leading to more effective submissions and improved stakeholder resourcing.	66
ENA	Process - submissions on submissions	Propose non-binding non-rule based AER guidelines on submission requirements including late submissions. Provides their own proposed guideline on what they consider best regulatory	66-67

Organisation	Issue	Substantive point being made	Page ref
		practice.	
ENERGEX	Process - submissions on submissions	Does not support delaying final regulatory determination. See ENA submission.	3-4
Ergon Energy	Process - confidential information	The AER does not need more time to consider confidentiality claims. See ENA submission.	16
Ergon Energy	Process - frameworks and approach paper	See ENA submission.	17
Ergon Energy	Process - submissions on submissions	Does not support delaying the final regulatory determination as it will impact on the annual pricing proposal process. See ENA submission.	15-16
Essential Energy	Process - submissions on submissions	Delaying the process may be an option but would have to be done with commencing the process earlier to avoid clashing with the annual pricing proposal process. See ENA submission.	9-12
Ethnic Communities Council of NSW	Process - other	Agree with the AER's regulatory process concerns, but this will be addressed if onus of proof of efficient expenditure is placed on NSPs.	3
ETSA, CitiPower and Powercor	Process - confidential information	Current framework strikes the correct balance between protecting NSPs submitting confidential information to the AER and allowing transparency in decision making process.	49
ETSA, CitiPower and Powercor	Process - frameworks and approach paper	The F&A Paper must be published prior to each regulatory determination - avoids complications associated with triggering its publication and uncertainty around whether the paper will be consulted upon for any given regulatory reset. However, the paper could be streamlined if there are no departures from the previous paper. If the paper is to be optional, then they support AER or NSPs triggering the paper based on specific circumstances, and AER consulting with stakeholders. The control mechanism needs to be locked in the paper prior to the regulatory proposal. The AER should have some flexibility to revisit the formulaic expression of the control mechanism (the AER currently does this). The "good reasons" test for amending service classification should be retained - the AER proposed "unforeseen circumstances" test is too uncertain.	50-52
ETSA, CitiPower and Powercor	Process - submissions on submissions	Does not support delaying the final regulatory determination - introduces uncertainty and unworkable, impacting on the finalisation of distribution tariffs and a price shock on consumers. The Tribunal has observed that the AER must draw line in engaging with the DNSP in meetings its	47-48

Organisation	Issue	Substantive point being made	Page ref
		imposed deadlines and therefore prescribing a specific period is unnecessary in the rules. See ENA submission.	
EUAA	Process - confidential information	See comments on restricting NSP submissions.	v, 33-34
EUAA	Process - submissions on submissions	Agree with the AER's regulatory process concerns in relation to submissions on submissions and confidentiality claims in regulatory proposals. These will diminish once the onus of proof of efficient expenditure is correctly shifted from the AER to NSPs. Disagrees with AEMC's characterisation of the problem and proposed solutions. Does not support additional consultation steps in the regulatory determination process - AER consults already frequently with NSPs and regulatory burden would increase.	v, 33-34
Grid Australia	Process - confidential information	Supports ENA proposal for a confidential information protocol. Does not agree with AER proposal to have discretion to place less weight on confidential information.	14
Grid Australia	Process - submissions on submissions	Supports extending the regulatory determination process by 3-4 months to allow for an issues paper to identify key issues earlier and a cross-submissions stage for an exchange between NSPs and other stakeholders. Supports additional two weeks for TNSPs to prepare their revised regulatory proposals.	2-3, 12
Jemena	Process - confidential information	Reasons for substantial amount of confidential information is because it is in response to the AER's RINs and information requests, and contains information that can damage the NSP's or a third party's commercial interests. See ENA submission.	55-56, 60-61
Jemena	Process - frameworks and approach paper	See ENA submission.	56
Jemena	Process - material errors	See ENA submission.	57-58
Jemena	Process - submissions on submissions	See ENA submission on non-rule based solutions.	51, 55
Jemena	Process - submissions on submissions	Proposes annualising the timetable for all NSPs from 2014 so that the regulatory processes are all aligned into a regulatory annual financial calendar. This will improve stakeholder resources and annual review of the process.	47, 51, 54-55
Jemena	Process - submissions on submissions	Although merits reviews are a consideration, voluminous information from NSPs has been due to RINs and subsequent AER information requests. Jemena provides information that it considers necessary to allow the AER to make a robust decision. Jemena is improving the way in which it presents its information to the AER, and a rule change is unnecessary.	53
MEU	Process - confidential	Supports AER proposal, including confidentiality claims relating to related party transactions.	38

