

APPENDIX 1: Addressing the approaches put forward in the NERA Economic Consulting and Gilbert & Tobin Paper.

PART B: Price Regulation of Distribution

<p>1. Overview</p>	<p>ENERGEX supports the use of the policy criteria for best practice distribution price regulation (section 1.2 at page 11), with the following recommended additions:</p> <ul style="list-style-type: none"> • produces the least overall compliance burden necessary to achieve the objectives of the framework; • is adaptable to change through transparent and equitable processes; • is accountable to all parties through fair processes and merit review mechanisms on key regulatory decisions; • is directed to addressing clear market failure, and where competition is feasible, relies to the maximum extent possible on the outcomes of competitive markets; and • facilitates investment certainty in the non-competitive sectors of gas and electricity markets. <p>ENERGEX recommends that these principles be included within the legislative guidance to the MCE as the policy making entity for the national energy market. ENERGEX maintains that it is important that the NER include these principles to provide guidance to the Australian Energy Market Commission (AEMC) and the Australian Energy Regulator (AER) in carrying out their respective functions within the national energy regulatory regime.</p> <p>Generally, ENERGEX considers the proposed governance arrangements for the national regulatory framework as being appropriate (section 1.3 at page 12) but has concerns in the manner in which Jurisdictional Directions will operate in practice. Clearly at present, a number of jurisdictions have in place policy instruments, which will be impacted by moving to the national framework.</p> <p>Where these specific jurisdictional arrangements are the basis of a “code derogation”, ENERGEX supports these derogations being carried over to the new national energy framework. ENERGEX supports an approach to Jurisdictional Directions that is similar to the current “code derogation” approach. For instance, ENERGEX is supportive of an approach, where the relevant jurisdiction will take any state based policy instrument on a proposed matter to the Ministerial Council on Energy (MCE) for agreement.</p> <p>Overall, ENERGEX supports the ‘propose-respond’ model that is currently set down within the National Third Party Access Code for Natural Gas Pipeline Systems (“the Gas Code”) as being the conceptual regulatory framework for</p>

Regulatory Issue	ENERGEX Response
	<p>energy distribution businesses. However, such an approach is only desirable where it is supported by appropriate dispute resolution (including merits review). The propose-respond model represents a superior approach to access regulation because it:</p> <ul style="list-style-type: none"> • places the onus of proof on the regulated business to propose reasonable access terms and conditions; • accepts that the regulated business is the best party to know what is required to manage and operate the business; and • allows the regulator to approve or reject the option proposed by the business whilst acknowledging that the regulator's preferred economic options may not be appropriate. <p>The propose-respond approach to access regulation received a further endorsement when the Western Australian Government adopted the approach for access regulation of Western Power's electricity distribution network.</p>
<p>2. Scope of distribution price regulation</p>	<p>The consultation paper's proposal for determining the scope of regulation for distribution services represents a good starting point for a national energy regulatory framework. Of concern, is the consultation paper's proposal for the setting of a standard definition of a "basic regulated distribution service", for the electricity and gas sectors. As a starting point for the national regime, ENERGEX considers that the setting of a standard definition represents an ambitious goal, which could potentially create difficulties.</p> <p>Importantly, ENERGEX considers that given the different jurisdictional approaches to the defining of a standard service, the likely outcome that would occur from trying to achieve a standard definition would be an amalgam of every jurisdiction's approach. This is likely to result in a relatively broad, lowest common denominator approach, which is likely to be a sub-optimal outcome.</p> <p>ENERGEX considers that the national energy regulatory regime provides the opportunity to introduce a 'coverage test' to act as a filter to determine those energy distribution services that should be subject to economic regulation. The introduction of a coverage test would bring the NEL in line with other statutory third party access regimes¹.</p> <p>Broadly, ENERGEX would be supportive of a coverage test which is consistent with the Productivity Commission's (PC) Review of the Gas Code.</p>

¹ Part 3A of the *Trade Practices Act*.

