



NSW and ACT opex remittal roundtable (16 August 2017) summary note

1. Introduction

Under the National Electricity Rules (NER), the AER is required to accept the total of the forecast operating expenditure (opex) proposed by the distribution network service provider (DNSP) if it satisfies the opex criteria. If the AER is not satisfied the forecast opex proposed by the DNSP reasonably reflects the opex criteria, it must not accept the forecast. The AER must set out its reason for that decision and provide a substitute estimate of total opex that the AER is satisfied reasonably reflects the opex criteria.

On 30 April 2015, the AER made final decisions on the determinations for the NSW and ACT electricity DNSPs for the 2014-19 regulatory control period. As part of these decisions, AER did not accept each of the DNSPs' proposed opex forecast. The AER substituted its alternative opex forecast.

On 17 July 2015, the NSW and ACT DNSPs sought limited merits review of the AER's decisions by the Australian Competition Tribunal (the Tribunal).

On 26 February 2016, the Tribunal decided to set aside the AER's final decisions on opex and remitted them back to the AER to re-make in accordance with its reasons.

On 24 March 2016, the AER sought judicial review of the Tribunal's decision by the Full Federal Court under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*.

On 24 May 2017, the Federal Court dismissed the AER's appeal on opex and upheld the Tribunal's decision.

On 16 August 2017, the AER convened a roundtable with a number of stakeholders to discuss options for how the AER and stakeholders could work together in remaking the opex decisions.

This summary note outlines:

- The agenda for the meeting
- The attendees present at the meeting
- The key themes that were discussed

2. AGENDA

Meeting Date: Wednesday 16 August 2017, 10.00am – 1.00pm

Location: ACCC and AER offices
Level 20, 175 Pitt Street, Sydney
Tamworth and Armidale rooms

AGENDA

TIME	ISSUE	SPEAKER/S
10:00 – 10:05	1. Welcome and introductions	Paula Conboy
10:05 – 10:20	2. Framing for today's discussion <ul style="list-style-type: none">○ Two key objectives for today – hear stakeholder views on key issues and discuss possible consultation processes○ Background opex information	Paula Conboy
10:20 – 11:20	3. Views of parties on key issues and potential consultation options <ul style="list-style-type: none">• <i>Each stakeholder has 10 mins to present views on key issues</i>	Around the table
11:20 – 11:30	Morning tea break	
11:30 – 12:45	4. Views of parties on key issues and potential consultation options (<i>continued</i>) <ul style="list-style-type: none">• <i>Discussion</i>	Around the table
12:45 – 1:00	5. Wrap-up and next steps	Paula Conboy

3. List of attendees

AER

Paula Conboy, AER Chair

Cristina Cifuentes, AER Board member

Jim Cox, AER Board member

Sebastian Roberts, General Manager – Network expenditure

Arek Gulbenkoglou, Director – Network expenditure

External

Richard Gross, Ausgrid

Rob Amphlett Lewis, Ausgrid

Rod Howard, Endeavour Energy

Jon Hocking, Endeavour Energy

John Cleland, Essential Energy

Gary Humphreys, Essential Energy

Michael Costello, ActewAGL

David Graham, ActewAGL

Rosemary Sinclair, Energy Consumers Australia

Craig Memery, Public Interest Advocacy Centre

Julia Mansour, Public Interest Advocacy Centre

Andrew Richards, EUAA

Mark Grenning, EUAA

Mark Henley, Consumer Challenge Panel

Louise Benjamin, Consumer Challenge Panel

4. Key themes in discussion

An expedited process where possible

Several participants support an expedited process. Potential benefits identified include:

- resolution of the issues as a useful starting point for the 2019–24 revenue determination process
- providing greater scope for revenue smoothing
- greater certainty for the running of businesses, and
- certainty from the final resolution to consumers.

It was noted that all stakeholders should have the opportunity to comment and the process should operate within the regulatory framework to advance the NEO.

A consultative approach to remittal

All participants support a consultative process and see the remittal process as a good opportunity to put AER 2.0 into practice.

It was recognised that there is an increasing effort and goodwill towards better and more clearly aligning consumer and network business interests.

It was agreed that the consultation process should be transparent and proportionate to the issues being considered.

It was noted that the scope of issues for each of the businesses will be different. Therefore, different consultation processes may be appropriate.

Affordability

Rising electricity prices have made affordability a key issue for consumers.

While wholesale and retail costs are in large part driving current increases, participants agreed to the objective of minimising price shocks related to network price increases. A number of participants sought a decision by March 2018 to allow maximum price smoothing.

It was agreed price smoothing should be used to the extent necessary to avoid such shocks.

A holistic approach to remittal

It was agreed that return on debt decisions remitted back to the AER will need to be folded in with opex remittal at some point. A number of participants stated that return on debt can be progressed by the AER now, as there is no reason to delay and wait for the outcomes of legal proceedings being considered elsewhere.

A number of parties also noted the interrelationship of the remittal outcomes with the 2019-24 revenue determinations and what this may mean for price impacts.

The role of benchmarking

A number of participants see a significant role for benchmarking in network regulation and support its further development. However, given the preference for an expedited process, a revised

approach to benchmarking is not possible for the 2014–19 remittal. The AER will continue to publish its annual benchmarking report which operates as an assurance mechanism.

A number of participants noted there may need to be a greater emphasis on detailed reviews in key opex areas such as labour and vegetation management and revealed cost information. A full bottom up review was not considered practical if an expedited process was the preferred option by stakeholders.

The use of revealed costs in remaking the opex decisions

Some participants noted the substantial opex reductions achieved since the AER's 2014–19 opex decisions and the strong incentives the networks have to make opex reductions. Some of the participants noted that these strong incentives should give stakeholders confidence that the recent reductions are consistent with an efficient level of opex.

A number of participants supported using revealed costs in the remittal process provided there are appropriate cross-checks on their efficiency, for example through benchmarking or detailed reviews.

It was also noted that there may be circumstances where the revealed costs are not reflective of an efficient and sustainable level of opex. This would need to be assessed on a case by case basis.

Transition costs

One of the issues for the remittal is opex transition costs incurred by the networks in moving to more efficient opex levels.

It was noted that the Tribunal did not reach a view on this and stated that the AER will need to consider this issue in remaking its opex decisions.

It was suggested that this issue could be addressed by applying an agreed set of assessment principles.

Return to an EBSS incentive framework

A number of participants expressed a preference to move back to an EBSS-based incentive arrangement. There were some questions about under what conditions this could occur.

Some participants stated that the businesses need to prove to the AER and consumers that they are operating at an efficient level before consideration of an EBSS.

Next steps

Participants gave a commitment to further consider the issues raised. It was recognised that this may occur through a number of different mechanisms including bilateral meetings between interested parties and group meetings.

It was noted that the Federal Court and the Tribunal are currently considering issues relating to return on debt arising from our determinations for SA Power Networks, the Victorian electricity distributors and ActewAGL (Gas) Distribution, respectively. The Federal Court and Tribunal decisions will likely inform the AER and other stakeholders on the approach for remaking the return on debt decisions on remittal. However, some participants questioned whether it was necessary to await the outcome of these proceedings.

The AER gave a commitment to assess what next steps may be appropriate to advance the issues given the views expressed by stakeholders.