

New Reg: Towards Consumer-Centric Energy Network Regulation

AusNet Trial – AER Staff Guidance Note 1: How the AER will support AusNet’s Customer Forum (July 2018)

Introduction and purpose

The Australian Energy Regulator (AER), Energy Consumers Australia (ECA), and Energy Networks Australia (ENA) have established a project aimed at improving consumer engagement and enabling customers to shape aspects of network revenue proposals submitted to the AER for approval (the **New Reg model**).

The New Reg model is a step beyond the AER’s current approach to incorporating consumer preferences into regulatory decisions, such as the [Consumer Challenge Panel](#). Instead of reporting on the effectiveness of the regulated network’s consumer engagement to the AER, the New Reg model empowers a regulated Network Service Provider’s (NSP’s) Customer Forum to negotiate and agree aspects of the NSP’s revenue proposal, in advance of the NSP submitting the proposal to the AER. The Customer Forum researches consumer preferences and seeks to bring that research to bear, along with direct engagement with consumers, in forming a view about aspects of the regulatory revenue proposal.

AusNet Services (**AusNet**) has agreed to trial the New Reg model for its Victorian electricity distribution network business (the **AusNet trial**). The [Customer Forum](#) (the **Forum**) that will negotiate aspects of AusNet’s revenue proposal has already been established.

The purpose of this Guidance Note is to set out the role the AER will have in assisting the Forum during the AusNet trial, so that:

- interested stakeholders understand the nature and scope of the AER’s involvement with the Forum, prior to AusNet submitting its revenue proposal to the AER
- AER staff are clear how they should engage with and provide support to the Forum.

Role of the AER to date

Since the New Reg project was initiated in 2017:

- the AER, ECA and ENA jointly published an [Approach Paper](#) and a [Directions Paper](#) on the New Reg model and the AusNet trial
- AER staff, along with ECA staff, provided comments to AusNet on the structure of their selection process, candidate shortlist and indicative selection of Forum members
- the AER endorsed AusNet’s [Early Engagement Plan](#), which sets out the detail of how AusNet proposes to implement the New Reg negotiated regulatory approach
- the AER, along with AusNet and the Chair of the Forum, signed an Early Engagement [Memorandum of Understanding](#), setting out the terms of reference and governance arrangements for the operation of the Forum and AusNet’s trial
- AER staff participated in many of the meetings already held between the Forum and AusNet.

Ongoing role of the AER in the AusNet trial

The AER's involvement with the Forum and AusNet, prior to AusNet's revenue proposal being formally submitted to the AER, is not intended to 'pre-approve' any matters in the proposal. Rather, it is to provide the Forum with the technical and economic support it needs to be an effective counterparty to AusNet during the negotiation process.

The role of AER staff in assisting the Forum includes:

- providing information and advice to the Forum, such as by
 - identifying and raising issues with the Forum and AusNet in Forum meetings
 - responding to questions from the Forum
- agreeing which issues are within the scope of negotiations between the Forum and AusNet
- for issues in scope, and which are relevant to AusNet's revenue proposal, setting out the boundaries of the negotiation.

The Forum's role will be complete once AusNet submits its revenue proposal to the AER, and the Forum has prepared its final Engagement Report. The Forum's final Engagement Report will identify areas of agreement and disagreement with AusNet within the scope of negotiation, and explain how agreed matters reflect the preferences of AusNet's customers.

The AER will then undertake its formal assessment of AusNet's proposal as normal, in accordance with the National Electricity Law (NEL) and National Electricity Rules (NER). The AER will not be bound by any agreement made between the Forum and AusNet.

However, if the process works as intended, and given AER staff's ongoing role in the process, it is more likely that AusNet's revenue proposal will reflect consumer preferences than if the Forum and AusNet operate outside the process envisaged by the New Reg model. In assessing AusNet's proposal, the AER will be able to have regard to the extent of the Forum's agreement with AusNet on certain matters in the proposal, and the extent to which that agreement is based on sound evidence of consumer perspectives and preferences. The AER can then take into account the matters that have been agreed and, conversely, those that have not been agreed, in its consideration of AusNet's proposal.

Providing information and advice to the Forum

The AER will continue to make appropriately experienced AER staff available to assist the Forum by:

- providing specialist information and assistance on regulatory, economic, industry or other relevant matters, as requested by the Forum
- reviewing or analysing some of the information provided to the Forum by AusNet, particularly in respect of issues in scope for negotiation (see below)
- assisting the Forum to understand the NEL and NER to the extent relevant to the preparation, negotiation and assessment of AusNet's revenue proposal
- flagging any areas of concern with the process as they arise, and suggesting actions that could be taken to address those concerns
- preparing any relevant guidance material on issues in scope, including a description of the boundaries of the negotiation for issues relevant to AusNet's revenue proposal.