Regulatory Issue	ENERGEX Response
	<p>ENERGEX considers that the PC's Review of the Gas Code sets down those matters that should be taken into account when deciding the form of regulation to be applied. These matters are:</p> <ul style="list-style-type: none"> • the nature of demand for the commodities and services of users of energy; • the actual and potential level of competition from substitutes such as energy delivered by other transport technologies; • the nature and extent of any barriers to entry in the market; • the degree of countervailing power in the market; • the degree of horizontal and vertical integration; and • any other significant factors, subject to them being consistent with the proposed new objects clause.⁵ <p>While not covered in the consultation paper, an integral role to supporting the efficacy of the national energy regulatory framework is:</p> <ul style="list-style-type: none"> • providing a regulated business with the right to 'merits' review of the AER's decision; and • the establishment of an independent agency, potentially a specialised court within the Commonwealth Court Structure, to undertake merits review (alternatively, the Australian Competition Tribunal could undertake merit review applications). <p>ENERGEX considers that merits review is essential to ensuring:</p> <ul style="list-style-type: none"> • transparency and consistency in the regulatory regime; • the development of increased knowledge and expertise on access regulation; and • that participants are disciplined in their proposals and undertakings.
3. Definition of basic regulated service	ENERGEX does not support having a standard definition for regulated distribution services, ENERGEX would prefer a more flexible approach where a distribution entity is able to apply for services to be covered or revoked.

⁵ Productivity Commission 2004, *Review of Gas Access Regime*, Report no.31, Canberra, page XLVII.

<p>4. Proposed criteria for including/excluding services from the scope of regulation</p>	<p>ENERGEX, in principle, supports the proposed criteria for including/excluding distribution electricity services from the price cap form of regulation.</p>
<p>5. Price cap regulation for distribution services</p>	<p><i>Recommended Process for Distribution Price Regulation</i></p> <p>The consultation paper proposes objectives for distribution price regulation and outlines a process for how distribution regulation should be applied (pages 19-20). The proposed process includes:</p> <ul style="list-style-type: none"> • that the NER should include ‘focused’ objectives for distribution price regulation; • the setting of a standard definition for regulated services, which will be regulated on a CPI – X price cap basis; • no further prescription in terms of the form of distribution regulation in the NEL/NGL; • specifying one or more forms of price regulation, and setting guidance on the circumstances when the AER should adopt each form; • providing guidance in relation to the application of the form of regulation chosen; and • any changes to the form of regulation would be completed by the AEMC through normal rule change processes (pages 18-19). <p>ENERGEX does not support the consultation paper’s proposed approach to the setting of price cap regulation of energy distribution networks, especially the prescription of the forms of price regulation within the NER. The proposed approach:</p> <ul style="list-style-type: none"> • is too prescriptive; • is opposed to the propose-respond model for regulation; • is based solely on the existing arrangements; and • does not look to improve existing arrangements in a manner that would increase transparency and flexibility and lower the burden of compliance. <p>The majority of energy networks have experienced at least two cost of service regulatory determinations. It is acknowledged by most industry participants that this approach to regulation represents the most intrusive, expensive and compliance driven approach to regulation. ENERGEX considers that the experience of these regulatory regimes needs to be taken into consideration in the setting of the national regulatory framework. Specifically, ENERGEX would support the relevant regulatory institutions having the power to introduce the most appropriate regulatory regime with due consideration to:</p>

- the outcomes from previous regulatory decisions;
- the compliance burden and costs of compliance; and
- the impact that the form of regulation will have on allocative, productive and dynamic efficiencies.

ENERGEX considers that these arrangements provide a consistent, and transparent process, and sets down an appropriate governance framework between the different national energy regulatory institutions.

Proposed objectives for distribution price regulation (page 20)

ENERGEX supports the PC's recommended objects clause for the Gas Code, which was:

*"To promote the economically efficient operation and use of, and economically efficient investment in, the services of transmission pipelines and distribution networks, thereby promoting effective competition in upstream and downstream markets."*⁶

ENERGEX also believes that there should be consistency in the regulatory instruments (objects clauses, pricing principles) for electricity and gas, providing that the 'effect' of applying consistency is to promote competitive neutrality between energy products.

