



AER network revenue determination engagement protocol

Version 1.0

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1 Purpose

We, the Australian Energy Regulator (AER), set the revenue allowances for Australian electricity and gas distribution and transmission network businesses. These decisions are important to consumers because network charges account for a significant component of each customer's final electricity and gas bills. Consultation and engagement provide confidence in our processes and are good regulatory practice.

Energy consumers should pay no more than necessary for the safe and reliable delivery of electricity and gas network services. Our decisions are guided by the objectives set out in national energy legislation, which promote: efficient investment in, and efficient operation and use of, energy services for the long term interests of energy consumers with respect to price, quality, safety, reliability and security of supply.

We are an independent decision-making body. Our functions and powers are set out in the national energy legislation and rules. The independence of our activities is underpinned by: a clearly defined role and functions; a well-established governance and reporting framework; and the application of a rigorous process of timely, considered, evidence-based and transparent decision making.

Our forms and processes of engagement continue to evolve. Our engagement approach reflects recent reforms that support greater consumer involvement in the regulatory process, improvements in the way we regulate network businesses—including better analytical tools such as benchmarking—and changes to our organisation.

The purpose of this document is to communicate our stakeholder engagement approach for network revenue determination processes. We identify our main external stakeholders (section 2). We explain our 'principles of engagement' (section 3), and what they mean in practice for how we engage with the network businesses (section 4) and all other stakeholders (section 5) on these processes. We explain why we brief some stakeholders ahead of the release of decisions (section 6). Finally, the AER's consultation requirements under the National Electricity and Gas rules are outlined (section 7)—with examples of how we will fulfil them in practice.

By doing so, we aim to create a predictable engagement experience for all stakeholders involved in our network revenue determination processes. We will continue to refine the way we engage on these processes, which will be reflected in this 'living' document.

This document complements the AER's 2013 AER Stakeholder Engagement Framework, which commits us to clearly communicating the purpose and objectives of, and the role of stakeholders in, an engagement process. This promotes transparency in our regulatory processes and decision making.

2 Our stakeholders

This document focuses on our engagement with our external stakeholders. Our main external stakeholders are:

- energy consumers—including residential consumers, small and large businesses, and large and industrial energy users, and consumer and other representative groups
- energy network service providers—including transmission and distribution businesses
- governments—including Energy Council Ministers, the Commonwealth Treasury, and state, territory and national government departments
- other regulators—including Australian Energy Market Operator, Australian Energy Market Commission, jurisdictional energy ombudsman and jurisdictional energy regulators
- other energy businesses—including electricity generators, gas producers and shippers, wholesalers, energy retailers and resellers, and peak industry groups
- investors in the energy sector
- media, who may report on our decisions.

We engage with the energy network service providers more than any other external stakeholder as part of a revenue determination. This is not surprising given our decisions on the businesses' revenue proposals can have a major impact on the way they operate their networks.

The Consumer Challenge Panel, which assists us to make better regulatory determinations by providing input on issues of importance to consumers, is an internal stakeholder to us. We appoint Consumer Challenge Panel members. We therefore do not explain how we engage with the Consumer Challenge Panel in this document.

3 Principles of engagement

We recognise that stakeholder participation in energy market decision making processes is an important element of achieving the National Electricity and Gas objectives. The COAG Energy Council expects we will develop and execute effective engagement with market participants according to good practice and consistent with legislative requirements.¹

To promote the National Electricity and Gas objectives, we apply the following principles in considering both the purpose of engagement and what level of engagement we will undertake for our network revenue determination processes:

1. Engagement is a tool to facilitate effective and timely decisions that promote the National Electricity and Gas objectives
2. Decision making is improved through timely consideration of the views presented to us by all stakeholders
3. The emphasis of our engagement with network business is on understanding their regulatory proposals
4. The emphasis of our engagement with all other stakeholders is on informing them of our regulatory processes and assessment approaches, and on understanding their views
5. There is a need to balance the protection of confidential information with disclosing information for an open and transparent regulatory decision-making process

We adhere to the principles of 'open government'. A key aspect of this is providing procedural fairness so that all of our stakeholders have an opportunity to be heard and have their views considered. Stakeholders should have access to sufficient information to understand and assess the substance of all issues affecting their interests. This highlights the importance of the network businesses' minimising confidentiality claims over the material presented in their regulatory proposals.²

The draft decision is an important stage of a regulatory process for exposing our decision and reasoning to scrutiny—allowing for extensive public input and feedback. This is a structured and transparent way for us to test the robustness of our decision.

