Draft Capital Expenditure Incentive Guidelines amendments

Objection to the AER's Draft Capex Incentive Guidelines Amendments

The Australian Energy Regulator's (AER) proposed changes to the Capital Expenditure Incentive Guidelines reflect a **systemically flawed approach** that continues to entrench **perverse incentives, regulatory capture, and disregard for public interest.** Far from aligning with the National Electricity Law (NEL) objective to promote the long-term interests of consumers, these amendments threaten to further undermine **consumer protections**, **network accountability**, and **energy system resilience**.

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1. False Claims of Consumer Benefit

The repeated AER claim that the ex post framework ensures consumers "**pay only for efficient and prudent overspends**" is **misleading and unsupported by evidence**. In practice, the mechanisms have **not prevented cost blowouts** nor delivered material rebates, benefits, or meaningful protections for consumers. As submissions from **individuals, consumer groups, and even major energy retailers** attest, **cost pass-throughs continue virtually unchallenged**, despite escalating project budgets and poor financial discipline from TNSPs.

Example: Project EnergyConnect—now nearly double its original estimated cost within just 20 months of its final RIT-T—**no longer meets its projected net benefit to consumers**. Yet, it continues unimpeded.

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2. Weakening the Ex Post Review: Institutionalising Overspend

Proposals to restrict ex post reviews only to "**egregious**" overspends are deeply concerning. This language deliberately **narrows the regulator's scope** and effectively **incentivises gold-plating and imprudent investment** under the guise of future-proofing or strategic necessity.

The CEFC's claim that ex post scrutiny acts as a **deterrent** to transmission investment should be welcomed—not avoided. Publicly funded infrastructure must be **subject to higher scrutiny**, not shielded from accountability to **ensure economic efficiency and long-term affordability**.

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3. Regulatory Capture and Deference to Industry Interests

The influence of network operators and peak industry bodies (such as ENA and Transgrid) over regulatory frameworks is **profoundly evident**. Proposals now appear **tailored to meet network preferences**, with TNSPs requesting "**upfront certainty**" that amounts to a **pre-approval of unchecked expenditure**.

This undermines the independence of the AER and effectively **transfers financial risk from networks to consumers**, creating a dangerous imbalance where **profits are private but losses are socialised**.

4. Grid Stability and Systemic Risk Ignored

The AER continues to dismiss valid engineering concerns regarding **synchronous inertia** and **system stability**, critical in light of recent blackouts such as Spain's. As expert engineer Paul Miskelly has outlined, high renewable penetration without adequate inertia mechanisms **puts entire power systems at risk of collapse** within seconds during disturbances.

The AER's continued reliance on the ISP—already heavily criticised as **non-independent, unvalidated, and speculative—**is indefensible when **real-world system physics are being ignored** in favour of ideological commitments and outdated forecasts.

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5. Systemic Governance and Accountability Failure

There is a widening gulf between **regulatory theory** and **on-the-ground outcomes**. With mounting evidence that consumers are **disproportionately burdened**, yet receive **no meaningful benefits or rebates** from underspends or "efficiencies," the AER's framework appears to **serve network interests first, and public interest last**.

Moreover, despite warnings from technical experts and impacted communities, the AER proceeds as if **consumer submissions are a procedural box-tick** rather than a genuine input into national energy strategy. That constitutes a **governance failure**.

Conclusion and Call for Reform

The AER's Draft Capex Incentive Amendments are a **regressive step** that codifies network dominance, increases systemic risk, and weakens the already fragile trust in regulatory institutions. These proposals should be **immediately withdrawn**, pending a full independent review of:

- The effectiveness of the ISP as a planning instrument
- Actual versus forecast capex over the last decade
- Engineering-based risk assessments for grid stability
- Consumer interest protections under current incentive schemes

Until then, **no further rule changes should be permitted** that relax financial scrutiny or enable further consumer exploitation.

An IMMEDIATE MORATORIUM, COMPREHENSIVE AUDIT and ROYAL COMMISSION IS ESSENTIAL.

From

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