Organisation	Issue	Substantive point being made	Page ref
	information		
MEU	Process - frameworks and approach paper	Needs to lock down early assessments of specific aspects in the framework and approach paper. The paper should facilitate a tripartite discussion and allow issues to be discussed and resolved prior to the regulatory proposal. The actual issues would be negotiated between the parties. Allowing a trigger to change service classification or a control mechanism to be based on unforeseeable circumstances suggest the NSP does not have sufficient understanding of its business.	56-57, 68-69
MEU	Process - other	The AER's public forums seldom provide stakeholders with an opportunity to have a significant debate on critical issues. Agrees with AEMC approach to consider entire regulatory process to maximise stakeholder involvement and adequate time to make proper decisions.	37, 39
MEU	Process - submissions on submissions	Agrees with: a new consultation step on the process, a mandatory issues paper stage, extending the period for NSPs to submit revised regulatory proposal (but allow stakeholders additional time to consider the AER's position on the revised regulatory proposal and new information), commencing the process earlier where all stakeholders are engaged earlier on key consumer issues, and restricting the scope of NSP submissions. Does not agree with delaying the final regulatory determination as stakeholders still do not have the opportunity to scrutinise the late information or the AER's response.	37-38
NSW Minister for Resources and Energy	Process - other	Supports strengthening existing processes to support consumer engagement and network/regulator relationships and information flows.	2
PIAC	Process - confidential information	Give AER discretion to place less weight on confidential information in NSP's regulatory proposals to incentivise NSPs to minimise confidentiality claims and provide consistency with AER approach to confidentiality claims in submissions.	2-3
PIAC	Process - submissions on submissions	Only supports the AER proposal to restrict scope of NSP submissions as NSPs will submit all relevant information as early as possible.	2
SA DMITRE	Process - other	Supports a central consumer group that advises existing individual consumer groups preparing submissions with expertise in NSP's business to analyse NSP information.	5
SA DMITRE	Process - submissions on submissions	Against delaying final regulatory determination process as it will impact retail pricing processes.	5
SP AusNet	Process - submissions on submissions	The AER has not been able to meaningfully engage earlier because of resources and reluctance to be bound outside the draft decision. See ENA submission.	5-6
SP AusNet	Process - submissions on submissions	See ENA submission.	6-7

Organisation	Issue	Substantive point being made	Page ref
UE and MG		See ENA submission on regulatory processes	
UnitingCare Australia	Process - confidential information	Agrees with AER proposal - experienced problems accessing confidential information, resulting in limiting consumer engagement in the process. If burden of proof is shifted from AER to NSP, then NSPs will have weaker incentives to make confidentiality claims as NSPs will try to provide regulator with as much information as possible to support their proposals.	59-60
UnitingCare Australia	Process - submissions on submissions	Disagrees with the AEMC characterisation of the problem and its proposed solutions. Considers problem is the onus of justifying regulatory proposals being placed on the AER, which can be easily resolved by shifting the onus from the AER to the NSP and the AER providing advanced notice of not considering late submissions. Does not require the AER proposed restrictions on NSP submissions.	60
Victorian DPI	Process - other	To improve consumer engagement, a larger share of the Consumer Advocacy Panel's funding needs to be directed to regulatory determinations or to the Panel.	15
Victorian DPI	Process - other	Lack of transparency on AER resourcing.	15
Victorian DPI	Process - submissions on submissions	A mandatory issues paper will summarise, synthesise and provide a "map" to the information in the NSP regulatory proposals and identify key issues, which in turn may reduce the volume of material that stakeholders have to consider. There would be a short extension to the timeframe (2 months to publish the issues paper according to the ESC process).	13-14

