



5 June 2007

Manager, MCE Secretariat  
Department of Industry, Tourism & Resources  
GPO Box 9839  
CANBERRA ACT 2601

Dear Sir / Madam,

**ECONOMIC REGULATORY PACKAGE NATIONAL ELECTRICITY RULES  
DISTRIBUTION REVENUE & PRICING RULES**

We refer to the request for submissions on the Exposure Draft and Explanatory Memorandum of the National Electricity (Economic Regulation of Distribution Services) Amendment Rule 2007 ("the Rules") and ask that you accept this submission on behalf of the Energy Users Association of Australia ("EUAA") and Energy Action Group ("EAG") jointly representing their constituents, large end-users and small end-users across the National Electricity Market ("NEM").

The EUAA and EAG would be pleased to discuss our submission with the MCE Secretariat and to be involved in any further consultation process. In the interim, should you require clarification on any point in our submission please do not hesitate to contact John Dick on 0419 560 966 or Robert Davenport on (03) 9898 3900

Yours faithfully,

A handwritten signature in black ink, appearing to read "Roman Domanski".

**Roman Domanski**  
**Executive Director**  
**Energy Users Association of Australia**

A handwritten signature in black ink, appearing to read "John Dick".

**John Dick**  
**President**  
**Energy Action Group**



**Energy Action**  
Group



**SUBMISSION TO THE MCE:  
REVIEW OF THE NATIONAL  
ELECTRICITY (ECONOMIC  
REGULATION OF DISTRIBUTION  
SERVICES) AMENDMENT RULE 2007**

This submission was prepared by the Energy Action Group and the Energy Users Association of Australia. Funding assistance was provided by the National Consumers Electricity Advocacy Panel.

## 1. Introduction

We refer to the MCE's request for comments on the "*National Electricity (Economic Regulation of Distribution Services) Amendment Rule 2007*" ("Rule") and ask that you accept this as the Energy Users Association of Australia ("EUAA") and Energy Action Group ("EAG") joint submission on the issues raised therein.

The EUAA and the EAG see this consultation process as an important first step in integrating distribution into the national framework. Although we support the process and actions that see the production of this consultation package, we remain concerned that the SCO appears, without explanation, to have ignored much of the advice provided by its expert consultants (i.e. NERA) in their paper entitled "*Distribution Pricing Rule Framework*" for the Network Policy Working Group. For instance on the issue of whether there should be a revenue or price cap SCO is advocating a legislative package promoting revenue rules for regulation of distribution entities when its expert advisers appear to prefer and advocate pricing based rules as the way forward. This is a fundamental issue and for there to be no discussion as to why the issue is not open for discussion in this consultative process appears to be a major omission.

The pragmatic interpretation, and one we have assumed, of the disconnect between expert advice and the legislative package issued for consultation is that steady movement toward a national regime, even if not based upon the preferred form of distribution regulation, is more desirable than an elongated timeframe for migration to a national scheme that is based upon the expert's findings. While we appreciate the trade-off between pragmatism and philosophical purity, and recognise the large and genuine benefit that the NEM will derive from the implementation of a national distribution regulatory regime, we are concerned that in the long run end-users will still be paying for that decision through higher network charges and a regime that on the advice of an expert report is sub-optimal.

We are also concerned that the SCO has decided to defer consideration of a number of other distribution related matters until the release of the retail regulation package. Again, while we can understand the desire to look at some of these issues in unison (i.e. the distribution billing issues fit neatly with reviewing retail settlements, etc) we believe it would have been preferable to issue the distribution and retail packages together. This would have allowed the market to review the customer facing elements of the market and their interactions in total. We wonder what the process will be for interested parties to modify comments they make in this consultation round as a result of reviewing what is proposed in the retail regulation package. It would be useful for SCO to advise interested parties, perhaps as part of the future retail package, how such commentary can be provided in a meaningful way.

Finally, while we see the need for the proposed NSW / ACT transitional provisions being canvassed at this time and in this package of reform, we have several major concerns. Primary among them is that, despite the assurances provided in the Explanatory Memorandum the transitional proposals will be seen to, and will in fact, establish precedents for the treatment of WACC, how transition and many other critical issues are addressed. We do not see how these precedents can successfully be distinguished from the

overall package and its outturns in the manner sought. We believe that SCO may wish to consider how it will ensure precedent is not established where it is not wanted.

Moving to the overall legislative package, as a general comment the EUAA and EAG supports the ongoing regulation of Distribution Businesses in a fashion that promotes their efficient operation coupled with incentives for appropriate capital investment to ensure a cost competitive outcome.

We are of the view however that the Rules as presently drafted, while representing a good start, require substantial amendment to achieve the objectives of the NEM, as cited in section 7 of the National Electricity Law;

*“The national electricity market objective is to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.”* (Our emphasis added)

In the rest of this submission we discuss the areas within the Explanatory Memorandum and draft Rule where we either seek change, believe the MCE should undertake further consideration of issues or have comment to make on the effect of the proposal from both a small and large end-user perspective. We note that the MCE has moved to ensure, that regulation of Distribution should be less prescriptive than that of Transmission and broadly support the manner by which this is achieved through the drafting of the Rules.

In this submission we comment on the documents in the same structure as they are presented in the Explanatory Memorandum, that is, we discuss the policy issues first and then, in some instances, propose either drafting changes to the Rules and/or propose other issues that we believe should be considered by the MCE.

## **2. Part B – Classification of Distribution Services and Distribution Determinations**

Replacement of the terms “Prescribed” and “Excluded” services with the concept of Direct Control Services (containing standard control services [the former prescribed services] and alternative control services [the former excluded services]) and negotiable distribution services seems to be undertaken to allow for the removal of prescriptive lists of regulated services which regulators must follow. We also note the stated intention of the new classifications.

Despite this we find the definitions proposed in clauses 6.1.0 and 6.2.2 for alternative control mechanism difficult to understand. As we see it a direct control service is a standard control service that is subject to a control mechanism (given effect through an AER determination) whereas an alternative control service is every other direct control service [cl6.1.0]. Under cl6.1.4 a Service Applicant may request a direct control service and the Distribution Network Service Provider (“DNSP”) must provide that service, indicating that the service is a monopoly of the DNSP as competition in the service is not

possible/desirable. Such services (i.e. monopoly) are normally subject to a control mechanism and hence it is difficult to see how a service captured by cl6.1.0 definitions and using cl6.2.2 to also define could be anything other than a standard control service, almost by definition. This raises the point of why have, and what is, an alternative control service under the new model?

The definition under clause 6.2.2(b) that is meant to differentiate between standard control services and alternative control services provides little guidance due to the non-descriptive nature of the test.

