Consumer
Challenge
Panel

Submission to the Australian Energy Regulator (AER)

Consumer Challenge Panel

Submission to the AER on Review of Networks Information Requirements

David Prins (chair of CCP29)

20 April 2023

Contents

1. The role of the Consumer Challenge Panel (CCP)

The AER established the Consumer Challenge Panel (CCP) in July 2013 as part of its Better Regulation reforms. These reforms aimed to deliver an improved regulatory framework focused on the long-term interests of consumers.

The CCP assists the AER to make better regulatory determinations by providing input on issues of importance to consumers. The expert members of the CCP bring consumer perspectives to the AER to better balance the range of views considered as part of the AER's decisions.[1]

The author of this submission is the chair of CCP29, a sub-panel of the AER's Consumer Challenge Panel that the AER established to focus specifically on the AER's review of incentive schemes.[2] The views expressed in this paper are the views of the author.

[1] Detailed information on the CCP is available on the AER website at https://www.aer.gov.au/about-us/consumer-challenge-panel

[2] Full information on the AER's review of incentive schemes can be found on the AER website at https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/review-of-incentive-schemes-for-regulated-networks

2. Background to this submission

In its consideration of the AER's review of incentive schemes, one of the recommendations of CCP29 was as shown in the text box below:[3]

> **Recommendation:** Businesses should be required to provide a credible narrative to explain why their outturns differed from regulatory decisions. This would go some way towards giving stakeholders better information to support their understanding regarding whether and to what extent incentive payments are justified. We recommend that these narratives should be published as part of the networks' price submissions. They should be subject to public scrutiny, and should be used to judge the quality of the network's proposal for the next regulatory period.
>
> A good narrative regarding what has happened in the current regulatory period and how that has informed what is being proposed for the upcoming regulatory period would confirm the network's commitment to customers, and its credibility as an efficient manager of network services.

The AER's Draft Decision in its review of incentive schemes supported this recommendation:[4]

> *… our review of the EBSS, the CESS and the STPIS has identified an opportunity for us to improve the transparency of, and the reasons for, differences between our expenditure forecasts and the actual expenditures incurred by NSPs during a regulatory control period. Improved transparency will better inform consumers and us about the extent to which any underspends incurred by a NSP do indeed reflect genuine efficiency gains.*
>
> *In our view, a clear case exists for NSPs to be more transparent about the reasons for any differences between actual capex incurred and our approved forecasts in a given regulatory control period. In addition to the criteria set out in the Better Resets Handbook about what we expect from a robust capex forecast in a regulatory proposal, there is also a clear case for NSPs to explain how actual capex outcomes in one regulatory control period relate to any proposed forecasts in a regulatory proposal for the following regulatory control period.*
>
> *…*
>
> *Increased transparency will help consumers and us to better assess efficiency performance and understand forecast expenditure proposals. It may also support the reputational incentives faced by networks. Our preliminary position is to revisit how we use our information gathering powers to require NSPs to provide:*
>
> - *clear explanations for why actual expenditure incurred by a NSP departs from a forecast capex allowance we have determined in a given regulatory control period and how any such departure is to be explained in light of a capex proposal in a regulatory proposal for the following regulatory control period*
> - *where capex projects or programs have been deferred from one regulatory control period to the next, the reasons why*

[3] See *CCP29 submission to the AER on review of incentive schemes discussion paper*, 11 March 2022
[4] See *Review of incentives schemes for networks – Draft Decision*, AER, December 2022, section 5 – Improved transparency. See *also Capital Expenditure Incentive Guideline – Draft Decision*, AER, December 2022, section 2.5 – Transparency.

