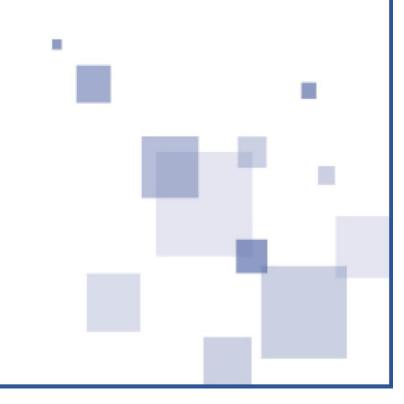


Presentation to the AER Board: Our Regulatory Proposal 2015-20



Key Points



Our Submission is founded on:

- extensive customer engagement to determine requirements;
- the resulting "Customer Commitments";
- our legal and regulatory obligations for a safe and reliable supply;
- the success of our energy conservation & demand management programs (target 122MVA);
- revised (relaxed) jurisdictional rules for security & reliability criteria that Ergon & Energex had successfully lobbied for;
- cost saving new technology such as ROAMES (spatial intelligence) and GUSS (battery network support)
- efficiencies and cost savings from our efficiency and effectiveness programs and the Independent Review Panel;
- our strategy of enabling an effective market and driving efficient services;
- our objective to keep average network prices to below inflation to drive the economy



Ergon Energy and our service commitments Getting the balance right – Safety, reliability, affordability

Our investment plans

AER benchmarking and how we compare

Questions

Supplementary Slides



Ergon Energy supplies electricity across a service area of more than one million square kilometres – across 97% of the state of Queensland.

Our electricity distribution network – a regulated asset base valued at over \$10 billion – has 371 major substations, over 160,000 kilometres of powerlines and around one million power poles.

To ensure we can deliver when we are needed, we monitor the network and respond 24 hours a day, 7 days a week. To do this we have 69 operational depots, two control centres and a central communications system centre, as well as two customer contact centre sites.



Ergon Energy's drivers...



Our Vision:

"To be a High Performance, Customer-Driven, Energy **Business**"

Our Purpose:

"To provide safe, reliable, efficient and sustainable energy solutions to support our customers and the Queensland economy"

Our Values:

"Success is built on our values of Safety, Professionalism, Integrity, Respect, Innovation and Teamwork - SPIRIT"

Our Customer Commitments:



- 1. Our goal is for our safety performance to stand with the best in our industry... to be Always Safe.
- 2. We'll maintain recent overall improvements in power supply reliability... and continue to improve the experience of customers who are suffering outages well outside our standards.
- 3. We'll be there after the storm, prepared and with the resources to respond to whatever Mother Nature delivers.
- 4. We'll meet our guaranteed services commitments. If we don't, we'll pay you.



CHOICE AND CONTROL

- We're looking to the future and evolving the network to best support customer choice in economic electricity supply solutions.
- 6. We'll make it easier for you to contact us, whether by phone, Facebook, or Twitter, and provide you with the information you need, when and how you need it.
- 7. We'll play our part in powering the economy by making it easier to connect to the network.



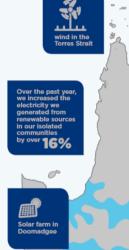
FOR THE BEST POSSIBLE PRICE

8. We're targeting to reduce what we charge for the use of our network in 2015/16, and keep increases overall in network charges under inflation for the next five years.

Ergon Energy's strategy...



Our network is increasingly operating as an open access platform for distributed energy resources – with the local sugar industry (through the generation of electricity using bagasse), solar energy exports from homes and businesses across regional Queensland, and other renewable energy sources now contributing over 10% of the electricity for our main grid.



Distribution network
Solar scaled to indicate density
Bagasse (sugar by-product)
Hydro and wind

SMART BIZ

10% of the electricity on our main grid is from renewable sources 96,000 solar energy systems are connected to the grid across regional

Queensland

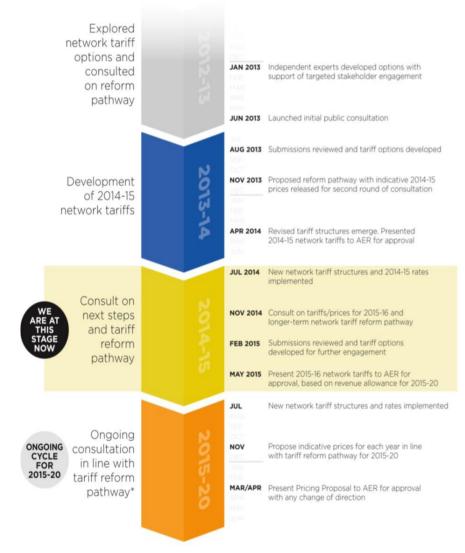
Hervey Bay tops our list with 25% To keep average network price increases below Inflation

- To improve network productivity through tariff reform.
- To develop an open access platform that enables an equitable and effective market for energy, demand, storage, information, control and services.
- To deliver efficient services.

Ergon Energy's strategy... Network Tariff Reform



The network tariff reform journey



Identify feasible short and long-term network tariff structures that send cost reflective tariff signals to customers.

Consultation process started in 2013-14 and continues as we progress tariff changes for 2015-16 and beyond

The key themes of our strategy include:

- reduced overall reliance on volume (kWh) charges
- time of use as a critical dimension of cost-reflective tariffs
- aligning demand charges to the incremental network costs associated with the demand or the Long Run Marginal Costs (LRMC)
- rebalancing between demand (aligned with LRMC outcomes) and fixed charges
- deploying kVA more widely as the unit of measure in our network tariffs.

* Our ongoing consultation process will be updated to incorporate consultation on our Tariff Structure Statement in line with the rule changes currently being progressed by the Australian Energy Market Commission.



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Questions

Supplementary Slides

Our progress in improving reliability, the challenge ahead



9





The average duration of outages across our network reduced by 41% and the frequency by 34% from 2010. Meeting our customers' expectations, and our legislated standards, has driven a substantial investment in reliability improvement. In 2004 the EDSD Review led to reliability standards that became increasingly stringent & higher security standards, both of which drove investment up.