Should these definitions be retained in their current form (as per clause 6.2.2(a)) then we believe it imperative that the sub-classifications under cl6.2.2(b) be defined more closely. For example, under clause 6.2.2(b)(1) how would the “relevant market” be defined, over what time period is it the 5 years of the determination or other time period that the determination is made under as per cl6.3.2(a)(5); or how will potential for competition be determined. . It is our view that the desire to remove prescription (especially in definitions and tests of this nature) must not be to the detriment of the market (more particularly customers) by introducing significant risk and uncertainty in the application of tests and definitions.

Clause 6.2.4(c) states that where a DNSP owns, controls or operates more than one Distribution System then, subject to the AER determining otherwise, separate determinations are required for each system. Historically a concern that we have had, and which remains, is that where such a situation occurs, particularly when the determination process covers regulatory periods that are not congruent, rules such as those provided for in clauses 6.5.7(e)(9) and 6.5.6(e)(9) to remove gaming of the regulator are not adequate. We believe that to remove the prospect of “double dipping” in cost recovery (for example, part cost recovery thought perhaps corporate overhead allocation where the total recovered exceeds 100%) regulators should migrate such distribution system determinations into congruent timeframes which will ensure that costs cannot be inappropriately allocated and potentially over-recovered.

#### **Recommendation One**

We recommend that either:

- ✳ The definition of alternative control services and standard control services be provided through an objective test that can be readily applied; or
- ✳ That the definitions of alternative control services and standard control services be replaced with a single service, called direct control services and that these services have the definition currently applied to standard control services (where services that are not direct control services are effectively negotiable distribution services). To remove doubt in transition the definition of direct control services should include those services that were formerly known as prescribed and excluded services.

**Recommendation Two**

We recommend that, should the tests in cl6.2.2(b) remain that they be elaborated upon to provide consumers with certainty in their application and definition.

**Recommendation Three**

We recommend that with respect to cl6.2.4(c) the MCE should consider whether significant public benefit may accrue by implementing a policy to ensure, over an appropriate transitional period, regulatory control periods for distribution systems controlled, owned or operated by the one DNSP (or corporate group) aligned.

### **3. Part C – Revenue Regulation for Standard Control Services**

It is our view that any revenue proposal submitted should include an estimate of the standard control service and alternative control service tariff rates for the regulatory control period. Presently DNSP are only required to provide the tariffs for the 1<sup>st</sup> year of the revenue determination, and then only after the revenue determination has been made (cl6.18.7 & 8).

While we acknowledge that the tariff structure and quantum will change with both the draft and final determinations we consider it important that the public (i.e. all consumers) are able to clearly understand the net effect of the revenue determination sought by the DNSP . Ascertaining the financial effect of the revenue proposal is the best indicator, given the complexities in understanding and then modelling operational and capital expenditures and the various other components of the revenue determinations. This can be accomplished by requiring that the revenue proposal includes a pro-forma of the implied tariff structure and the quantum that arises if the revenue proposal is accepted as submitted to the AER.

We believe that such a requirement would also serve to focus consumer attention on the regulatory process and thus deliver greater end-use consumer involvement as they would see clearly the net effect of what was being sought. Such involvement in the process can only benefit the further development of the NEM in the long term interests of consumers, as required by the Single Market Objective.

We note that the Essential Services Commission presently requires Victorian DNSPs to provide a five year tariff plan (through the Victorian Distribution Code) and also an annual report on that plan to inform the market on how they are progressing in implementing that plan. We suggest that this tariff plan (and the annual reporting requirement) would form an appropriate template.

**Recommendation Four**

That section 6.1.3 of Schedule 6.1 be amended to insert a new section requiring a revenue proposal to include a tariff schedule for each year of the regulatory control period showing existing (or proposed) tariffs.

### **Recommendation Five**

That the Rules be amended to require that the final determination leads to the issue of not only the 1<sup>st</sup> period tariff structure but also pro-forma tariff structures and prices for each year of the regulatory control period approved in the revenue determination (for all regulated revenue). The Tariff Plan (and annual reporting requirements) in the Victorian Distribution Code may be a good reference point.

We are advised in the Explanatory Memorandum that assets carried across from one regulatory control period to the next are subject to a review of the economic life (because the depreciation schedules are required to be based upon the economic life of the asset). It is not clear in the operation of clause 6.5.3(b)(2) how changes in the economic life of an asset carried forward in the regulated asset base from an earlier period which arise due to further capital investment are adjusted in the depreciation schedule. The Rules seem to be silent on adjustments to economic lives of carried forward assets. The current practice is that the additional capex is included in the asset base and depreciated accordingly. This should be made quite clear in the Rules.

### **Recommendation Seven**

That the MCE ensure that the Rules ensure appropriate treatment of carried forward regulated asset base assets that have additional capital expenditure to ensure an appropriate economic life is used for determining depreciation charges.

The sharing of efficiency gains is discussed in cl6.5.5. Sub-clause (b) states that the consultation that will occur under AER auspices:

*“may (but is not required to) extend to efficiency gains and losses related to capital expenditure.”*

It is our firm view that the regime for sharing with consumer’s efficiency gains must include those benefits derived from capital expenditure. Whereas losses incurred should be not be shared in order to properly incentive DNSPs to adequately plan, monitor, budget and implement their capital expenditure programs. It is implicit in the name selected by the MCE, that is, the “efficiency benefit sharing scheme” (underlining our emphasis) that losses are not, to be shared as the word benefit does not imply detriment to consumers. We note that DNSP’s already have protection against “stranded” assets a significant cost underwritten by consumers. The suggested changes are especially important in the next round of regulatory reviews due to the ever increasing size of capital programs relative to the asset bases of DNSPs.

### **Recommendation Eight**

Change clause 6.5.5(b) to read:

*“An efficiency benefit sharing scheme will extend to efficiency gains being shared with Distribution Customers.”*

Overall the need for this scheme to in fact be sharing the “benefits” with end-use consumers requires that the scope for the consultation, as cited in clause 6.5.5(a) to be amended to remove the prospect of operating losses being passed through to consumers.

### **Recommendation Nine**

Change clause 6.5.5(a) to be amended to ensure operating losses are not passed through to end-use consumers.

Benchmarking what is an “efficient DNSP” through either a proxy DNSP (sourced from a comparable Australian environment or overseas experience) or a hybrid DNSP (for example, reviewing each function of a DNSP and then selecting a benchmark for best practice within that function and then amalgamating the result to provide a hybrid DNSP that is “efficient”) is very difficult in the Australian context. This is because many DNSP’s, for example Ergon Energy and Country Energy have no Australian or international peers with respect to their operations. Generating a hybrid DNSP to test efficiency for these types of unique businesses will be very difficult.

That said, we are concerned that slavish adherence in all instances to the form rather than intent of clauses such as 6.5.6(e)(4) and 6.5.7(e)(4) in all circumstances will simply create opportunities for gaming the AER and increase regulatory risk – for which the DNSP will seek further WACC increases in compensation.