In addition to the above objects clause, ENERGEX supports the need for 'regulatory principles' that govern the manner in which the objects clause is interpreted. ENERGEX considers that the following regulatory principles should be included in the NER to guide the AER when regulating energy distribution businesses:

- observe the principle of financial capital maintenance. That is, no ex-post optimisation of investments which were either pre-approved by the regulator or cannot be shown to be imprudent on an ex ante basis;
- ensure full compensation for risk including regulatory risk and the asymmetric consequences of regulatory error;
- reward and incentivise regulated businesses by allowing the benefits from any efficiency gains to be kept by the business for a period;
- regulation to be limited to instances where there is a clear need with the benchmark for assessment of costs and benefits being workable competition rather than perfect competition; and
- take into account consumer preferences for quality of service.

⁶ Productivity Commission 2004, *Review of Gas Access Regime*, Report no.31, Canberra, page 180.

	<p><i>Rules to set out the form of regulation and substantive guidance on implementation</i></p> <p>ENERGEX does not support the approach proposed within the consultation paper. Please refer to our comments in 2.</p> <p><i>Recognition of fixed principles in Gas Access Arrangements</i></p> <p>ENERGEX supports the Gas Code's process for setting fixed principles within Gas Access Arrangements. Accordingly, it is expected that the fixed principles will roll-over into the NGL.</p> <p><i>AER to have regard to decisions of previous jurisdictional regulators</i></p> <p>ENERGEX supports the consultation paper's proposal. Additionally, ENERGEX would like to see the MCE set down principles or guidance as to how elements of existing jurisdictional determinations are to be grandfathered.</p> <p>Some possible guiding principles to decide on those elements to be grandfathered from existing regulatory regimes to the national regulatory regime include:</p> <ul style="list-style-type: none"> • the sovereign power of the jurisdictions is respected (the consultation paper's identification of CSOs and franchise equalisation tariff schemes represents a reasonable approach); and • any decision to reject an element of an existing regulatory regime must take into account the likely impact on the financial capital maintenance principle for market participants.
<p>6. Regulatory requirements in relation to Tariff Setting</p>	<p><i>Proposed principles in relation to tariff setting</i></p> <p>ENERGEX largely supports the consultation paper's proposed pricing principles. However, principle (iii) requiring that there be constraints on year-to-year tariff changes is a principle that ENERGEX does not support as it is contrary to the propose-respond model.</p> <p>Under the propose-respond model, the energy business must propose a price schedule (path) over the access period that not only ensures the business' revenue adequacy requirements, but also provides users with appropriate price signals. An appropriate price signal to consumers should at least:</p> <ul style="list-style-type: none"> • be based on efficient forward looking cost; • allow for sufficient stability to facilitate the end-user's forward planning; and • consider quality of supply issues. <p>ENERGEX also recommends that the principles include a reference to the recovery of expected revenues. For</p>

	<p>example, the pricing principle recommended by the PC's Review of the Gas Code that reference tariffs should:⁷</p> <p><i>"...be set so as to generate expected revenue for a reference service or services that is at least sufficient to meet the efficient costs of providing access to the reference service or services ... include a return on investment commensurate with the regulatory and commercial risks involved"</i></p>
<p>7. Service performance targets</p>	<p>Service performance targets</p> <p>Service performance within a regulatory regime is important given the risk that a regulated business can degrade the quality of its service as a means of boosting regulated earnings in the short-term. However, ENERGEX is unable to support the proposed options outlined within the consultation paper.</p> <p>The service performance proposals incorporated within the paper are too broad – the principles look to capture all elements of service performance monitoring, which may be impractical given the current arrangements within each of the jurisdictions. That is, the businesses would face service quality measures which may be irrelevant. ENERGEX supports variation, where justified, in the elements of service monitored in different jurisdictions. In addition, the proposed principles could potentially create confusion by looking to set minimum and average performance targets within a regulatory regime.</p> <p>Under current arrangements, ENERGEX's quality of service is regulated by the technical regulator, the Department of Energy (DoE). In January 2005, the Queensland Government legislated a Electricity Industry Code (EIC), which requires ENERGEX, as part of its distribution licence obligations, to deliver minimum levels of service assessed against electricity reliability indices by feeder category. The EIC also requires ENERGEX to make payment to individual customers where the customer experiences a level of service that is outside the standard. ENERGEX is not subject to a service quality incentive scheme as the Queensland Competition Authority has not applied a scheme for the current regulatory period.</p> <p>In terms of service performance ENERGEX supports the following framework:</p> <p>(a) The MCE sets down overarching principles governing service performance and standard regimes. For instance, the NER could require that the service standard regimes be consistent with the following:</p> <ul style="list-style-type: none"> ○ have clear objectives related to the outcomes that are sought from the regulation of service standards; ○ reflect consumer preferences; ○ be simple and transparent; ○ provide a balance between rewards and penalties;