To assist the Forum, AER staff may be asked to attend:

- meetings, workshops, discussions, presentations, training or site visits arranged by AusNet and attended by the Forum

- at the invitation of the Forum, private meetings of the Forum
- at the invitation of the Forum and AusNet jointly, negotiations between the Forum and AusNet, as an observer.

Given that the AER is not resourced to do so, AER staff will not be expected to review all of the material that AusNet provides to the Forum, and will not be expected to verify the accuracy of that material. However, if AER staff think there are any particular issues or concerns with any information provided to the Forum, staff will raise them with the Forum and AusNet.

Agreeing the scope of negotiation and timeframe

Scope

As set out in the Early Engagement Plan, the AER, the Forum and AusNet are all expected to agree to the scope of the negotiation. The Forum is not expected to negotiate AusNet's entire revenue proposal, because some aspects of the proposal are unlikely to benefit significantly from customer views. Rather, the Forum is expected to focus on a number of issues for negotiation, taking into account:

- the requirements of the NEL and NER
- the extent to which AusNet has discretion to propose an issue
- the extent to which the issue can be influenced by customer views
- the materiality of any proposed expenditure
- the extent to which an expenditure trade-off is available
- the technical complexity of the issue and the degree of specialist expertise required to assess it.

In addition, policy or wider issues should not be in scope, particularly where those issues would be better dealt with through a different and more expansive consultative process than the Forum's negotiation with AusNet.

AER staff will be encouraging the Forum to focus its time on:

- preparing itself to effectively negotiate issues that are in scope and relate to AusNet's revenue proposal
- seeking evidence from consumer research to support its negotiation positions.

However, the Forum is not precluded from considering or directing further consumer research and engagement on matters not directly relevant to AusNet's revenue proposal. For instance, the Forum might propose a number of ways that customer outcomes could be improved at negligible cost to AusNet. Or the Forum might propose that the cost of improving certain customer outcomes should be borne by AusNet's shareholders rather than electricity consumers.

If AusNet agrees to implement these kinds of initiatives, then there might be no impact on AusNet's revenue proposal to the AER. That is likely to be the case if the improved customer outcomes sought by the Forum have no effect on the forecast operating expenditure or capital expenditure AusNet includes in its revenue proposal. Such matters could therefore be in scope for negotiation, but require no involvement from AER staff, because they would have no bearing on AusNet's revenue proposal.

Some of the information AusNet provides to the Forum will relate to issues that are out of scope, or it could be just introductory or contextual information.

Because the focus of AER staff's involvement is to better prepare the Forum to negotiate issues that are in scope, AER staff will not be expected to review any information relating to out of scope issues relevant to the revenue proposal, until after AusNet submits its proposal to the AER. Similarly, AER staff will not be expected to review material not relevant to AusNet's revenue proposal, whether or not that material is relevant to an issue in scope for negotiation.

Timeframe

Once the scope has been agreed, a timeframe for AusNet Services and AER staff to engage on the matters in scope will be agreed. This timeframe will provide AER staff with sufficient time to analyse and respond to AusNet's proposals on the matters in scope, and which relate to AusNet's revenue proposal.

Setting out the boundaries of negotiation

For each issue that is agreed to be in scope, and is relevant to AusNet's revenue proposal, AER staff can assist the Forum by communicating:

- any relevant constraints arising from the regulatory framework established by the NEL and NER
- relevant AER approaches or methodologies set out in current AER Guidelines
- potentially acceptable regulatory outcomes in quantitative or qualitative terms, for example:
 - indicative changes in revenues, prices, service, and/or other dimensions of AusNet's performance, that might not be acceptable
 - indicative ranges of expenditure allowances or other parameters that the AER may consider efficient, or components of those allowances
 - appropriate trade-offs between various options
 - proposed changes to AER assessment approaches or methodologies, where the reasons for those changes might not be persuasive
- what elements of the issue are negotiable.

Status of views provided to the Forum by the AER

AER staff may provide advice to the Forum in oral or written form. Non-confidential advice that is provided in writing, in response to a request from the Forum about how the AER might assess a particular matter in AusNet's revenue proposal, will be published on the AER's website. AusNet and the Forum have acknowledged that any views expressed by AER staff do not reflect the views of the AER. AER decisions are made by the AER Board.

AER staff will provide regular updates to the AER Board on the progress of the Forum, on the issues to be included in the scope of negotiations, the boundaries of negotiation, and responses to questions raised by the Forum.

Any views provided by the AER in advance of AusNet submitting its revenue proposal will not fetter the AER's discretion in assessing the proposal once it is submitted.