### **Recommendation Ten**

The AER, when interpreting and giving effect to clauses such as 6.5.6(e)(4) and 6.5.7(e)(4) needs to be cognisant of the behavioural effect their interpretation may have upon DNSP in drafting their revenue proposals.

When undertaking benchmarking for the purposes of clause 6.5.7(e)(4) we would also encourage the AER (in addition to any organisational benchmarking) to seek from DNSP a “project by project” (focusing on projects perhaps with a value of above and below \$1M and with the provision of the “duration curves” to show the range of outcomes rather than the average) analysis of:

- ✧ Initial Project Budgets;
- ✧ Any Revised Project Budgets;
- ✧ Actual Project Cost (dissected by overhead, materials, etc);
- ✧ Initial Project completion timeframe; and
- ✧ Actual Project completion timeframe.

We believe such an analysis will help reveal the efficiency and effectiveness of historic capital budgeting processes, efficacy of the project management of the individual DNSP and allow, over time the creation of a database by which the AER can compare and contrast each DNSP. This will be particularly insightful in assisting the AER to judge the veracity and “do-ability” of the capital expenditure programs provided by DNSP’s as part of their revenue proposals.

### **Recommendation Eleven**

Insertion of a new sub-clause in cl6.5.7 (and mirrored in Schedule 6.1 clause 6.1.2) that requires the provision of historical capital program performance, for all capital expenditure (aggregated but not averaged in project values of greater than \$1M and below \$1M) including, but not limited to:

- \* Initial Project Budgets;
- \* Any Revised Project
- \* Budgets Actual Project Costs (dissected by overhead, materials, etc)
- \* Initial project completion timeframe; and
- \* Actual project completion timeframe:

And any other information requested by the AER to assist its interpretation and understanding of the material provided.

We are concerned with the effect of cl6.6.1(a) and (b) upon end-use consumers. It appears that where a positive pass through event occurs (irrespective of materiality) the DNSP may seek to have the AER approve recovery from end-users. It is our experience that DNSPs' are adept at protecting their profits and seek pass through of positive amounts as a matter of course – irrespective of materiality. We are therefore certain that DNSPs' will regularly monitor and quickly make application under cl6.6.1(a) for pass through.

We query whether a materiality level should be set as a threshold for positive pass through amounts to be eligible for application to the AER. It would be normal that all businesses face some level of inherent risk of such events and DNSPs' should be no different. The best manner of protecting the DNSPs' and ensuring only non-expected positive pass through is sought is to implement a materiality test.

### **Recommendation Twelve**

Clause 6.6.1(a) should be amended to include a materiality threshold of, say \$1M per positive change event, after which the DNSP may apply to the AER for approval of a positive pass through. Clause 6.6.1(c) should also be amended to insert the provision of proof from the DNSP of the materiality threshold being achieved.

We cannot understand why clause 6.6.1(b) does not contain a positive obligation upon the DNSPs' to:

- \* advise the AER of a negative change event; and
- \* make application to the AER for approval of a negative pass through:

subject to an appropriate materiality threshold being achieved.

It seems reasonable to mirror the positive and negative pass through materiality threshold at say \$1M per positive/negative change event to provide symmetry to the risk faced by DNSPs' (and thus have no impact upon inherent risk and therefore WACC).

Further it seems strange that the AER would need to monitor events to ascertain whether a negative change event had occurred and then attempt to quantify it and then require the DNSP to make application for a negative pass through. It is logical to assume that DNSPs' assess for financial impact and quantum of all change events (whether positive or negative). It is inherently sensible, in our view, to then place a positive obligation on DNSPs' to make application to the AER for negative pass through (subject to materiality). Such a positive obligation would:

- \* not add significant cost to DNSP (as they already perform this function as part of their normal operations);
- \* reduce the costs of the AER (who would no longer need to assess themselves the effect of change events and try to ascertain whether they result in positive or negative pass through – and therefore under the current scenario when negative seek to have the DNSP submit); and
- \* provide an obvious benefit to end-use consumers for little or no incremental costs (thus enhancing the efficiency of the NEM).

#### **Recommendation Thirteen**

Clause 6.6.1(b) should be amended to provide a positive obligation upon the DNSP to make application to the AER for a negative pass through (subject to the previously mentioned materiality threshold) after a negative change event. The penalty provisions of the Rules should also be amended to provide for a considerable financial penalty for non-compliance with this amended clause.

It is also our contention that the full value of all material negative pass through events (as defined in the proposed new clause 6.6.1(b)) should be made available to end-use consumers.

#### **Recommendation Fourteen**

Our view is that:

- \* Clause 6.6.1(g)(2)(ii) should be removed.
- \* Clauses 6.6.1(g)((1) and (2)(i) should be re-worded to ensure 100% of any negative pass through amount is reimbursed to end-use consumers.
- \* To give effect to these changes consequential amendments are also required to clause 6.6.1(j).

We find it interesting that in setting a service incentive scheme for DNSP' as envisaged under clause 6.6.2 that end-use consumers are not one of the parties to whom the AER must consult (see clause 6.6.2(b)(1)).

Given that the NEM purportedly exists for the benefit of end-use consumers (as per section 7 of the NEL) it would seem logical that end-use consumers must be one of the parties consulted on the service standards that are required, and consequently what level of service provision in excess of these mandatory minimums should attract incentive payments. The

explicit involvement of end-use consumers in this regard should also be mandatory, as it is end-use consumer who pay for the services provided (and any incentive payments!).

While we recognise that clause 6.6.2(f) requires that any amendments, variations, etc of the scheme be subject to consultation and that will naturally include end-use consumers and their representatives, we believe that the views of end-use consumers are vital in the formation of the inaugural scheme, not as a secondary consideration after its development. Further, it is unclear as to whether the initial scheme will be issued for comment under the distribution consultation procedures (whereas it is clear under clause 6.6.2(f) that variations, amendments and replacement schemes will be subject to the consultation procedures).

#### **Recommendation Fifteen**

Clause 6.6.2(b) should have a new sub-clause (1) added, as follows:

*“(1) must consult with end-use consumers; and”*

with consequential renumbering of the existing sub-clauses (1)-(3).

#### **Recommendation Sixteen**

Clause 6.6.2 should be amended, to remove doubt, that the inaugural service target performance incentive scheme is subject to the distribution consultation procedures prior to its being given effect.

### **4. Part D – Negotiated Distribution Services – Regulation of Pricing**

There does not appear to be a specific requirement for the Negotiated Distribution Service Criteria (“NDSC”) developed by the DNSP and determined by the AER to be subject to the Distribution Consultation Procedures to ensure that end-use consumers have the opportunity to provide comment on the NDSC and its terms and conditions and processes.