EDSD also included specific programme requirements (e.g. copper conductor)

Over the last five years the performance of the network has significantly improved.

Ergon Energy's strategy since 2005 has been to progressively transition to the deterministic EDSD N-1 criteria , whilst engaging with our shareholders and industry counterparts on developing more sustainable criteria and developing smarter demand management responses

In 2014 – for the first time since 2008 – we achieved all six reliability performance targets within the Minimum Service Standards.

We have taken action to address affordability

WE HAVE REDUCED OUR TOTAL EXPENDITURE DRAMATICALLY



As a result of changes to our capital program and a company-wide efficiency drive, our total expenditure for the 2010-15 period is likely to be at least \$1.7 billion or 22% below the level approved by the AER. We believe we can reduce our expenditure further, by another 11% in 2015-20.

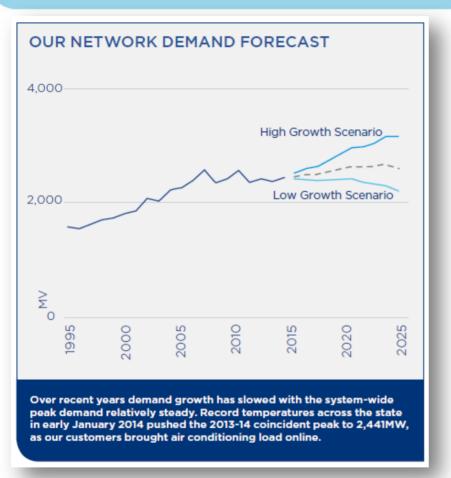


In 2011, Ergon Energy adopted a strategic goal to limit increases to average network charges to less than the CPI over the medium to longer term.

Our focus has been on driving efficiencies and effectiveness, and ensuring prudent investment.

If we had not acted, and finance costs had not fallen, our customers would have been facing another substantial increase in network charges of over 12% in 2015-16.

Our investment plans address both low system-wide demand and local growth across our network





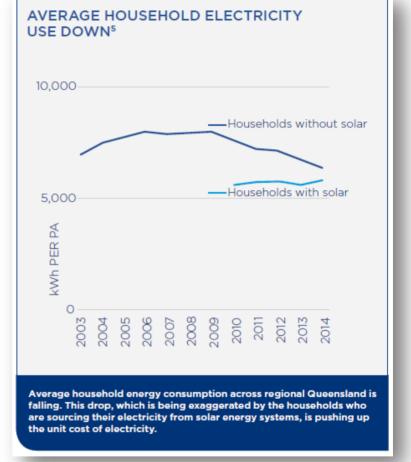
Our submission is based on a low growth scenario, but there is political drive for change:

- The Queensland Plan targets a doubling of regional Queensland's population in 30 years.
- Northern Australia White Paper in progress. Objectives: set out a clear, well-defined and timely policy platform for promoting the development of Northern Australia.

A changing industry and marketplace – But are a leader







- 360 MW of distributed roof top PV and on over 21% of stand-alone houses
- PV impacts on demand, consumption, voltage management
- Estimated 2010-15 FiT & associated costs = \$413 million
- Over 50 network connected generators with a feed in capacity of 589MW 12



Ergon Energy and our service commitments Getting the balance right – Safety, reliability, affordability

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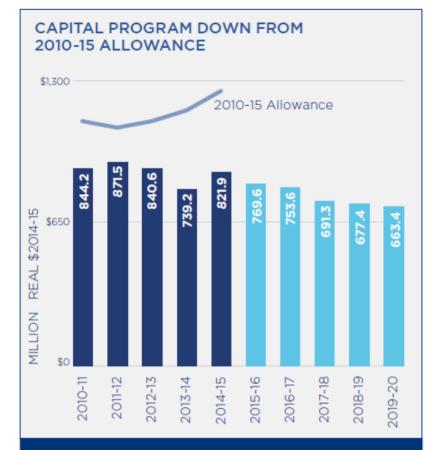
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Questions

Supplementary Slides

Our journey to the best possible price ...

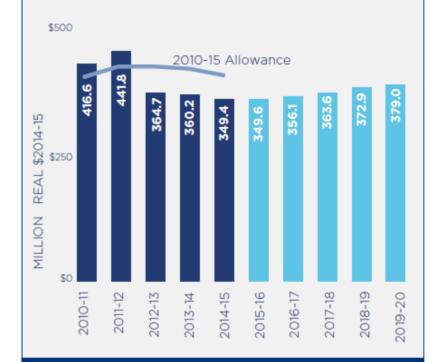




Due to a very different growth profile to what was forecast at the time of the last determination, and the low growth economic scenario we are using for our forward planning, our capital expenditure will be lower in 2015-20 - totalling \$3.6 billion.

Changes have also occurred to the classification of services. The trend shown is for our Standard Control Services.

OUR OPERATING COSTS WERE REDUCED MID-PERIOD

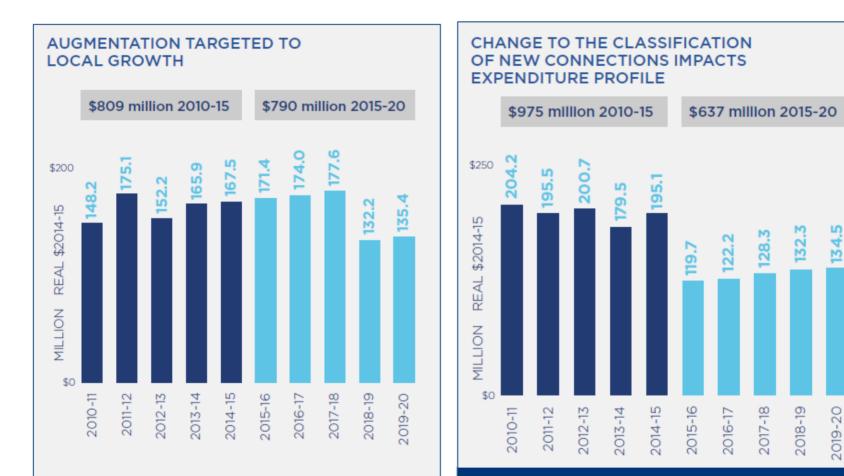


We have achieved substantial efficiencies over recent years, which have placed us well to deliver savings as we move into 2015-16. The targets we have set for our operating costs are a challenge and will require significant reductions in costs in the future to deliver. We are looking to technology-based capabilities to support greater efficiencies moving forward.