PART V Summary of diverse issues

Organisation	Issue	Substantive point being made	Page ref
AER	Small-scale incentive schemes	<p>The AER should be given discretion to introduce new incentive schemes, not just test schemes or small scale pilots. Doubt whether temporary schemes will have any effect on incentives, particularly where there is a low revenue at risk. In addition, providing the AER with discretion to introduce test or pilot schemes will make the process of introducing new schemes more cumbersome than the current arrangements.</p> <p>The AER's discretion should be guided by principles set out in the NER. The principles should be those set out in the AER's rule change request and any other relevant principles the AEMC deems fit to prescribe. Agrees that the AER should have regard to the interaction of any scheme with other incentive schemes in the NER.</p>	31-33
AER	Uncertainty regime	<p>Agrees with AEMC characterisation of the debate on the uncertainty regime. Agrees that increasing the number of intra-period adjustments has potential costs with respect to expenditure discipline and price stability, and these costs need to be weighed against the benefits of giving NSPs appropriate level of protection for changing circumstances.</p> <p>Agrees that the contingent projects regime should be considered for distribution, taking into account incentives for efficiency and avoid a cost of service regime.</p> <p>Maintains that benefits associated with introducing a materiality threshold in Chapter 6 are consistent with the definition currently in Chapter 6A.</p>	21
AER	Process - timeframe for uncertainty	<p>Cost pass through, contingent project and capex reopener applications should be extended. A maximum of 100 business days extension for unusual complex/difficult questions, and "stop the clock" would only be applicable when the AER waits on information or outcomes from an external party, which has less certainty than complex questions.</p> <p>AER has experienced complex contingent project applications relating to capital projects where there are frequent changes of scale, scope and schedule, and therefore reassessment of the application when the AER receives it. For example, an expert is required to conduct a detailed examination of the change profile of expenditure to determine the total capex and opex allowance for the project.</p>	63, 75-77
AER	Shared assets	<p>Supports the proposal to extend the proposed shared asset rule change to TNSPs.</p> <p>Considers the proposed rules on shared assets should extend to assets used in the provision of alternative control services. Excluding alternative control services assets gives rise to the following concerns:</p> <ul style="list-style-type: none"> Some alternative assets (such as meters and streetlights) can have other uses that generate significant income. Appears to be in principle no reason for limiting this rule to a 	33-35

Organisation	Issue	Substantive point being made	Page ref
		<p>subset of regulated assets.</p> <ul style="list-style-type: none"> • The classification of services will become more of an issue if the treatment of standard control services assets and alternative control services assets are differentiated in this way. There will be an incentive for a NSP to have the assets that generate additional income from other sources classified as alternative control services. • Differentiating between standard control services and alternative control services could create a significant definitional issue. <p>Does not see any practical issues in the application of its proposed rule to alternative control services. The AER could make an adjustment through a separate adjustment mechanism. The allocation of compensation between users of standard control services and alternative control services would be addressed by the AER as part of designing the adjustment mechanism.</p> <p>Agrees that it should have the discretion to determine the appropriate mechanism to be used to provide for the sharing of the revenue. In the case of the AER using forecast adjustments to the building block revenue requirement, the AER also proposes that it have the option to apply/not apply unders and overs adjustments based on actual outcomes.</p>	
Ausgrid	Uncertainty regime	<p>Does not support including contingent projects in distribution. There are differences between transmission and distribution network projects, which were recognised by the MCE, and therefore did not introduce distribution contingent projects. Contingent projects may be suitable for clearly defined events requiring significant investment, which would be low and administratively practical to consider on an ad-hoc basis. However, compared to transmission, distribution network projects are smaller in scale, larger in number and have shorter lead-times. This makes it a problem to anticipate and identify in the regulatory proposal. Where the projects are based on uncertain events, DNSPs can apply a probabilistic approach to those events.</p> <p>It would be overly resource intensive if the materiality threshold of \$10m applied because there would be a large number of contingent projects in the AER determination, requiring mini determinations throughout the regulatory control period.</p>	7
CALC	Small-scale incentive schemes	<p>The AER's ability to introduce new incentive schemes should not be restricted to small scale pilot schemes. Recognises that there are risks involved in introducing new incentive schemes but considers that this is not a valid reason for limiting the AER's discretion. In addition, questions whether small scale pilot schemes have the ability to produce any evidence of effectiveness.</p>	5
ENA	Small-scale incentive schemes	<p>Considers there is likely to be some merit in allowing the AER to introduce small scale pilot or test schemes.</p> <p>The limits placed on any scheme introduced should ensure that the costs and risks for NSPs are minimised while still allowing for meaningful results to be obtained. Suggests the following factors:</p> <ul style="list-style-type: none"> • Limiting the revenue at risk to only small amounts or paper trials; 	36