#### **Recommendation Seventeen**

Part D should be amended, to remove doubt, to ensure that the Negotiated Distribution Service Criteria is subject to the public consultation procedures of the Distribution Consultation Procedures prior to the AER approving the NDSC.

While we agree with the principle espoused in clause 6.7.1(5) that the price for a negotiated distribution service should be the same for all users of that service, unless there is a material difference in the cost of providing that service, we are concerned that “material difference” is not a defined term and therefore subject to potentially differing interpretations.

### **Recommendation Eighteen**

Clause 6.7.1(5) should have a definition of “material difference” inserted.

While the negotiating framework provided under clause 6.7.5 provides for the inclusion of a term whereby (under sub-clause (7)) the Service Applicant provides for the DNSPs reasonable direct expenses it is our view that the DNSP must have a contra obligation to advise the Service Applicant an estimate (that is binding upon the DNSP within an acceptable range) of that cost.

Such an estimate will allow the end-use customer to ascertain the cost of negotiating the negotiated service which will assist in their decision making processes. It also acts as an incentive mechanism to encourage the DNSP to assess the time and effort it will put into the negotiation process which can subsequently be used as a control mechanism by the DNSP (to show efficiency in the negotiation process – if the cost estimate is complied with).

### **Recommendation Nineteen**

Clause 6.7.5(7) should have a sub-clause added that imposes an obligation upon the DNSP to provide the Service Applicant with an estimate of both the direct expenses the DNSP envisages will be incurred together with the timeframe for the completion of the negotiation process.

## **5. Part E – Regulatory Process**

Circumstances can be envisaged whereby either a DNSP or end-user may have an issue that they believe requires the specific views of the AER prior to the revenue determination process commencing. We believe that the scope of clause 6.8.1 should be amended to allow a DNSP or end-use consumer to seek a meeting with the AER with the purpose of seeking the AER’s preparation and issue of an Issues Paper on a specific topic that is relevant to a particular DNSPs revenue determination.

It is difficult to see how one could be too prescriptive of the timeframes for this meeting to occur – however it is possible this can be addresses through the existing timeframes being applied. That is, by leaving the timeframes in clause 6.8.1(c) unaltered the DNSP or end-use customer concerned would need to have conducted their meetings with the AER in sufficient time for the AER to comply with the timing in this clause. The onus is on the DNSP or end-use customer. Further, clause 6.14(b) complements this proposal.

### **Recommendation Twenty**

Clause 6.8.1 should have a sub-clause added that imposes an obligation upon the AER to meet with either a DNSP or end-use customer to discuss the need for the AER to prepare an Issues Paper on a specific topic or DNSP.

Further to our earlier comments in relation to Part C we see it as imperative that the regulatory proposal include an estimate of the actual tariffs implicit for direct control services for the regulatory control period. Presently DNSP are only required to provide a pricing proposal for the 1<sup>st</sup> year of the revenue determination, with actual tariffs only after the revenue determination has been made (clauses 6.18.7 & 8).

As mentioned earlier while we acknowledge that the residual tariff structure and quantum will change with both the draft and final determinations we consider it important that the public (i.e. all consumers) are able to clearly understand the net effect of the revenue determination sought by the DNSP upon them when deciding whether or not to provide comment on the initial regulatory proposal or subsequent AER draft and final determinations. This can be accomplished by requiring the regulatory proposal to include a pro-forma of the implied tariff structure and quantum that arises if the regulatory proposal is accepted as submitted to the AER.

This information is critical for the forward planning of many large users (i.e. decisions such as where to expand capacity, using what energy sources, etc) and would also serve to provide a focus for consumers in understanding the net effect of the DNSP revenue proposals in a simple, yet effective way.

We believe that such a requirement would also serve to focus consumer attention on the regulatory process and thus deliver greater end-use consumer involvement as they would see clearly the net effect of what was being sought. Such involvement in the process can only benefit the further development of the NEM in the long term interests of consumers, as required by the Market Objectives.

#### **Recommendation Twenty One**

In addition to Recommendations Four and Five, amend clause 6.8.2(c) to require a regulatory proposal to include a tariff schedule for each year of the regulatory control period showing existing (or proposed) tariffs should the DNSP be successful in having their regulatory proposal accepted and declared the revenue determination by the AER.

The Victorian Distribution Code Tariff Plan and annual reporting requirements may be a reasonable starting point for examining the form and structure of this requirement.

Again we are concerned that the issue of “materiality” is mentioned as a specific test, and yet remains undefined. In this instance, under clauses 6.13(a)(1)(iv) and 6.13(a)(2), materiality is a test for the AER revoking a determination affected by misleading information. We believe it critical that materiality be defined in these instances.

#### **Recommendation Twenty Two**

Clauses 6.13(a)(1)(iv) and 6.13(a)(2) should have a definition of “material” inserted.

## 6. Part G – Cost Allocation

While we applaud the desire of the AER to be able to replicate the cost outcomes arising from a DNSPs Cost Allocation Principles being applied we are concerned that the proscriptive detail required by clause 6.15.2(1) does not provide for that replication to be achieved cost effectively. It is possible to see a situation whereby the Cost Allocation Principles proposed by an DNSP comply with the letter of this clause, but the effect of the outworking of the Principle places the AER in the position of being unable, in reality, to replicate the cost outcomes in a cost or time efficient/effective manner. We suggest that this needs remedy as suggested below.

### **Recommendation Twenty Three**

Clause 6.15.2(1) should have inserted immediately after “*enable the AER to*” the words: “*easily and cost effectively, in the opinion of the AER,*”.

With the large capital and operational expenditure programs being undertaken by the DNSPs, which will be continuing into the near future given the current asset replacement cycle, we envisage a significant increase in so called “unallocable costs” such as head office staff training, etc. The great danger for end-use consumers with these costs is that not only do they appear to increase exponentially, but the method for allocating these costs to individual service categories tends to be inconsistent between DNSPs and arbitrary. We believe that Cost Allocation Guidelines (clause 6.15.3) and Cost Allocation Method (clause 6.15.4) must make it clear how such allocations are being made and the AER must ensure that the allocation (as well as the quantum) is reasonable.

While the AER develops the Cost Allocation Guidelines (clause 6.15.3) under distribution consultation procedures the Cost Allocation Method proposed by the DNSP is not subject to market review either when it is initially developed or when changes or variations are made. Rather it is subject to review/approval by the AER. We believe that the AER, in reviewing this document should have an obligation to consult with the market.

### **Recommendation Twenty Four**

Clauses 6.15.3 and 6.15.4 should be amended to ensure that the issue of unallocated costs is dealt with in sufficient detail to ensure end-use customers are able to monitor the performance of DNSP in keeping these costs controlled, can track their allocation between capital and operational budgets and are reasonable.