Capital reduced due to falling demand for energy & connections, demand management deferring/avoiding **\$664m** and new security standards in 2012 & 2014. Cyclone Yasi, Oswald costs not passed through.

Our growth capex has been scaled to meet changes in demand evident since 2010-11, as well as new security criteria

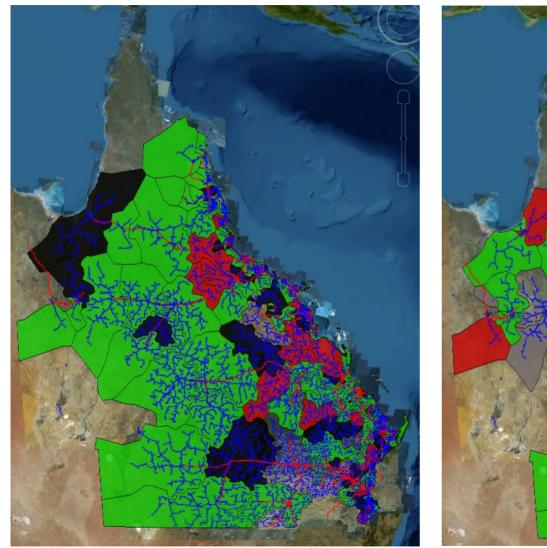


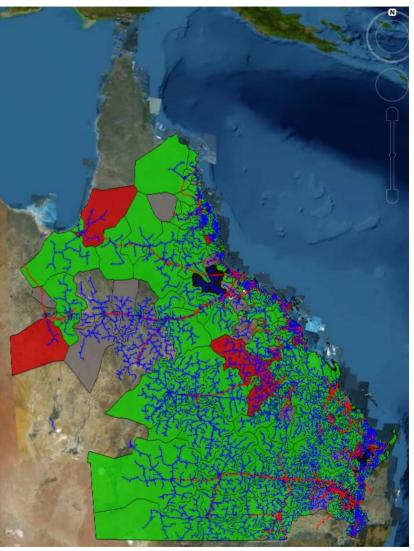


In our plans we have funds allocated to 23 major subtransmission level projects that are already progressing, and another 29 new projects. In addition, we are planning 47 distribution level projects. All new projects have been planned based on forecast loads associated with the low economic forecast for Queensland. We are anticipating the rate of new connections to remain relatively stable in the coming years. The drop shown in 2015-16 simply reflects changes in the classification of some of our new connection services – an estimated \$385 million of large customer initiated capital works are now considered Alternative Control Services and, as such, are not shown in the Standard Control Service expenditure forecasts here.

Managing demand – Demand response incentives







Feeder - capacity

Zone sub - capacity

and

Note: data validation under way to ensure visualisation is accurate, i.e capacity constraints have not been verified



With affordability such a significant issue, and given our improved performance, we have cut our reliability improvement investment.

Asset Renewal capex comprises 38% of our capex spend, predominantly driven by condition and safety – not age-based drivers as suggested by AER Issues Paper

Safety drivers account for 30% of our proposed asset renewal spend.

Replacing assets nearing end of functional life accounts for 70% of our proposed asset renewal spend.

We have allocated expenditure to address the performance of up to 45 feeder lines that are consistently underperforming.

We are targeting investment into operational technology and other improvement initiatives like protection devices and network resilience (spreaders).



ASSET RENEWAL CRITICAL FOR SAFETY AND MAINTAINING SERVICE STANDARDS



We have made improvements in our data and information systems, inspection and condition monitoring regimes and our understanding of asset management solutions. This has allowed us to defer significant expenditure, and achieved other efficiencies in our asset management techniques. This has allowed us to divert funds for emerging safety risks, like the replacement of ageing copper powerlines and the old style, open wire or uninsulated services that go from the pole to the house.



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Supplementary Slides



- Our benchmarking studies show that Ergon Energy's network: ۲
 - has evolved with its customer base, and is designed, maintained and \bigcirc operated in a way that suits its unique customer base
 - services an area with very low customer density \bigcirc
 - must transmit over longer distances than others and is radial in nature \bigcirc
 - has an extensive dual level (eg 132-66-11kV) sub-transmission network 0 including transformation and switching stations, unlike the DNSPs assessed as being on the frontier
 - operates in a very harsh and challenging environment. 0
- Additionally, Ergon has a significant amount of imbedded generation ullet
- Above factors demonstrate why: ۲
 - it is difficult to compare one Australian DNSP with another because of the Ο differences in scale, size and network attributes and environments
 - o some of our inherent and inherited drivers may make our costs appear higher on some attributes when compared to other DNSPs
 - there are significant challenges in using existing benchmarking information to Ο determine revenue and/or expenditure allowances

Concerns identified to date with AER's benchmarking approach requiring further engagement



