SUBMISSION

AER DRAFT CAPITAL EXPENDITURE INCENTIVE GUIDELINES 2025

27 JUNE 2025

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our members are the engine room of the Australian economy, producing many of the products that households and business use every day including bricks, glass, steel, aluminium, paper, food and beverages. Combined, our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

EUAA members are focussed on making products that meet their own customers' requirements where energy is just one input to the process albeit a critical one. Their expectation is that the energy industry continues to provide energy services that are fit for purpose and consistent with the NEO so that our members can continue to provide a fit for purpose product for their customers.

Thank you for the opportunity to make a submission under the Draft Capital Expenditure Incentive Guidelines 2025 (Draft Guidelines).

At the EUAA, we support the design of rules, legislation and procedures that achieve efficient, cost effective and equitable outcomes for networks, developers and consumers and risks are appropriately allocated to those best able to manage them. In the energy sector under most circumstances, this is best achieved through a national approach and a sharp focus on the NEO. From our perspective, an equitable balance has not been reached in the Draft Guidelines and there is a high likelihood of transfer of risk from NSP's managing projects to consumers.

We understand that the Draft Guidelines attempt to establish a mechanism that encourages NSP's to limit overspend on their regulated capital expenditure allowance for both their allowance during the regulatory control period and for ISP projects. The Draft Guidelines do this by:

1. Setting the Capital Expenditure Sharing Scheme (CESS) for "efficient" overspend.
2. Removing from the RAB for 3 years any "inefficient" overspend.
3. Setting the depreciation rate as either "modelled" or "actual" for RAB roll-over into the next regulatory control period, depending on which will provide a higher level of "encouragement" to the NSP to control overspend.

These are all good policy frameworks that have been shown to work over the many regulatory control periods they have been active.

However, there are two aspects of the current Draft Guidelines are of concern to the EUAA:

1. Firstly, adjustments to the standard sharing ratios of the CESS ex-ante removes the onus of the NSP to take all due care in managing a project to minimise overspend by reducing the penalty it may endure.
2. Secondly, adjustments to the set sharing ratio (at the ex-ante approval) of the CESS ex-post further removes the onus on the NSP.

Both of these potential reductions in CESS are at the "discretion of AER", which places the AER in a difficult position of being lobbied by the relevant NSP before a project is approved and again after a project has been substantially completed. These negotiation points also create a scenario where AER will need to have a "sliding scale of efficient overspend" rather than the current black and white process. Additionally, reductions in CESS transfer project risk from the NSP (who is best placed to manage the project) to the consumer.

We believe these issues have arisen from the AER considering the evidence from the NSP's lobbying, and not considering fully the consumer impact, which is a requirement of the AER in the NEL.

We have several proposals for amending the CESS adjustments. These are:

1. Remove all negotiable adjustments for the CESS from the Draft Guidelines to re-establish the onus on the NSP.
2. In recognition that ISP projects are political by nature, establish new "standard CESS sharing ratios" exclusively for ISP projects that appropriately share the risk of the projects, while also removing the "negotiation" point for CESS as in the first recommendation.
3. Allow for negotiable CESS ratios once and once only (either ex-ante or ex-post), with an explicit list of what the AER may consider as reasons to adjust the CESS, including a maximum negotiable point that is non-zero (i.e. never has 100% of the overspend flowing through to consumers).

These proposals put the onus back on the NSP to ensure proper management of a project, but also to ensure their original estimates are better prepared (particularly for ISP projects).

Given the recent history of cost overruns on ISP projects, we would not expect any NSP to be "surprised" by significant cost overruns in the future and therefore see no need to accommodate this issue in the Draft Guidelines. We see this issue as one that should be "managed" by the NSP either through the project cost estimation process or through their project management structures in place.

We also support the Justice and Equity Centre's proposal to have several ex-post reviews throughout an ISP project that tests discrete components of the project and therefore better allocates overspend to those discrete spending components of the project. This proposal better protects the interests of both consumers and the NSP, as any overspend on a project can be dealt with at the time of the overspend and allocated through CESS or removal from future RABs at that point in time, without leaving NSPs and consumers wondering who will bear the cost.

While outside of the scope of this work, we think an approach to ensuring more accurate capex for initial AER approval should be considered. For example, a condition of approving early works CPA should be that the capex presented to the AER for assessment is a class 2 estimate, as determined by the AER, not the proponent. This would ensure a far more realistic capex number is being assessed by the AER, reducing the CESS risk of the NSP and improving consumer confidence in both the NSP and the AER.

During the "messy middle" of the energy transition, consumers are looking to peak bodies like AER to provide clarity and transparency with its processes so that better decision making, and investment can occur. This includes encouraging NSP's to provide accurate, realistic cost estimates at the commencement of a project and encouraging NSP's to manage the risks, including cost overruns, when they proceed with project delivery.

The EUAA welcomes further discussions around the issues raised in this submission.

Do not hesitate to be in contact with EUAA Policy Manager Dr Leigh Clemow, should you have any questions.

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Andrew Richards
Chief Executive Officer