### **Recommendation Twenty Five**

Insert a new sub-clause in 6.15.4, which compels the AER to issue the Cost Allocation Method (initially and any subsequent variations/amendments) to end-use customers for comment using the distribution consultation procedures prior to the AER accepting or refusing the document.

## **7. Part J – Distribution Pricing Rules**

It is difficult to see why under clause 6.18.3(a)(1) a pricing proposal is only required for the first year of the regulatory control period rather than for the full regulatory period (which can always be updated subsequently) when the DNSP has the information necessary to provide the actual pricing proposal and an indicative pricing proposal for the remaining years of the regulatory control period. Such a requirement would bring the pricing proposals here into line with the timeframes we have requested elsewhere in this submission for the provision of tariff structures and indicate pricing for the entirety of the regulatory control period.

Clause 6.18.3(b) can remain unaltered under such a regime as it would still be necessary for a pricing proposal each year to be lodged to account for changes due to pass throughs, overs and unders, etc. What we think can improve the efficiency of the overall market is however that the time period for the provision of this proposal and the issue of tariffs be lengthened. That is, the time for submission should be say 6 months prior with the issue of actual tariffs to be applied within a further 1 month (clause 6.18.8(b)). Such a regime would allow end-use customers the opportunity to budget and plan their own businesses and make business investment decisions in a timely manner.

### **Recommendation Twenty Six**

Insert a new sub-clause in 6.18.3(a), which compels the DNSP to also submit to the AER an indicative pricing proposal for the second and subsequent years of the regulatory control period.

### **Recommendation Twenty Seven**

In clause 6.18.3(b) replace “2” with “6”. Similarly in clause 6.18.8(b) replace “1” with “5”.

We are concerned that the cost incurred by a DNSP in installing remotely read interval meters appears to be approved, almost unfettered, outside the side constraint process (clause 6.18.6(c)(3)). While we are aware that the Victorian Government’s IMRO is proceeding and that the Government is agreeing, in some form with the DNSP involved their allowed costs for smart meter installation, we are not convinced that this requires the relaxation of the side constraint in the Rules. We would envisage that the IMRO costs would be incurred in a regulatory control period preceding the transfer of distribution regulation to the AER and as such the approval for expenditure and the migration of this to a pricing proposal and tariff structure part of the ex-ante process, making this clause redundant. We believe that the costs of interval meter roll out (as with any meter replacement scheme irrespective of technology, would form part of the usual asset base of the DNSP and consequently be subject to tests of efficiency and effectiveness of the “spend” and the side constraint formulae.

**Recommendation Twenty Eight**

Delete clause 6.18.6(c)(3).

Clause 6.19.1 provides for a Service Applicant to provide any information the DNSP requests as part of the connection and access process. It would be usual to place a reasonableness test upon this requirement to ensure that the DNSP do not abuse their position of market power in the provision of connection and access services with end-use customers.

**Recommendation Twenty Nine**

Insert “*reasonable*” after “*information*” in clause 6.19.1.

**8. Schedule 6.1 – Contents of Revenue Proposals**

Throughout this submission we have made comment with respect to the additional information that we believe is necessary to ensure the AER can assess the performance of DNSPs with respect to their operational and capital expenditure programs. Recommendations Four and Twelve deal with the provision of further detailed information on indicative tariffs arising should the DNSPs revenue proposal be accepted by the AER in the form it is submitted while the later details significant further analysis and information that is required from DNSPs to give an insight into the efficiency and effectiveness of prior capital expenditure programs.

We are of the view that the minimal changes we have requested will go substantially to assisting end-use consumers (and the AER) to understand the extent to which capital programs are either running late (and the causes for this) or capital expenditure programs are being achieved in a monetary spend basis, but that money is being spent inefficiently or ineffectively. For example, it is apparent that some DNSP are achieving their capital expenditure program gross spend – but this is due to projects either running significantly over time (with consequential budget blow-outs) and/or poor initial budgeting meant that with labour resources stretched costing relied upon were woefully inadequate. In both instances end-use consumers are detrimentally impacted, either by non-delivery of capacity that was purportedly required and/or inefficient/ineffective spend.

Ordinarily capital works programs ramp up after years 2 and 3 of regulatory control periods. As a result of this revenue determinations are usually made with only actual data on capital budget performance for 2 or 3 years at a maximum. Data from the 4<sup>th</sup> year is often available and reviewed as part of the revenue determination, but towards the end of the process. We are concerned that this process leads to the capital expenditure program of the 5<sup>th</sup> year of each regulatory control period being overlooked and not subject to the usual levels of scrutiny faced by the preceding 4 years (and in particular years 1-3). This outturn is the natural consequence of the process design. This arrangement can be partly remedied by ensuring that each regulatory control period is subject to a specific review of the conduct of the regulated entity for the entire regulatory control period. While the

information liberated through this review will not be able to inform the subsequent revenue determination – it would be of significant benefit to the AER in the following review and would provide end-users vital information on DNSP performance. Provision of this information would enhance the credibility of the regulatory arrangements overall and improve DNSP oversight.

We referred earlier to the opportunity for poor allocation in the operating program area, including inappropriate overhead allocations (between overhead and direct costs) or large unallocated overheads. Schedule 6.1 needs to ensure that the detail provided to the AER is sufficient to capture (or at least sign-post) these sorts of inappropriate allocation.

Finally we believe that it is important that regulated entities reveal explicitly related party transactions (where “related party” is defined as per the Corporations Act and the disclosure requirement mirrors that of the Corporations Act). Disclosure should be to the AER as part of the Revenue Proposal and explicitly reveal historical related party transactions over the previous regulatory control period, related party transactions currently in effect (as at the date of the revenue proposal) and, to the extent known, related party transactions that will take place during the regulatory control period for the revenue proposal being submitted. This will allow the public to understand the extent to which the regulated entity is engaged in related party transactions and understand the nature (and possible effect) of those transactions upon the DNSPs costs.

<p><b>Recommendation Thirty</b></p>
<p>The following changes are required to Schedule 6.1, clause 6.1.2:</p>
<ul style="list-style-type: none"> <li>* Sub clause (1)(i) – replace “<i>or</i>” with “<i>and</i>”;</li> <li>* Sub clause (3) – replace “<i>key</i>” with “<i>all</i>”;</li> <li>* Sub clause (5) – replace “<i>key</i>” with “<i>all</i>”;</li> <li>* Sub clause (8) – replace “<i>significant</i>” with “<i>material</i>”</li> </ul>
<p>Further, a sub-clause(s) requiring the DNSP to:</p>
<ul style="list-style-type: none"> <li>* advise the level of materiality assumed for the budget process;</li> <li>* provide a reconciliation between the prior regulatory control period actual results, by category, on the same category basis as the forecasts required for this revenue proposal (to allow direct comparisons to be made, even where accounting treatment or cost allocation methods may have changed within the DNSP.</li> </ul>
<p>This second point is particularly important as it allows the AER to compare directly between periods and removes the DNSPs ability to game between periods by changing accounting or cost allocation policies, etc.</p>

### **Recommendation Thirty One**

The following changes are required to Schedule 6.1, clause 6.1.3:

- \* Sub clause (1) – replace “*significant*” with “*material*”;
- \* Sub clause (3) – replace “*key*” with “*all*”;
- \* Sub clause (5) – replace “*key*” with “*all*”;
- \* Sub clause (8) – replace “*significant*” with “*material*”

### **Recommendation Thirty Two**

Insertion of a requirement for the AER to conduct a post regulatory control period review of DNSP compliance in totality of the period in question, focussing particularly on capital and operations spending in year 5.