A draft decision can also help to narrow issues for consideration in the final stages of a regulatory process. For example, under the National Gas Rules, the service provider may, within the revision period, submit additions or other amendments to the access arrangement proposal to address matters raised in the access arrangement draft decision. The amendments must be limited to those necessary to address matters raised in the access arrangement draft decision unless the AER approves further amendments.³ Of course, all other stakeholders can make submissions on, and disagree with, matters accepted by us in a draft decision, which we would consider in developing our final decision.

¹ See COAG Energy Council Statement of Expectations for the Australian Energy Regulator.

² Our Better Regulation Confidentiality Guideline sets out the scheme for how we will handle confidentiality claims.

³ See rule 60 of the National Gas Rules. Similarly, see clause 6.10.3(b) of the National Electricity Rules.

4 AER engagement with network businesses

Our regulatory processes, including our engagement approach, must be effective and efficient to deliver better network regulation.⁴ Further, our decisions must be founded on clear, demonstrable and objective arguments and evidence.

The regulatory proposals and the way we assess them are complex and technical. Engagement with the network businesses is largely about us ensuring that we understand the material that is presented to us in the proposals, especially at the early stages of a process.

We will offer opportunities for the network businesses to meet directly with the AER Board soon after they have lodged both their initial and revised regulatory proposals. The purpose of these meetings is to give the businesses an opportunity to provide an overview of their regulatory proposals, and draw particular issues to the AER Board's attention. To promote transparency, the agenda and slides presented at these meetings will be published on the AER's website, subject to the confidentiality issues noted earlier.

To manage our regulatory processes effectively and efficiently, we need to run a targeted consultation process with the network businesses. We review the regulatory proposals and seek further information when questions arise—including through information requests, which are an efficient way for us to understand proposals and record review-related material.

In our engagement with a network business or other individual stakeholder, we may indicate our initial position on a matter as a way to test our understanding of the issues at hand. Nevertheless, we generally see the draft decision is the most appropriate and transparent mechanism for engaging in this way—it gives all stakeholders equal access to information and an equal opportunity to respond.

The later we are in a process, the less meetings and workshops we may hold with a network business. Engagement is not about a negotiation of outcomes. In practice, we are busy drafting the decision documents towards the end of a regulatory process.

The decisions we make as part of a revenue determination are supported by detailed analysis and reasoning. We consider that the written explanation should be sufficient to provide stakeholders with a good understanding of how and why we arrived at our decisions. A verbal explanation cannot always capture all aspects of our decisions and can be misinterpreted. As such, we will not necessarily meet with network businesses to explain the detailed reasons of our decisions.

⁴ To support the work of the COAG Energy Council, the Council expects that we will undertake our responsibilities efficiently and effectively (see COAG Energy Council Statement of Expectations for the Australian Energy Regulator).

5 AER engagement with all other stakeholders

The network businesses have a very good understanding of our regulatory processes and assessment approaches. Many other stakeholders do not have the same level of involvement in our regulatory processes. We therefore see that we have a role in informing these stakeholders to help them to consider the network businesses' proposals and our decisions.

When possible, we will establish 'jurisdictional reference groups', which give us a mechanism for coordinated and informed views from a cross-section of stakeholders. All stakeholders in a region may be invited to attend consumer reference group meetings, with the exception of the network businesses.

For example, we set up jurisdictional reference groups for our recent electricity distribution processes to make it easier for consumers in particular to provide input into these decisions. We explained the key issues and our approach to assessing the network businesses' proposals at these meetings, among other things.

Stakeholders who attend our jurisdictional reference group meetings can raise questions and engage with us—and the Consumer Challenge Panel—to develop their understanding of the regulatory proposals and key issues. Attendees can request further meetings, workshops and training. For example, we can offer consumer groups training on the 'building block model', which is a key feature of our decisions.

Some stakeholders ask us to simply keep them informed throughout a revenue determination process, such as on upcoming forums and workshops, and when decisions are released. We are happy to accommodate such requests. Further, we publish consumer guides to provide these stakeholders with accessible information on our processes and decisions.

Other stakeholders seek to provide substantive input into our decisions through submissions. We can assist these stakeholders by communicating the key issues being considered by the AER in a process, and by highlighting both the material we can consider in forming our decisions and the relevant legislative criteria. Our issues papers and overviews of our decisions are designed with these stakeholders in mind.

We are flexible in how we receive submissions. For example, consumer representatives can provide input into our decisions just by attending our jurisdictional reference group meetings and workshops. We can take oral submissions at a meeting from those stakeholders that would not otherwise provide written submissions to the AER—within the bounds of the consultation timelines.

In considering submissions, going forward, we will seek further information from consumer representatives and other stakeholders when questions arise—including through information requests. This will help ensure we understand and then reflect the views we receive in our regulatory decisions. We recognise consumer representatives may have limited capacity to respond to such requests. The Consumer Challenge Panel also helps us understand the range of consumer views that are put to us.