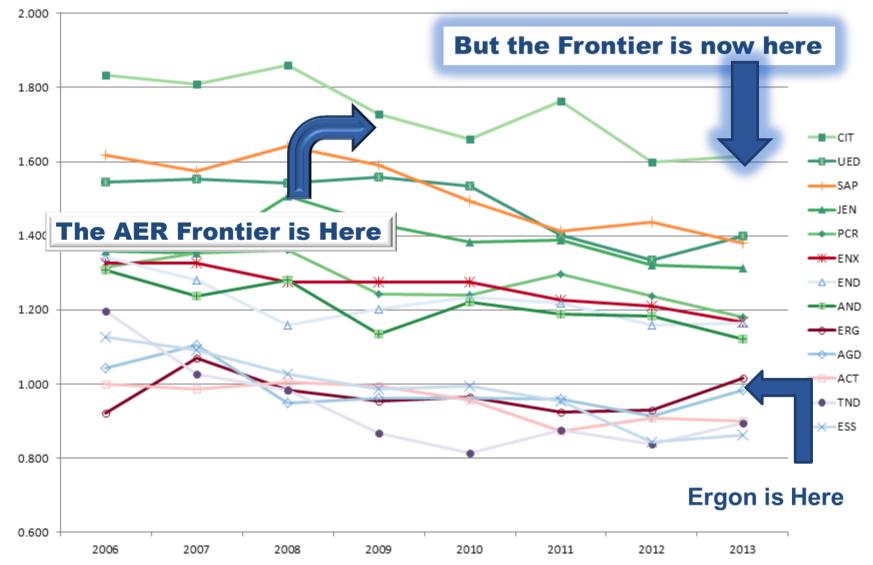
- AER's Draft NSW Decisions have already concluded that Ergon Energy's opex is 'materially inefficient'
- Our 2015-2020 Submission contains significant supporting material establishing our efficient base year and the results of various internal and external efficiency reviews – this material has not been considered as yet by the AER in its benchmarking reports in assessing our opex efficiency
- Assessment of 'frontier' businesses in Victoria and SA is based on 2009 data points
- Assessment by the AER that bushfire risks have placed Victorian DNSPs at a cost disadvantage compared to other NSPs does not adequately consider impacts of bushfire events and whether pre-existing bush fire mitigation practices were prudent and efficient (given Royal Commission findings and evidence drawn from Victorian regulatory impact statements (RIS)):
 - "The VBRC had identified a number of inadequacies in respect of then current inspection and maintenance arrangements for electricity assets in high fire risk areas and made recommendations for improved practice in this area. ..." 2013 RIS
 - "... to the extent that specific information on the drivers of these costs was provided, it suggests that the majority of the overall impact was the result of changes in enforcement practices by ESV, rather than the substantive changes made to the regulations ..." 2014 RIS

Concerns identified to date with AER's benchmarking approach requiring further engagement

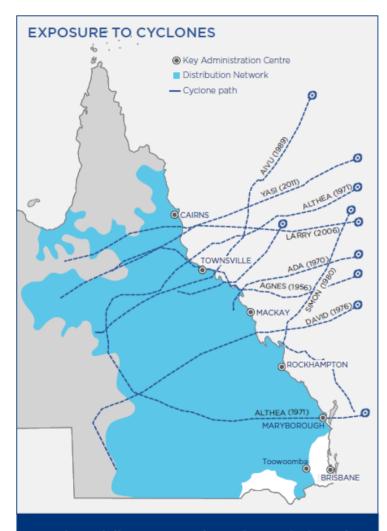


- Concerns regarding adequacy of underlying data, normalisation of international data sets and choice of benchmarking models
- AER benchmarking report does not consider impacts of upcoming regulatory proposals on 'frontier' businesses (e.g. SA Power Networks seeking 33% uplift in opex)
- Numerous network design and operational factors impact AER benchmarking results, including:
 - Level of vegetation management works undertaken by Councils and customers, not just DNSPs in some states (e.g. Victoria, where Council's undertake 25% of the work by cost and customers are responsible for clearing around services on their property)
 - o Subtransmission network requirements in Queensland versus other states
 - Capital investment cycles and capitalisation policies impact relative asset age profiles and opex levels
 - Normalisation for customer density and distance travelled to meet customer requirements
 - Different state OHS & regulatory environments, including distribution authority requirements, vegetation management requirements, differing maintenance cycles₂₁ jurisdictional scheme impacts and level of solar PV penetration





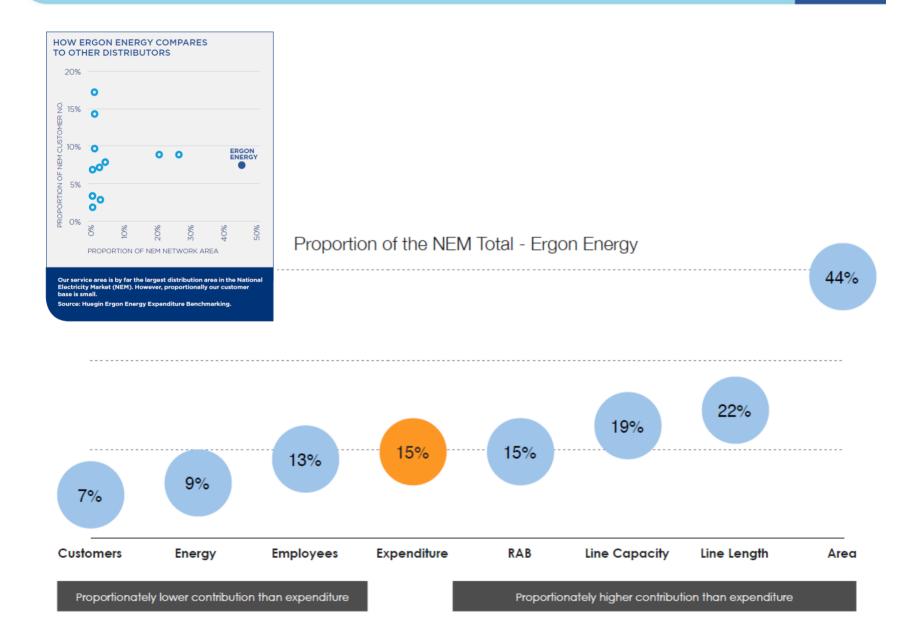
Ergon Energy operates in a harsh environment



Over the past half century, our service area has seen the destructive force of ten major cyclones. Most recently the network has had to stand up to the impacts of cyclones Yasi and Oswald, a mini tornado in Townsville, and several major wide spread flooding events, to name a few.