### **Recommendation Thirty Three**

Insertion of a requirement DNSPs to disclose to the AER as part of the Revenue Proposal historical related party transactions over the previous regulatory control period, related party transactions currently in effect (as at the date of the revenue proposal) and, to the extent known, related party transactions that will take place during the regulatory control period for the revenue proposal being submitted. Related Party should, for the purposes of these new clauses be defined as per the Corporations Act where the disclosure requirement also mirrors that of the Corporations Act.

## **9. Schedule 6.2 – Regulatory Asset Base**

Similar to Schedule 6.1 we have made comment with respect to specific items within this schedule earlier in this submission. In particular we have focussed on the economic life of assets and the ability for this to be manipulated inappropriately in favour of the DNSP (see Section 3 of this submission discussing Part C and Recommendation Seven).

Further to those comments we are concerned with the transitional arrangements contained in Schedule 6.2.1 clause 6.2.1(c)(1) and their interaction with clause 6.2.1(c)(2). In the latter, adjustments to the Regulatory Asset Base (“RAB”) for estimated versus actual capital expenditure is to be made to ensure that the correct final RAB is carried forward for the 1<sup>st</sup> determination to be undertaken by the AER. In principle this is reasonable – however it assumes that the RAB carried forward is correct and that DNSPs have not been able to game the individual state based regulators. We are not confident that in all instances this is the case.

### **Recommendation Thirty Four**

Schedule 6.2.1 clause 6.2.1(c)(1) be amended to include after “*as set out in the table below*” the words “*following a reasonableness review by the AER*”.

Further clause 6.2.1(c)(2) does not state the manner in which the AER assesses the actual capital expenditure relative to the estimate to ensure, during this transition of the RAB between regulators, that the capital expenditure vs actual has been efficiently and effectively incurred. It seems drafted to simply require that the RAB be updated for the difference between actual and estimate between the date the RAB was set and the date of the updated RAB being rolled into the starting position for the 1<sup>st</sup> AER review. .

#### **Recommendation Thirty Five**

Schedule 6.2.1 clause 6.2.1(c)(2) be amended to ensure that the provisions of Schedule 6.2.1 clause 6.2.2.

We believe that the prudence and efficiency of the capital spend of DNSP requires full review and as such schedule 6.2.2 clause 6.2.2 requires amendment. Further we are also concerned that this clause appears to only relate to expenditure utilised in the provision of standard control services. We believe that prudence and efficiency in capital spending should apply to the more inclusive direct control services.

#### **Recommendation Thirty Six**

Schedule 6.2.1 clause 6.2.2 be amended to insert “*and S6.2.1(c)(2)*” after “*S6.2.1(d)(2)*”.

#### **Recommendation Seven**

Schedule 6.2.1 clauses 6.2.2 (1), (2) and (4) be amended to replace “*standard*” with “*direct*”.

## **10. Other Issues – Savings and Transitional Rules**

Chapter 11 of the Explanatory Memorandum discusses the concepts to be used in the drafting of these rules. Given the restricted timeframe for the AER to perform its 1<sup>st</sup> review of the NSW / ACT entities we agree that:

- \* retaining the definitions of services within prescribed and excluded is sensible;
- \* on grounds of practicality that a post-tax revenue model and building block method is also reasonable (noting that IPART presently uses a pre-tax model);
- \* price control setting for excluded services could be through adopting the alternative control method as stipulated in these Rules (though subject to the proposed changes we have made in earlier recommendations to the rules as they pertain to alternative control services)

Transitional arrangements would garner additional support from end-use customers if the AER were compelled to review the efficiency and effectiveness of the IPART inspired “side constraints”, “D” and “S” factor regimes to which the NSW DNSP are currently subject. Such a review would inform the debate on the form and effectiveness of the

Efficiency Benefits Sharing Scheme (clause 6.5.5) and the Service Target Performance Incentive Scheme (clause 6.6.2) and should then form the basis for an Issues Paper by the AER on the form, design and operation of such schemes under clause 6.8.1.

Subject to the following, we agree with the proposals for transition in the areas of depreciation, corporate income tax, operating expenditure, capital expenditure, incentive schemes, pricing methodology, side constraints, capital contributions and the X factor. Transitional issues where we offer alternative or amended proposals now follow.

While we recognise the desire of the MCE for the AER to continue to average price cap regime for both ACT and NSW DNSPs to ensure consistency given the truncated timeframe we believe careful consideration is required of the manner in which the AER enforces the transition from a price cap regime to a revenue cap regime for these businesses to ensure the transition is capable of completion over one regulatory control period.

#### **Recommendation Thirty Eight**

The transitional requirements should ensure that the NSW / ACT DNSPs are transitioned over one regulatory control period (i.e. that one commencing on 1 July 2009).

#### **Recommendation Thirty Nine**

The transitional requirements should ensure that the AER is required to review the effectiveness and efficiency of the NSW DNSPs “D”, “S” and side-constraint schemes for input into the setting of the 2009 revenue determination. Further the AER should be compelled to use the results of this review to publish an Issues Paper (under clause 6.8.1) to address how the learnings from this review can inform the form and effectiveness of the Efficiency Benefits Sharing Scheme (clause 6.5.5) and the Service Target Performance Incentive Scheme (clause 6.6.2).

While we are comfortable that the form of regulation for alternative control service equivalents be at the discretion of the AER, we believe that the AER be required to consult using the distribution consultation process on its proposal for the form of regulation to enable end-use consumers the ability to make comment.

#### **Recommendation Forty**

The AER should be required to consult using the distribution consultation procedures on the form of regulation for alternative control service equivalents.

We remain uncertain as to whether the comment (p43) :

*“It is proposed that the rule in the exposure draft rule will apply, and the DNSPs will lodge ....”*

refers simply to the 13 month timeframe for lodgement of the revenue and pricing proposals as per the draft Rules (to which we would agree) or whether this extends to the actual content of the draft Rules which are the subject of this consultation process (to which we would strongly disagree). In the latter instance, to be clear, it is our view that the DNSPs must comply in presenting their revenue and pricing proposals not only with the 13 month lodgement timeframe but also with the requirements (whatever they may be) of the Rule that arises as a result of this consultation.