Organisation	Issue	Substantive point being made	Page ref
		<ul style="list-style-type: none"> • Requiring that NSPs are involved in the design of the scheme; • Requiring that an NSP agree to participate in the scheme before it is trialled; and • Limiting the operation of the scheme to only parts of an NSPs operations, eg to certain regions or certain classes of customers. <p>Does not support the AER having a broad power to introduce new incentive schemes. Considers that this may lead to the AER ignoring specific criteria and protections that apply to existing incentive schemes. In addition it agrees with the AEMC that there is a risk that new incentive schemes could be introduced that lead to unexpected and unwelcome outcomes.</p>	
ENA	Process - material errors	<p>No evidence has been provided by the AER for correcting material errors. Past instance where AER should have made a correction, but decided not to do so.</p> <p>AER should not be given ability to "amend" the error in addition to revocation and substitution as it would reduce NSP merits review rights and no evidence to justify change.</p> <p>If "deficiency" is included in Chapter 6A provisions, then the text should replicate the existing Chapter 6 provision which contains a more prescribed list of material errors.</p>	78-79
ENA	Uncertainty regime	<p>The uncertainty measures have not been effective in reducing risks associated with changes to output requirements on NSPs because: they have not been applied in full or at all; where they have been applied, it is impractical and inefficient for these to shield NSPs from all output related risk as this would reduce innovation and low cost solution incentives; and the measures based on thresholds and conditions may not be sufficiently flexible for circumstances or unforeseen projects required. In particular, capex reopeners is a "shipwreck clause" with a 5% RAB threshold, contingent projects are limited to AER approved projects in the regulatory determination with a \$10m or 5% MAR threshold, and cost pass throughs only apply to limited pre-defined circumstances. These measures do not allow NSPs to make timely responses to customer needs as they require onerous and intrusive AER review when the NSP makes the application.</p> <p>Costs affected by uncertainty measures relate to projects where NSPs have limited discretion and these services and prices are regulated. This is different to commercial contracts on prices and conditions where NSPs have flexibility.</p> <p>As pass through applications are for narrowly defined events with a materiality threshold, NSPs are exposed to unrecoverable costs.</p> <p>For contingent projects, these generally relate to very large and uncertain projects which require advanced identification and defined trigger. It is currently difficult for contingent projects to be defined in transmission because of the AER's narrow application, and there is demand risk for TNSPs. For distribution, there will be very limited projects that could be applied, given the program nature in distribution.</p>	27-28, 34-35

Organisation	Issue	Substantive point being made	Page ref
		As the uncertainty mechanisms are not subject to merits review like in the regulatory determination, a regulatory error can only be addressed via judicial review and therefore increases risks to NSPs in relying on these mechanisms.	
ENA	Process - timeframe for uncertainty	<p>Supports AER's proposed maximum 100 business days for cost pass throughs, capex reopeners and contingency projects applications. In addition, apply "stop the clock" when AER invites written submissions, requests further information or waiting for an external administrative process/decision or third party qualification.</p> <p>Circumstances requiring "stop the clock" for contingent project applications include consulting with stakeholders on the amount of expenditure and revenue reasonably required for undertaking the project.</p> <p>Does not support prescription requiring NSPs to notify the AER of their intention to make an application.</p> <p>Proposes the AER consult with NSPs and other stakeholders to develop guidelines to clarify expectations of NSPs and the AER.</p>	80-81
ENA	Shared assets	<p>To the extent that assets included in the RAB are used to deliver alternative control services (and the users of the alternative control services are charged for use of these assets), it is appropriate that network customers should receive some compensation.</p> <p>The sharing of benefits between NSPs and electricity customers should be consistent with the following principles:</p> <ul style="list-style-type: none"> • NSPs should be incentivised to pursue alternative use network services by being permitted to retain a share of benefits from these services; • Benefits should be defined as incremental revenue from alternative uses net of all incremental costs (including avoidable costs, tax, the cost of risk and a reasonable margin associated with the non-regulated alternative use service); and • Arrangements for implementing benefits sharing should: recognise legacy arrangements and the maturity of the market for alternative uses; be administratively simple; and be proportionate to the benefits. 	36-37
ENERGEX	Shared assets	The mechanism to provide incentives for NSPs to pursue alternative uses should recognise the associated risks, be administratively simple to implement and be consistent with appropriate guiding principles.	2-3
Ergon Energy	Small-scale incentive schemes	Any proven pilot or test scheme should be introduced through the usual rule change process to ensure adequate consultation and guidance to the AER in implementing and applying the scheme.	8
Ergon Energy	Uncertainty regime	See ENA submission	7
Ergon Energy	Process - timeframe for uncertainty	See ENA submission.	17