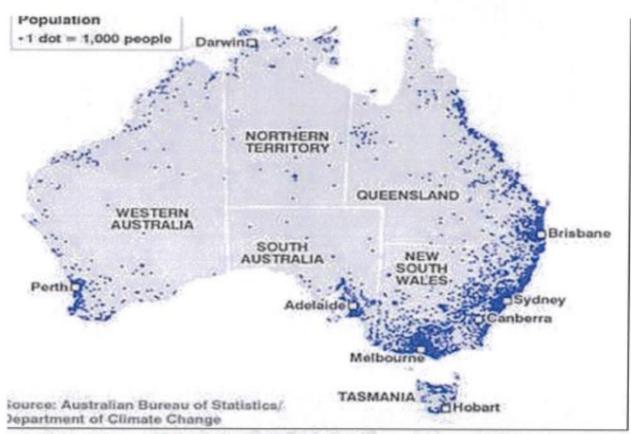
How Ergon Energy compares across the NEM



Ergon Energy: Challenges of low customer/population density



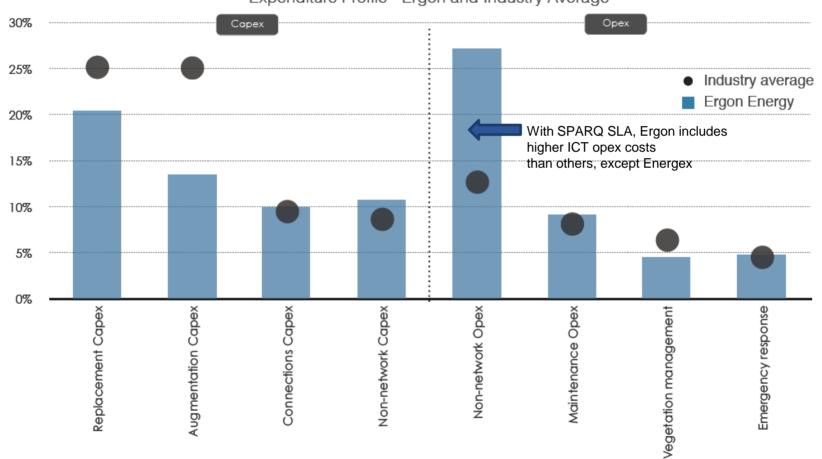
Population distribution



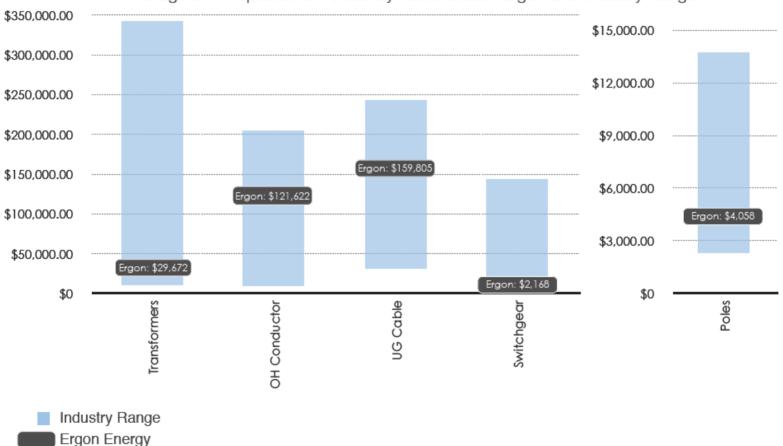
Population distribution map.

http://home.iprimus.com.au/foo7/firesum.htm 17 December 2010





Expenditure Profile - Ergon and Industry Average



Average Unit Replacement Costs by Asset Class - Ergon and Industry Range

Resourcing Strategy Snapshot





Our current and future investment plans balance Safety, Reliability and Affordability





PEACE OF MIND

- Our goal is for our safety performance to stand with the best in our industry... to be Always Safe.
- We'll maintain recent overall improvements in power supply reliability... and continue to improve the experience of customers who are suffering outages well outside our standards.
- 3. We'll be there after the storm, prepared and with the resources to respond to whatever Mother Nature delivers.
- 4. We'll meet our guaranteed services commitments. If we don't, we'll pay you.



CHOICE AND CONTROL

- We're looking to the future and evolving the network to best support customer choice in economic electricity supply solutions.
- We'll make it easier for you to contact us, whether by phone, Facebook, or Twitter, and provide you with the information you need, when and how you need it.
- 7. We'll play our part in powering the economy by making it easier to connect to the network.



FOR THE BEST POSSIBLE PRICE

 We're targeting to reduce what we charge for the use of our network in 2015/16, and keep increases overall in network charges under inflation for the next five years.

Our 2015-20 regulated revenue submission enables us to meet our Customer Commitments







A suite of documents are also available for you to access on our web site: <u>www.ergon.com.au/futureinvestment</u>



Customer Research

Price Impacts

AER Benchmarking –

- Ergon's harsh environment and emergency response requirements
- Assessment of bushfire risk and vegetation management impacts in Victoria



15

» Customer Feedback.

The majority <u>agree</u> with the 'What You've Said Summary'; most felt it helped to articulate their own thoughts and opinions.

WHAT YOU'VE SAID ...

This is a sammary of the insights we've gained from engaging with our customers and communities about our future investment priorities. Reports on the key findings from our service/cost trade-off research study and the feedback received from our online survey have been made available online at www.ergon.com.au/futureinvestment.

The big picture

PEACE OF MIND

of accept has imperved and are no incore locality that the narratifies intendential (competition areas where analytic) is allowed to a second and the second acception of the second the second acception of the second in the network's molecular to searce workfor at important. Our containers are locating for any environment in term downations, including where exceedings, including where exceedings, molecular, and a great downations, including where exceedings, there are not a great downations, including where exceedings.

electrical satisfy tech employment a september of the second second second the impact of new six-dridity infrastructure on the community, emergency management, and community participation.

CHOICE AND CONTROL

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Customers want more options around how they connect to the network, while they find tastfly employ, and want almpticity, they are testing for options and increatives to help them are so them but.

> customers increasingly went to be med so they can make the energy ted decisions that are best for then

FOR THE BEST POSSIBLE PRICE

The could also failed right to a significant lance, with although the processes datas on prices have these West West are indefenses to and understand to take the data prices up, as the Para of the industry in regional Gaussiana, they appart Topos failing to respond. Our containes much prices to publicly, and new no longer willing to pay ences for Anthew merical arguments. Building and process to compare willing to pay ences for Anthew processing the state of the state

STOCK DEPOTY was not the Autom material a property of

Stimulus B: What You've Said

'For the Best Possible Price' is generally considered to be the most important category by residents. 'Peace of Mind' is generally the second most important category.