⁷ Productivity Commission 2004, *Review of Gas Access Regime*, Report no.31, Canberra, page XLIX.

	<ul style="list-style-type: none"> ○ encourage efficiency; and ○ encourage innovation. <ul style="list-style-type: none"> • A suite or toolkit of nationally consistent service standard measures be agreed (ENERGEX considers that the work recently undertaken by the Energy Network Association’s (ENA) represents an excellent starting point). • Each jurisdictional technical regulator should set minimum service standards and Guaranteed Service Levels. • The AER when setting the monopoly prices oversight for electricity distribution business should take account of the legal service obligations imposed on the regulated business. • The AER should be able to set a service quality incentive scheme, which will incentivise a regulated business to outperform the service standard regime.
(b) Process for regulation of price capped services	ENERGEX supports the consultation paper’s proposed process for the AER when undertaking price reviews for distribution services. However, ENERGEX considers that the process could be improved by stipulating that the price review process is based on the propose-respond model similar to that operating within the Gas Code.
(c) Information disclosure	<p>ENERGEX supports the consultation paper’s proposals on information disclosure. The requirements for information disclosure, particularly in setting ring-fencing and regulatory accounting requirements, could be enhanced by the NER setting down some higher level decision making principles to guide the AER.</p> <p>ENERGEX considers that the following principles should be included in the NER to guide the AER on how it sets down information requirements for regulated businesses that:</p> <ul style="list-style-type: none"> • regulated businesses be provided with a clear and transparent process for claiming confidential information; • in setting information disclosure requirements, the AER is to have regard to the costs of compliance; and • the AER have regard to pre-existing reporting undertaken by the regulated business.
(d) Connection and capital contributions requirements	<p>ENERGEX supports the consultation paper’s principles relating to connections and capital contributions. ENERGEX considers that these principles, if included in the NER, provide sufficient guidance for the AEMC and AER to consider connections and capital contributions.</p> <p>ENERGEX considers that the setting of a national approach to the treatment of connections and capital contributions needs to be undertaken through a consultative process with the distributors and the jurisdictions. Moreover, ENERGEX maintains that, in setting a national approach for connections and capital contributions, there needs to be consideration of specific jurisdictional legislation and policies on connections and capital contributions, particularly, local government laws that require distributors to undertake specific connection works.</p>