Organisation	Issue	Substantive point being made	Page ref
Essential Energy	Uncertainty regime	Capex reopeners and contingent projects would be of little use to DNSPs as distribution projects are smaller and more numerous than TNSPs' projects. It would also be of little benefit for retailers and consumers.	8
Ethnic Communities Council of NSW	Uncertainty regime	Changes to intra-period adjustment of expenditure allowances need to be considered carefully, as they can diminish incentives to control costs, and result in more laborious regulatory processes, leading to diminished consumer engagement.	3
ETSA, CitiPower and Powercor	Process - material errors	See ENA submission.	52
ETSA, CitiPower and Powercor	Uncertainty regime	<p>Capex reopener and contingent projects are not suitable for distribution. Retain existing rules on capex forecasts.</p> <p>For capex reopeners, it would create a significant administrative burden because DNSPs would be required to re-justify their entire capex program (and possibly opex program) with detailed supporting material and the AER would have to be satisfied. For contingent projects, distribution network projects are large in number with smaller assets and require regular investments, resulting in higher administrative burden to specify in the distribution determination and during the regulatory control period, and increased risk of not recovering efficient capex because each project has to be a defined trigger event and satisfy the materiality threshold.</p> <p>Merits review would not be available for AER decisions on contingent capex, leading to increased regulatory error risk and not giving DNSPs opportunity to recover efficient capex.</p> <p>The proposed 1% materiality threshold of DNSP AAR for all pass through applications does not give NSPs reasonable opportunity to recover efficient and prudent costs. The threshold is overly onerous, significantly increasing DNSP risks to costs for unforeseen events and risks associated to quality, safety and reliability of supply. Proposes a materiality threshold of \$1m to increase certainty on a material event for cost pass throughs, alleviate the AER from determining materiality, and address the AER's concerns.</p>	30-32
ETSA, CitiPower and Powercor	Process - timeframe for uncertainty	<p>Do not consider contingency projects and capex reopeners are appropriate in the distribution context.</p> <p>Agree with the "stop the clock" mechanism for cost pass through applications.</p> <p>Agree with AEMC proposal for a notice of intent for cost pass through applications to allow NSPs to understand the cost implications before submitting their application and to allow for more accurate forecasts.</p>	53
ETSA, CitiPower and Powercor	Shared assets	Support the view that principles should be developed to provide guidance on when compensation should be permitted and how much it should be. Refer to its December Response for suggested mandatory criteria.	35