"It's pretty spot on – I'd be happy with that" Townsville Resident (Male)

"It's ironic, even the first paragraph talks about what I've already said today" Roma Resident (Male)

"It's exactly what you want and think. You want peace of mind that you have safe and reliable power. And you want the options to choose how you live, against what you're willing to pay" Bundaberg Resident (Male) "If they listen and do something about this (What You've Said), this would be good" Roma Resident (Female)

> "Peace of mind is just knowing they are doing their job. That is just expected. The rest relates to the options I have to be comfortable with what I'm paying" Bundaberg Resident (Female)

colmar brunton.

Customer Segments – Willingness to Pay Residential/Business Cost Trade Off Research

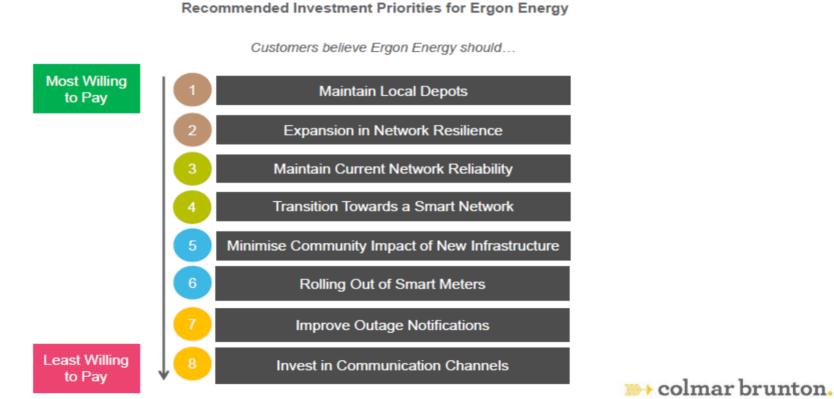


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Insight 4 (cont.)

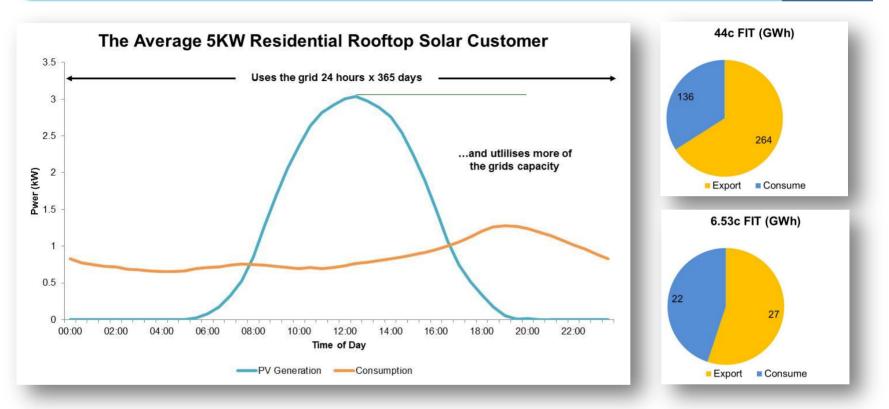
The following ranking, which is based on a range of questions, shows what customers would be most willingness to pay for (if required).

Customers are most willing to pay for services that are supply or response related, rather than improvements in other areas.



33





- Distributed roof top solar supplies 2.1% of the energy traded in the grid, plus owners self consume approximately 1.1% above total grid fed energy.
- High residential Feed-in Tariffs have increased grid costs as 44c customers change behaviour by moving more load into the evening, adding to the peak for predominantly evening peaking substations.
- Residential solar PV is now a key driver for sizing infrastructure in residential subdivisions

A typical residential customer



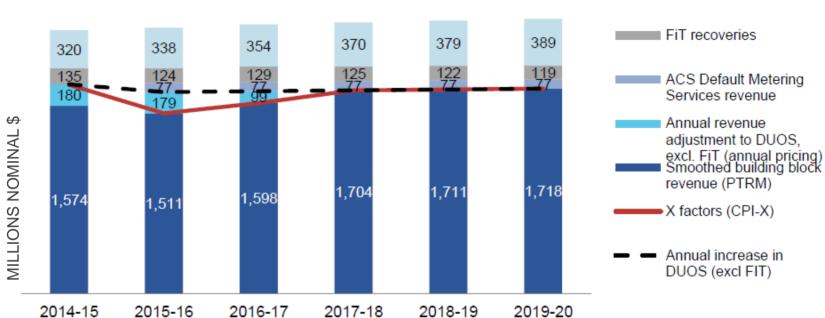


What do our forecasts mean for our customers? This graph shows a reduction for a typical annual residential customer using 4,091kWh per annum of around 6% in 2015-16 in the Distribution Use of System charge passed on to the customer's retailer.

An indicative price stack and trend has been shown in nominal dollars to illustrate all of the charges that are allocated to an average electricity bill for a residential customer on a market retail contract. Forward forecasts are indicative only.

The majority of residential customers in regional Queensland, however, benefit from the Queensland Government's notified retail tariffs, which are determined by the Queensland Competition Authority. This means the actual retail bill is subsidised in line with the Queensland Government's Uniform Tariff Policy. The historical INDICATIVE BILL shows the retail bill for the customer on these Notified Prices. For further information on how regulated retail tariffs are determined go to www.dews.qld.gov.au/energy-water-home/electricity/prices.