We agree with the RAB modified roll-in whereby only that capital expenditure approved by the relevant Jurisdictional Regulator is rolled in. That said our comments above re changes to the RAB methodology are also pertinent in this regard.

The MCE proposes that the AER should adopt the Transmission WACC for the transitional DNSPs rather than undertake a review, that such an act would not create a precedent that the transmission and distribution WACC must be treated the same in the future. The EUAA/EAG is strongly opposed to this suggested course of action. The WACC is a key determinant of the revenue cap and hence the cost that end users will pay over the regulatory period. Some of the WACC parameters, in particular the equity beta, the market risk premium and the debt premium are highly contentious. The ACCC/AER assigns an equity beta of 1, the average market risk of the Australian stock market, to energy companies. The assigning of the same beta equity risk to a regulated entity with a guaranteed return on assets as applies to the stock market in general is, we believe, difficult to justify. Nor is the ACCC/AER consistent in applying this figure between regulated entities. For example, it assigns an equity beta of 0.85 to the regulated activities of Telstra, activities which are highly analogous to the poles and wires activities of the electricity network service providers and arguably are subject to greater risk given competition and technological change in telecommunications.

The ACCC/AER is also not in tune with the majority of the state regulators who are presently responsible for determining the revenue caps for distribution network service providers. Equity betas' applied by the various state regulatory authorities to current DNSP determinations are:

- ESCOSA (SA) 0.8
- IPART (NSW) 0.78 – 1.11
- QCA (Qld) 0.9
- ICRC (ACT) 0.9
- ERA (WA) 1.0
- ESC (Vic) 1.0

The level of the equity beta is extremely important in the revenue/price cap calculation as demonstrated in the table below using the recent Powerlink determination. For instance if an equity beta of 0.9, 0.85 and 0.8 rather than 1 was used in the Powerlink reset, then the revenue for the regulatory period is \$70 million, \$100 million and \$130 million less than that provided for in the draft determination.

**Powerlink MAR based on draft decision and varying the equity beta only (\$m, nominal)**

	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>Total</b>
<b>Smoothed allowed revenue (WACC = 8.76%, beta of 1)</b>	<b>536.05</b>	<b>580.33</b>	<b>628.27</b>	<b>680.17</b>	<b>736.35</b>	<b>3161.18</b>
<b>Smoothed allowed revenue (WACC = 8.52%, beta of 0.9)</b>	<b>525.38</b>	<b>568.47</b>	<b>615.09</b>	<b>665.54</b>	<b>720.13</b>	<b>3094.60</b>
<b>Smoothed allowed revenue (WACC = 8.40%, beta of 0.85)</b>	<b>520.04</b>	<b>562.53</b>	<b>608.50</b>	<b>658.23</b>	<b>712.02</b>	<b>3061.32</b>
<b>Smoothed allowed revenue (WACC = 8.28 %, beta of 0.8)</b>	<b>514.70</b>	<b>556.60</b>	<b>601.92</b>	<b>650.92</b>	<b>703.91</b>	<b>3028.06</b>

Similarly, the parameters in respect of market risk premium and the debt premium can be challenged. The market risk premium of 6% appears to fairly uniformly applied by the regulatory authorities across network service providers but we query can a 6% premium be justified in a regulated monopoly situation with a guaranteed revenue stream and return on assets? By contrast to the market risk premium the debt premium varies significantly between regulators.

The application of the transmission WACC parameters would mean that in all likelihood the values assigned would be substantially higher than if the resets were undertaken by the State/Territory regulatory authorities. There is no justification for these increases and it is not acceptable to suggest that end users should wear these extra costs through to 2014 on the basis of expediency.

**Recommendation Forty One**

Thw WACC parameters to be used in the transitional stage be on a review by review basis..

With respect to pass-throughs we appreciate the need for certainty with respect to the Demand Management Levy for the transitional period. Similarly we agree with the proposal for treating ring-fencing alterations – however we would add a requirement that any pass-through be only for “efficient spend”.

**Recommendation Forty Two**

Pass-through amounts under transitional arrangements should be subject to an “efficient and prudent spend” test.

While we agree that Miscellaneous Services, Monopoly Services or Emergency Recoverable Works could be treated as alternative control services under the transitional arrangements we share the concerns of the MCE regarding absent adequate historical cost data. Therefore we believe that rather than the proposed two step transitional arrangement

these services should be transitionally defined as direct control services and subject to regulation under that regime. During the ensuing regulatory control period appropriate cost data can be gathered and in the subsequent revenue proposal (for the 2<sup>nd</sup> AER regulatory control period) the DNSPs can make representation as to the form of regulation (or the AER could conduct a review of this issue prior to that time as part of an Issues paper issues under clause 6.8.1).

#### **Recommendation Forty Four**

Miscellaneous Services, Monopoly Services or Emergency Recoverable Works should be defined as direct control services for the transitional period and during that time sufficient historical data collected to allow further analysis prior to the next regulatory control period. Further, the AER should develop and release an Issues paper under clause 6.8.1 on this issue to allow the market sufficient time to consider the broader issues.

## **11. Other Issues – Annual Planning Reports**

The information flow to end-use consumers from Chapter 6 could be improved by adopting in this national scheme the annual Network Management Plan (“NMP”) as required in Queensland by the Queensland Competition Authority.

NMP are essentially five-year plans derived from the DNSPs asset management strategies and operational plans. The NMP states the DNSPs intentions for providing network reliability, capacity and security of supply. These plans also provide valuable information / data such as network performance and capability, discussion of the primary issues facing the DNSP in delivering their capital and operational programs (as well as strategies the DNSP has adopted to respond to these challenges).

The NMP also covers things such as specific details of network capability and works planning. The NMP is used as a tool to facilitate a public/end-user consultation process on network constraints, supply issues and the DNSPs proposed solutions. Finally the NMP is used as a reporting mechanism providing feedback against prior year targets.

The production of NMP should become a national requirement under Chapter 6.

#### **Recommendation Forty Five**

The SCO should incorporate into Chapter 6 the Network Management Plan requirements upon DNSPs utilising the model provided by the Queensland legislation as a starting point. The commencement date for the provision of the 1<sup>st</sup> annual Network Management Plan should be the 1<sup>st</sup> year that the DNSP is subject to AER regulatory authority / control (i.e. prior to the 1<sup>st</sup> AER regulatory control period revenue determination having effect).

### **Recommendation Forty Six**

That SCO ensure the South Australian Minister's second reading speech specifically and clearly includes commentary that the intent of the Merit Review changes in the legislation are so end-user consumers and their representative organisations may participate in legal proceedings before the Australian Competition Tribunal.