Organisation	Issue	Substantive point being made	Page ref
		<p>In addition the AER should be required to:</p> <ul style="list-style-type: none"> • outline its proposed approach to any adjustment in its F&A Paper; and • calculate any adjustment in accordance with the approach set out in the F&A Paper (unless circumstances justify departure). <p>Agree that the use of assets for alternative control services should be excluded from the uses for which consumers should receive compensation as these services are subject to a separate control mechanism.</p>	
EUAA	Small-scale incentive schemes	The use of small-scale pilot schemes merits further consideration. The effectiveness, or not, of an incentive is unlikely to be established if the scale is small, or the targets and incentive power is reduced. The AEMC has failed to recognise the benefits that can be obtained by providing discretion in this area including for example: sharper regulatory incentives, more innovation, and more flexible and timely responses.	25
EUAA	Uncertainty regime	<p>AEMC does not appear to have committed to implement Professor Littlechild's advice that lower expenditure risks should be reflected in lower rates of return with respect to applying capex re-openers and contingent projects that exist for TNSPs to DNSPs.</p> <p>Impacts on consumers and other stakeholders have not been considered by the AEMC on the proposed introduction of the various intra-period adjustments. These adjustments will place further demands on consumer organisation resources in addition to the regulatory determinations. Greater flexibility in the determination of expenditure allowances needs to also take account of consequently lower equity risks, and higher consultation and regulatory process demands.</p>	24, 26
The Financial Investor Group	Uncertainty regime	Keep the uncertainty regime simple and limit it to factors clearly outside of the NSP's control	19
Grid Australia	Process - material errors	<p>Retain the current provisions in Chapter 6A, but agree to allow for a revenue determination to be revoked and substituted for false and misleading information "to the extent necessary".</p> <p>Does not agree with AER proposal to extend the scope of matters to a "deficiency".</p> <p>See ENA comment on AER proposal to "amend" a determination for material errors.</p>	13
Grid Australia	Process - timeframe for uncertainty	<p>Supports the "stop the clock" mechanism.</p> <p>Agrees with the AEMC that a stop-the-clock mechanism is not necessary for contingent projects.</p>	13
Grid Australia	Shared assets	The current cost allocation principles already accommodate cost sharing for non-prescribed transmission services provided by TNSPs. Consequently any issues associated with shared asset treatment may be best addressed through amendments to the cost allocation principles.	2
IPART	Small-scale incentive schemes	Is supportive of the AER having the ability to develop incentive mechanisms. Is concerned that limiting the revenue at risk in a pilot scheme might limit the incentive power of the scheme and therefore not provide a good indication of the power of the scheme.	10
IPART	Uncertainty regime	Support risks being allocated to the party best able to manage that risk and a well-targeted and	9-10

Organisation	Issue	Substantive point being made	Page ref
		<p>effective uncertainty regime. Support the AEMC considering the pass through arrangements. Share retailers' concerns that the inclusion of these mechanisms may lead to less predictability about future network prices.</p> <p>Contingent projects would be less suitable for distribution because distribution expenditure tends to be smaller, less discrete and more integrated. Contingent projects and capex reopeners could be administratively burdensome and soften the discipline on NSPs to have best-practice asset management and planning practices.</p>	
IPART	Shared assets	Supports sharing of benefits from the use of shared assets with customers.	11
Jemena	Small-scale incentive schemes	Giving the AER power to introduce pilot or test schemes is a sensible option. However, the AER should not be able to impose these schemes on a NSP. In addition the amount of revenue at risk should be small. In the meantime, the AER should place priority on developing improved incentive schemes for capex and demand side participation projects for which the NER already allows.	25, 26
Jemena	Uncertainty regime	Reiterated previous reservations on including contingent projects in distribution. Including capex reopeners may accommodate specific high-cost projects, but not deal with unexpected increase in program capex requirements e.g. increased demand/connection numbers.	24
Jemena	Process - timeframe for uncertainty	See ENA submission.	58
Jemena	Shared assets	<p>Supports the use of a flexible mechanism for establishing a revenue decrement for the sharing of standard control assets and that there should be a set of principles to guide the AER in its decision making.</p> <p>If the concept of compensation for consumers for use of shared assets is applied to distribution, then there is no reason in principle why it should not also be applied to transmission.</p> <p>The use of assets for alternative control services should be excluded from the uses for which consumers should receive compensation. This is appropriate as these services are subject to a separate control mechanism.</p> <p>Any sharing arrangement must:</p> <ul style="list-style-type: none"> • apply only to revenues after netting off all relevant costs; • take into account the detrimental effect of any form of sharing on the incentives of DNSPs to develop such alternative sources of revenue; • be developed so as to minimise the associated regulatory burden; • be applied in such a way that new forms of unregulated service are granted a sharing holiday for a minimum initial period (possibly 3 or 5 years); • provide a basis for deciding the amount of revenue to be shared with consumers; • disregard services that are unlikely to be material; and • be designed so as to be proportionate to the amounts involved. 	26-27, 31-32