Aggregate expected network charges: Placeholder WACC = 8.02%



	2015-16	2016-17	2017-18	2018-19	2019-20
Annual increase in DUOS (excl. FiT)	-3.7%	0.4%	0.4%	0.4%	0.4%
X Factors (CPI - X)	15.9%	-3.1%	-3.9%	2.1%	2.1%



Ergon Energy's benchmarking challenge: Finding suitable peers



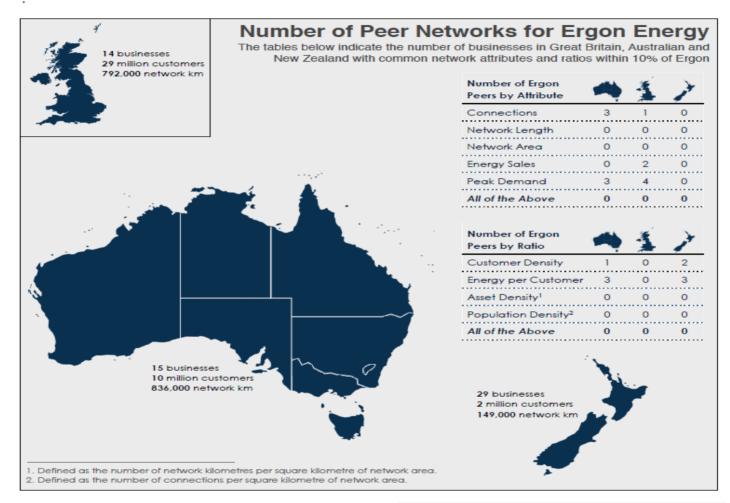
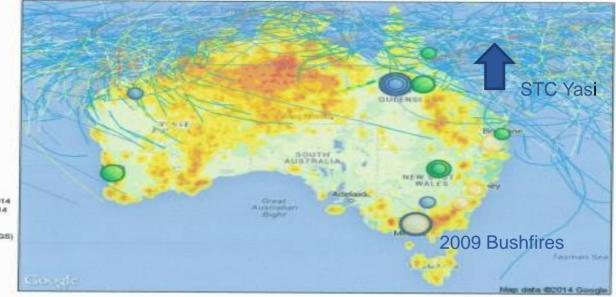


Figure 4: Lack of peer organisations for Ergon Energy

Benchmarking: natural catastrophes from 2000-14



Summary of Natural Catastrophes, TC and Wildfire 2000-2014, including Sigma Loss



USD\$\$ impact of event – sigma loss calculation



- 1'000m USD 5'000m USD
- 250m USD 1'000m USD
- 100m USD 250m USD
- Som USD 100m USD
- < 50m USD





ERGON. ENERGY

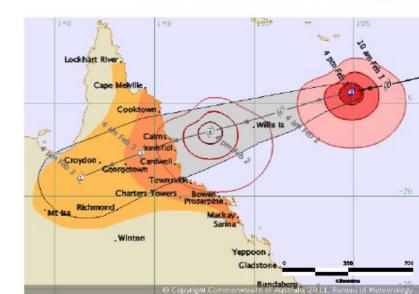
Preparations

- Request for help
 - Resources (MOU in place)
 - Suppliers
- Pre-position
 - Stationed crews in Rockhampton
- Communications
 - Stakeholders
 - Social Media
- Awaiting point of impact
 - Cairns or
 - Townsville?









Whatever it takes



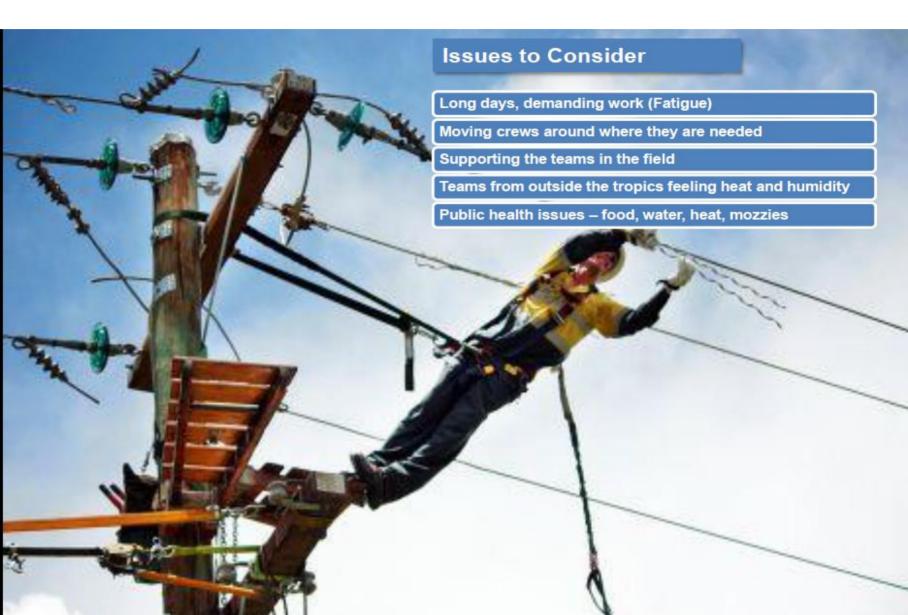


- 155 mobile generators deployed to hardest hit communities totalling 70,000kVA in generating capacity.
- Of the 220,000 customers without power, 200,000 were restored within 1 week. By comparison, in Cyclone Larry there were approx 90,000 customers without power, 75,000 were restored within 1 week.

INITIAL RESPONSE ZONES	CUSTOMERS OFF DAY 1	% OF NORMALLY CONNECTED	% OFF BY THE END OF WEEK 1
Cairns	55,000	79%	0%
Tablelands/Western	33,350	57%	0.1%
Cardwell/Innisfail	17,000	100%	64%
Townsville/Ingham	80,800	96%	14%
Burdekin/Whitsunday	40,800	47%	0%
TOTAL	Over 220,000	72%	8%

(Total normally connected = 316,400)





Emergency Response Challenges – Other factors affecting our response after Cyclone Yasi



More than 1,600 employees live in the area that was directly impacted

Some employees and relatives were personally impacted

Restricted communications

Counselling - Employee Assistance Program was available 24 hours a day for professional counselling

Ergon Energy buildings closed prior to cyclone and employees sent home to prepare

Induction of external crews and daily safety briefings were held for staff and contractors

Accommodation was a major challenge - largest effort ever undertaken

Support staff to provide meals, bottled water, laundry services

Fatigue management plan for all employees and managers

Nurse available for field crews













The Bulletin

NEWS

Crews kept busy as lightning knocks out power

11th Dec 2014 6:54 AM

ERGON Energy field response crews have been kept busy after more than 53,000 lightning strikes were recorded over the past three days during storm activity across central Queensland.