### **13. Parts F, H, I, K, L and M – Deferred for consideration until the Retail Regulation Package / Rule change is issued for consultation**

In this area we comment on those areas of the Rules where the matter is either deemed in the Explanatory Memorandum as having no equivalent, or where the matter is deferred for consideration as part of the Retail package expected later this year.

#### Comment on Part H

It is vital that in the foreshadowed review of Part H that clauses 6.16(b), (c), (e) and (f) remain unaltered. The EUAA and EAG has relied heavily upon the protections offered by these clauses, in the information provided by the AER considering the comments made in consultation processes, and the explanations offered to ensure that end-users obtain sufficient information on the regulatory processes for distribution services and comfort in the integrity of the economic regulatory processes and the institutional framework provided by the AER itself. Throughout this submission the EUAA and EAG have sought to make additional clauses of the Rules subject to the distribution consultation procedures proposed under Part H and any amendment to these provisions renders the comments in this document largely void. That is, in the absence of these protections in Part H the EUAA and EAG would offer significantly different comments upon the Rules and the Explanatory Memorandum.

### **Recommendation Forty Seven**

Clauses 6.16(b), 6.16(c), 6.16(e) and 6.16(f) must remain unaltered in the foreshadowed review of Part H otherwise the efficacy of this consultation process is destroyed and the integrity of this process / consultation is removed.

#### Comment on Part K

When SCO examines those matters to be part of the review of Part K we believe consideration should be given to including (in addition to those requirements of clause 6.20.2):

- \* Requiring that all DNSP bills issued to retailers are in an agreed electronic format.
- \* Requiring DNSP bills to be:
  - \* NMI based;
  - \* provide the tariff class;

- \* start and end date of the billing period (as per sub-clause (b)) and also stipulate that the start and end dates are by calendar month;
- \* consumption data to be reconciled to the relevant NEMMCO settlement week (to provide ease in retailer reconciliation); and
- \* separation of any adjustments from a prior billing period (listed by NMI).

Further, the erroneous concept that it is possible for a Distribution Customer to truly negotiate with a DNSP (as envisaged by clause 6.21.1(b)) should be subjected to practical evaluation. It seems unreasonable to assume that regulated monopolies are in fact regulated because they wield (or have the potential to wield) significant market power to the detriment of the end-consumer (ultimately), which is the reason for these Rules in an overall context and yet to then stipulate or expect that another party is able to negotiate in a reasonable fashion with the same entity. It is time the veil was lifted on this tautology.

It is also difficult to see why, in a negotiation context, there is a need for clauses 6.21.1(c) and (d) which simply provides non-exhaustive options lists and thus add little or no value to the Rules.

#### **Recommendation Forty Eight**

Any review of Part K should include specific reference to clause 6.20.2 and the proscriptive definition of elements of the DNSP bill.

#### **Recommendation Forty Nine**

Any review of Part K should include an examination (in terms of clause 6.21.1(b)) of ability of party to, in reality, negotiate with a monopoly business.

Our understanding of the Interval Meter Roll Out (“IMRO”) process presently underway in Victoria is that the underlying data flows and the systems within the NEM for recording and tracking data (both standing data and consumption data) mean that with a higher volume of data residing in the NEM that existing NEMMCO systems and processes would, or should, be subject to review and scrutiny for whether these processes deliver to the market as a whole efficient and effective service.

Our understanding of the reason (or a major reason) for the deferral of the review of the distribution elements of billing, settlements and prudential requirements and the combination of those elements with consideration of the Retail reform package is their close interrelatedness. It is equally relevant that a review of these elements for distribution and retail should be expanded to include the effect NEMMCO systems and processes have upon distribution and retail effectiveness and efficiency and by consequence the effectiveness of competition in the NEM.

We therefore believe that the Part K review should be expanded to also consider the interaction of NEMMCO’s MSATS, CATS and WIGS systems with distributor and retailer settlement and billing requirements and systems with a strong view to examining how

efficiencies in NEMMCO's operations can be driven and accountability/responsibility improved for the services NEMMCO provides the markets in these vital areas.

#### **Recommendation Fifty**

Any review of Part K should include an examination of the interaction of NEMMCO's MSATS, CATS and WIGS systems with distributor / retailer settlement and billing requirements.

#### **Recommendation Fifty One**

The Part K review should ascertain how further efficiency in NEMMCO (particularly MSATS / CATS and WIGS) can be delivered including increased accountability / responsibility for the delivery of these services.

#### Comment on Part M

We see benefit in assessing whether, in addition to those parties mentioned in clause 6.23.2(c)(2), that the another party that may be able to add value is end-user representative organisations. We regularly see members discussing access issues (not necessarily disputes as such) with the suggestion that the end-user organisation should get involved as the issue at hand is one that "must be" affecting or impacting upon other members.

It is ironic that the DNSP in this situation not only has asymmetric power through their monopoly service provider status, but they are also the only party that knows of the potential number of similar disputes (or issues) that are either on-hand at that time or have been dealt with in the past (together with the myriad of arguments for / against) thus placing the more powerful party also in the position of possessing significantly greater information. A counter balance to this could be to include end-user representative organisations as part of this group to assist the AER in their role by bringing a market-wide perspective to the issue at hand.

#### **Recommendation Fifty Two**

A review of Part M should include examination (in terms of clause 6.23.2(c)(2)) of the addition of end-user representative organisations as a party from whom the AER may hear evidence or receive submissions.

## **14. Conclusions**

The Rules represent a significant integrated package of reforms that are, overall, quite reasonable. The Rules represent a sensible way of bringing together under a common framework a range of different regulatory regimes where the problems that arise from movement to the new regime over time appears both manageable and should minimise disruption to the businesses concerned and end-use consumers.

It is however unfortunate that the reforms appear to have a tone of appeasement to them, however this is understandable given the need to bring all jurisdictions along the journey to a national regime within a defined and tight timeframe.

The analysis we have made focuses unashamedly upon the needs of the end-user, both from the perspective of large businesses (EUAA membership) and the small end (EAG membership). Overall many of the issues in the package are the same for both groups due to their common interest in ensuring distribution regulation delivers high quality, reliable electricity supply at a price that is reasonable and reflects prudent and efficient expenditure levels (relative to that service). Where we have made recommendations it is either to preserve a beneficial element of a regulatory regime already in existence within the NEM, to improve upon an existing regime's elements or an innovation offered by SCO in this package or to remedy a perceived deficiency in the protection of end-use consumers from the proposal as it stands.

The recommendations we propose are, in our view, largely common sense and consequently we would encourage the SCO to incorporate these suggestions into the final package.

The EUAA and EAG thank SCO for the opportunity to provide comment and stand ready to engage in further dialogue, make additional representation and clarifying submissions as the case may be to assist the process of finalising the reform package.