6 We brief some stakeholders ahead of the release of decisions

Our revenue determinations can have significant financial implications for the network businesses and can include market sensitive information. A business' earnings could be materially different from market expectations as a result of a regulatory decision. Further, our decisions can have a significant impact on residential energy prices and go to how the regulatory regime is operating.

We recognise that network businesses and governments may need some time to consider and understand our decisions, prior to their public release. Briefings on our decisions allow, for example, senior management and the Board of the network businesses to more effectively report to their key stakeholders—including, for some network businesses, the ASX, ASX listed parent companies and overseas owners—upon the release of our decisions.

We may brief the network businesses at a high level on key elements of our decisions in the days prior to their release. Further, we will provide embargoed copies of our decision documents to the network businesses the day before their release.⁵ Similarly, we may provide high level briefs and embargoed copies of our decisions to relevant Energy Council Ministers and portfolio departments, and the Commonwealth Treasury.

Such briefings would occur after the AER Board has made the relevant decision, and are not an invitation or opportunity for the network businesses or governments to provide further, late submissions to us.

⁵ That is, we provide decision documents on the condition that the network business cannot disclose the content of our decision until a certain time.

7 Consultation requirements under the rules

The National Electricity and Gas rules prescribe a process for consultation on network revenue determination processes and publication of information that will inform those decisions. The AER must:

- publish the framework and approach paper (electricity only)
- publish the regulatory proposal and any supporting material
- publish an issues paper (electricity only)
- invite written submissions
- hold a public forum on the issues paper (electricity only)
- publish a draft decision and reasoning
- invite written submissions on the draft decision
- hold a pre-determination conference (electricity only)
- publish the revised proposal
- publish a final decision and reasoning

The timeline for a revenue determination process is significantly longer under the National Electricity Rules compared to the National Gas Rules, which allows for more extensive consultation with users, consumers and consumer representatives in particular. Although the National Gas Rules do not require us to publish an issues paper for a regulatory process, we undertake to do so when practicable. We consider issues papers are an important tool for helping consumers and consumer representatives to understand the businesses' proposals.

We have some discretion on the timing of submissions and revised proposal due dates, although the National Electricity Rules and National Gas Rules prescribe minimum lengths of time for the above steps in the consultation process.

The National Electricity Rules allow us to align our submissions and revised regulatory proposals due dates.⁶ We may then run a separate consultation process seeking views specifically on the businesses' revised proposals,⁷ which allows us to better consider views presented to us by all stakeholders. This additional round of consultation is not another opportunity for stakeholders to comment on our draft decisions. Nor is it for the network businesses to continue to develop their revised proposals after they fall due. Rather, it provides stakeholders with an opportunity to comment on the revised proposals submitted by the businesses.

In contrast, under the National Gas Rules, submissions must remain open for a minimum period after the revised proposal is submitted.⁸

⁶ Under the National Electricity Rules, there are separate clauses relating to the minimum days we must allow for submissions (cl. 6.10.2(c)) and revised proposals (cl. 6.10.3(a)).

⁷ See clause 6.10.3(e) and 6.10.4 of the National Electricity Rules.

⁸ See rule 59(5) under the National Gas Rules.

7.1 Public forums

Under the National Electricity Rules, the AER is required to hold both a public forum on the issues paper and a predetermination conference for the purpose of explaining the draft determination.⁹ We are not required to hold public forums or 'hearings' under the National Gas Rules, unless requested by stakeholders about a draft decision.¹⁰

Public forums usually involve:

- network business presentations on their proposals
- Consumer Challenge Panel presentation
- AER staff presentations, including on the process and possibly substantive matters
- questions from the public.

Predetermination conferences or hearings involve:

- AER staff presentations on draft decisions
- network business presentations on the AER's draft decision
- Consumer Challenge Panel presentation
- questions from the public.

Going forward, we will look to provide opportunities for other stakeholders—especially consumers and consumer representatives—to present at public forums to ensure a wide range of views are presented. For example, we may invite those stakeholders who made initial submissions on the proposals to present at the predetermination conference. This will give consumers, consumer representatives and other stakeholders the opportunity to put their views directly to AER Board members in attendance.

To promote transparency, the agenda and slides presented at public forums will be published on the AER's website. We may also publish transcripts of the public forum presentations.

⁹ See clauses 6.9.3(b2) and 6.10.2(b) of the National Electricity Rules.

¹⁰ See rule 61 of the National Gas Rules. Also, under rule 57, a gas service provider may, in the course of preparing a full access arrangement proposal for the AER's approval, by notice to the AER, request a pre-submission conference with representatives of the AER to discuss questions affecting the proper formulation of the proposal.