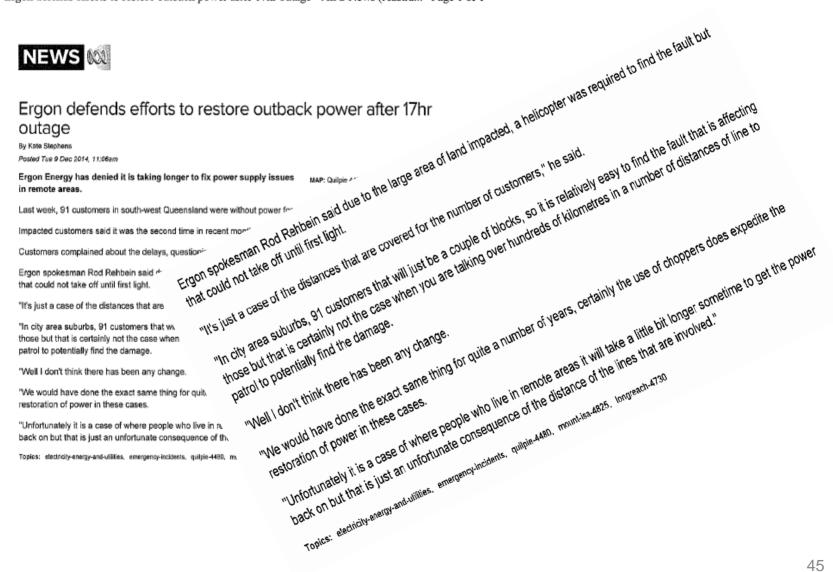
Successive overnight storm activity since Sunday has resulted in customers being affected by storm damage and power outages, some for prolonged periods.

Particularly affected are rural areas around Miriam Vale, Monto, Biloela, Moura, across the Central Highlands and around Rockhampton.

In some instances customers have been affected on consecutive occasions, with power supply interrupted after equipment was damaged by intense lightning strikes.



Ergon defends efforts to restore outback power after 17hr outage - ABC News (Austra... Page 1 of 1





- In Victoria local councils perform vegetation management near electric lines, particularly in urban areas that form part of the licence area covered by a particular DNSP. In contrast, Ergon Energy performs this function in Qld.
- Victorian Councils vegetation management expenditure is approx 25% of the total spend in that state:
- September 2014 Draft Regulatory Impact Statement (2014 RIS) for the proposed 2015 Victorian bushfire regulations the total combined annual clearance expenditures for Victorian NSPs and councils is estimated to be: \$122.9 million (1TNSP + 5DNSPs) + \$38.9 million (67 Councils with Declared Areas) = \$161.8 million per annum.
- Additionally, it is understood that Ergon Energy undertakes vegetation clearance along service lines to the point of attachment on customer premises and that other DNSPs outside Queensland, including in Victoria, may not undertake these works.



AER considers the Vic DNSPs are at a cost disadvantage compared to NSW DNSPs:

"... There were increased regulatory obligations placed on the Victorian service providers after the Black Saturday bushfires, which occurred in 2009. Also, for the majority of the benchmarking period, vegetation management regulations were stricter for Victorian service providers than for the NSW service providers....

... we consider that while bushfire may be a serious risk for most service providers, the NSW service providers do not appear to have as high bushfire risk as the comparison service providers, which are located in South Australia and Victoria. This indicates that the NSW service providers may have a cost advantage relative to the comparison service providers.

We are satisfied that it is necessary to provide a negative 2.4 per cent operating environment adjustment for differences in bushfire regulations between the NSW service providers and the comparison service providers."

Economic Insights report: "AER (2014) estimates that the effect of these temporary opex increases [for bushfire mitigation] has been a cost disadvantage to the Victorian DNSPs of just over 10 per cent for the period from 2011 onwards (ie their opex costs were increased by just over 10 per cent for this period compared to what they otherwise would have been). Taking the weighted average Victorian and South Australian benchmark, this would be a cost disadvantage to the benchmark of 7.8 per cent from 2011 onwards."



Maurice Blackburn's submissions against SP Ausnet in Black Saturday Litigation:

"Importantly, the [economic] regulator consistently made clear that the ultimatelyallowed revenue was an aggregate figure to accommodate the distributors' estimates of efficient expenditures plus a commercial rate of return, but that it was a matter for each distribution business as to how it spent the aggregate revenue; the distributors had the economic regulatory freedom to depart from their particular forecasts and the plans underpinning them if they so wished.

... In both the 2005 Electricity Distribution Price Review (EDPR) (regulated by the ESC) and the 2010 EDPR (regulated by the AER) the regulator explicitly commented on the underspending. In the 7 years prior to Black Saturday, SPI underspent on operations and maintenance by \$95m – the equivalent of almost an entire year's spending for such purposes."

Other views about Vic DNSPs and bushfire risk are at odds with AER assessment: 2013/2014 Regulatory Impact Statements



2013 RIS:

"Amendments to the regulations which took effect in October 2010 implemented two specific recommendations from the Victorian Bushfires Royal Commission (VBRC). The VBRC had identified a number of inadequacies in respect of then current inspection and maintenance arrangements for electricity assets in high fire risk areas and made recommendations for improved practice in this area. ...

[T]he VBRC believed that this approach was necessary to provide a high level of assurance that the inadequacies in past performance in these areas would be addressed in the future through more frequent and higher quality inspection arrangements. The proposed regulations would retain these requirements."

2014 RIS:

" ... the majority of MECs and councils argued that they had incurred significant increases in vegetation clearance costs since the adoption of the current regulations and Code in 2010. However, only two distribution companies provided quantitative estimates of these changes, while one of these estimates is apparently implausibly large, particularly in light of the lack of information provided as to the drivers of this cost.

" ... to the extent that specific information on the drivers of these costs was provided, it suggests that the majority of the overall impact was the result of changes in enforcement practices by ESV, rather than the substantive changes made to the regulations ..."