Organisation	Issue	Substantive point being made	Page ref
		<p>The default approach to the sharing of (net) unregulated revenues from standard control assets should be by way of an annual revenue forecast, perhaps with an ex post true up which could be done in the following regulatory control period.</p> <p>There should be protections to ensure that the share of revenue that the AER determines does not contribute to a negative commercial outcome for the DNSP. Exposure to regulatory risk would detract from the incentives for DNSPs to actively seek new forms of unregulated services that utilise regulated assets.</p>	
MEU	Small-scale incentive schemes	Agrees that the AER should be given the power to develop and implement pilot or test incentive schemes within a controlled environment. The limits on the scheme must minimise the risk of the scheme to consumers.	62
MEU	Process - material errors	Supports aligning the broader Chapter 6A provisions with the narrower Chapter 6 provisions.	70
MEU	Uncertainty regime	<p>Capex reopeners and contingent projects should not apply to distribution because there are few very large projects and most are small and capex is more easily redirected to higher priority projects. Capex reopeners and contingent projects should also not be allowed for TNSPs as the capex should be set on approved projects and reprioritise as necessary like for competitive businesses. Where TNSPs can prove to the AER that reprioritisation cannot work and consumers would suffer if the project cannot proceed then they can undertake such projects.</p> <p>Disagrees that more extensive use of the uncertainty regime means regulatory arrangements more closely resemble commercial contracts. Uncertainty relates to the approach to reallocating limited capex rather than automatically allowing increases</p>	47-48, 60
MEU	Process - timeframe for uncertainty	Agrees with "stop the clock" mechanism - incentivises NSPs to provide adequate supporting information.	57
MEU	Shared assets	<p>Supports the view that the concept of compensation for consumers for use of shared assets should also be applied to transmission.</p> <p>If assets used for alternative control purposes are fully reimbursed by the consumers of the services, then any revenue from other uses of the assets should be used to offset the costs to the users of the alternative control services.</p> <p>Where in addition the costs of an asset are fully recovered, the NSP should not benefit from selling the use of the same asset to another party. Similarly, if the assets are fully recovered from one source then the use of the assets should not provide a source of profit to the regulated entity.</p>	62
SP AusNet	Uncertainty regime	<p>Applying contingent projects to distribution is likely to be ineffective except in very rare circumstances. Compared to transmission, distribution capex projects are smaller, non-location specific, and not necessarily related to clear identifiable in advance project specific triggers.</p> <p>Proposed alternative solution such as linking the AER approved allowance for DNSP augmentation program and allowance for customer connections to out-turn peak demand growth</p>	5

Organisation	Issue	Substantive point being made	Page ref
		where forecasts are credible.	
UE and MG	Uncertainty regime	See ENA submission	4
UnitingCare Australia	Small-scale incentive schemes	The use of small-scale pilot schemes merits further consideration. The effectiveness, or not, of an incentive is unlikely to be established if the scale is small, or the targets and incentive power is diminished.	48
UnitingCare Australia	Uncertainty regime	See EUAA submission.	47-49

PART VI Summary of issues raised about transitionals

Organisation	Issue	Substantive point being made	Page ref
TransGrid	Transitionals	Concerns the rate of return framework. Transgrid must submit its regulatory proposal to the AER in May 2013. States there is uncertainty regarding the timing and outcomes of the economic regulation of network service providers rule change requests. This risks the AER making an incorrect decision regarding the rate of return for the upcoming reset determination. This is because of two specific issues with the current rules on the rate of return: inflexibility; and lack of merits review. TransGrid requested a derogation from the current rules to allow the AER to depart from the SORI and to provide access to merits review of its decision.	Attachment A
Transend	Transitionals	Similar issues to those raised in the Transgrid submission apply to it.	1
Ausgrid	Transitionals	Broad range of issues creates significant risks for upcoming regulatory determination period. Need certainty what changes, if any, will apply to it so they can be taken into account in preparing its submission. Has already begun the process of forecasting opex and capex – would need to review, revise and potentially restart to match a new rule. Any new incentive schemes (capex or small pilot) should not apply to it as there is insufficient time for it to consider the implications for the framework and approach process which has already commented and on Ausgrid's planned expenditure. Any new rate of return framework should not apply to Ausgrid as it is too close to its determination as it exposes Ausgrid to significant uncertainty about how the rate of return would be set – as opposed to understanding how the initial one operates.	2-3