- *the extent to which changes beyond the control of an NSP, including regulatory obligations, customer demand, and environmental issues may be relevant.*

We will revisit these matters as part of the Networks Information Requirements Review that we are currently conducting, which commenced on 23 March 2022,[5] *and our consultation from March 2023 on the regulatory information notices (RINs) for the forthcoming regulatory proposals for South Australia Power Networks (SAPN), Ergon Energy and Energex on 31 October 2023.*

These consultation processes will also provide the NSPs and us an opportunity to engage with consumer groups to properly identify the information we should seek from NSPs to better understand and improve the transparency about differences between our expenditure forecasts and the actual expenditures incurred. Our intention is for NSPs to provide a narrative, as recommended by the CCP, that explains differences between capex outcomes and forecasts in a way that both comprehensive and accessible to stakeholders.

CCP29 provided a submission that responded to the AER on various aspects of the Draft Decision, including the AER's draft decision on improved transparency.[6] This submission to the AER's review of networks information requirements from the chair of CCP29 is supplemental to the previous CCP29 submissions to the AER's review of incentive schemes.

[5] AER, *Network Information Requirements Review: Discussion paper*, March 2022
[6] See *CCP29 submission to the AER on the AER's review of incentive schemes draft decision*, 3 March 2023

3. Supplementary comments regarding transparency of relevance to the AER review of networks information requirements

The concerns that were expressed by CCP29 in regard to the AER review of incentive schemes include whether incentive schemes are really incentivising different investment and expenditure activities in networks than would have been the case if the incentive schemes (EBSS, CESS, STPIS) were absent or differently structured. Network businesses benefit from EBSS and CESS where outturn expenditures differ from the expenditures that were allowed for in the relevant final determination of the AER for the regulatory period in question.

It is important for the AER and all stakeholders (including customer stakeholder) to understand why there are differences between forecast and outturn expenditures, and to improve transparency more generally. These are pre-requisites to understanding whether and to what extent the incentive schemes are fit for purpose. To that end, CCP29 suggested that network businesses should be required to provide narrative to explain differences, and CCP29 was pleased that the AER has signalled in its Draft Decision on its review of incentive schemes that it intends to improve transparency.

There are further considerations that the AER needs to address in order for the implementation of improved transparency to be successful at achieving improvements in the long-term interests of customers in accordance with the NEO. This submission poses the following questions that the AER needs to consider as part of its design and implementation processes for the inclusion of increased transparency in networks information requirements:

- How will information provided be used? What analysis will be undertaken by the AER of the information provided?
- Will the incentive schemes be worded such that incentive payments are retained by the network only if the narrative justifies that a customer benefit was achieved that would not have arisen without the incentive payment?
- Will the onus of proof be on the network business to prove this is the case or on the AER to disprove if the network business has not provided sufficient proof?
- How will the AER ensure that information that is provided adds to clarity of understanding and not continued obfuscation?
- Will the AER be able to deep-dive into the information provided to determine whether expenditure deviations justify incentive payments?
- What will be the criteria used to assess the quality / veracity / accuracy / completeness of the information provided?
- What will be the consequences to the network of poor quality information (or none provided)?
- Overall, what tangible benefits will be seen by consumers as a result of AER analysis of the information provided?

Network businesses are now routinely undertaking considerable stakeholder (and particular customer) engagement in preparing their regulatory proposals. The AER is increasingly putting more substantial weight on the stakeholder engagement processes undertaken by the networks in its regulatory decision-making processes. More meaningful and effective stakeholder engagement prior to the submission of network business proposals to the AER should lead to better outcomes for all stakeholders, especially consumers, while easing the regulatory burden on the network business and on the AER after proposal submission. Effective engagement should also improve business focus on the quality, clarity and usefulness rather than simply the quantity of information provided to the AER and to stakeholders more generally.

This submission proposes that network businesses' preparation of transparency statements should be rolled into meaningful and open engagement processes, and not just prepared in a vacuum in the business with minimal if any stakeholder involvement. Narratives resonate with stakeholders. They aid stakeholders' understanding and enable better outcomes. Stakeholders should hear from businesses the reasons why the business' outturn capex and opex differed from the AER's previous final determination, the implications for customers of payments made to network businesses (or penalties incurred by the businesses) under the incentive schemes, and how deviations between determination and outturn and influencing the business' forthcoming regulatory period proposal. These are all relevant considerations for stakeholder engagement.