PART C: Consumer Protection

Regulatory Issue	
<p>2. Obligation to provide connection services (Distribution)</p>	<p>ENERGEX agrees with the approach to impose consumer protection obligations directly through legislation with a civil penalty regime incorporated into the Law for failure to comply with the requirements. It is also reasonable to extend those consumer protections to customers supplied directly through private networks.</p> <p>ENERGEX is concerned with the terminology used in policy criteria in paragraph 2.2. The reference to vulnerable customers when referring to small end consumers should be used in a cautionary manner. A vulnerable customer, as a class of customers, has been used broadly within the paper, and should not be used in the context of lower consumption customers as a whole. A vulnerable customer in energy services, is more correctly used to describe a customer that is disadvantaged for a specific reason such as low income, has limited capacity to derive income or other similar instances of hardship where a customer may not be in a financial position to manage essential services. The expression vulnerable customer implies a disproportionate bargaining position between service provider and customer which in turn assumes a high level of consumer protection is necessary in dealings with that customer. ENERGEX recommends the term vulnerable customer should be confined to hardship issues and in those cases, defined appropriately.</p> <p>Recommended Approach:</p> <ul style="list-style-type: none"> (a) A Designated distributor is obliged to provide standard connection services to small end-use customers within designated regions. A Standard Connection Services definition will be determined through public consultation by AEMC. The standard connection services will be imposed through a deemed contract. Alternatively, a customer may enter into non-standard terms. Where the customer is a small-end customer the party must provide informed consent. (b) Designation of regions provided for by Jurisdictional Ministers. (c) The subject of specific terms and conditions for Standard Connection Services to be itemised in NEL/NGL for development in Rules. (The development will utilise principal objectives of the national framework). (d) Any information disclosure requirements when entering into non-standard terms for Standard Connection Service should be confined to a particular level of customer, being small-end customers only.
<p>3. Limitation upon disconnecting small end customers and the obligations to reconnect</p>	<p>As the distributor is obliged to provide the monopoly connection services it is appropriate to limit disconnection to certain circumstances. Such a limitation on disconnection is an integral part of the standard terms and conditions of providing a Standard Connection Service. To correspond with the principles associated with light-handed regulation the standard terms and conditions should only cover those disconnection circumstances which are essential to provide for</p>

Regulatory Issue	
small customers (distribution)	<p>fair dealing between a small-end customer and a distributor (or retailer). Consequently, the subject matter of terms and the detail included within the Rules will cover only the minimum terms for connection. Prescriptive terms over and above what is necessary will interfere with the principle of light-handed regulation.</p> <p>ENERGEX believes the subject matters for minimum terms for connection are sufficiently accounted for in Section 2.3. The limitation upon disconnection should be included as a specific term of the standard connection agreement applying to small-end customers. There is no reason to provide for a separate rule covering the subject.</p>
4. Mechanisms for dispute resolution between distributors and small end customers (Distribution)	<p>ENERGEX generally agrees with the concept that a distributor must have an internal dispute resolution system in place. However, ENERGEX believes the form and content of the system should be established by the individual distributor (or retailer). There are generic standards for dispute resolution currently in place; hence the rules should only oblige a distributor to have a dispute resolution process in place which adheres to the AS: 4269-1995, Complaints Handling.</p> <p>Presently, all States participating in the MCE reform process have a jurisdictional alternative dispute resolution (ADR) scheme in place for small-end customers. Therefore, the status quo should remain avoiding start-up costs for a new body. In regard to paragraph 4.3, this approach is consistent with current alternative dispute arrangements. It is not apparent that transitional arrangements will need to be grandfathered. The consumption threshold level of a small-end customer will be nationally consistent and determined through public consultation by the AEMC.</p>
5. The obligation of retailers to supply small end customers	<p>Given full retail contestability will apply in all mainland jurisdictions by 1 July 2007, the timetable for the MCE reform does not provide for the national framework until 2008. This means the reference to customers in some jurisdictions having no effective choice is no longer valid. Also, it is a tenuous argument to suggest a move-in customer to an energised property does not, in effect, have a choice of retailer; however, it is accepted that some level of protection is appropriate for a move-in situation to cover both the legal rights and obligations of the retailer and the customer.</p> <p>Recommended Approach:</p> <ul style="list-style-type: none"> (a) Jurisdictional Ministers to designate Local Retailers in relation to designated regions. Designated regions are determined by the jurisdictional Minister. (b) Mechanism provides a Local Retailer must have standing offers for a Specified Class of Customer. (c) Specified Class of Customer is designated through a national scheme (after public consultation). (d) Local Retailers must supply according to standing offers utilising minimum terms and conditions provided for in Rules.

Regulatory Issue	
	<p>(e) The subject matter for standard terms and conditions will include matters of a contractual nature specifically:</p> <ol style="list-style-type: none"> a. calculation of charges; b. termination rights; c. circumstances in which security may be sought, use and payment of security; d. billing; meter reading/bill estimation, apportionment of payment and billing disputes; e. rules for undercharging and overcharging; f. payment methods (includes bill smoothing) and assistance for payment difficulties; g. rules relating to disconnections and reconnections; and h. liability and warranties. <p>(f) Detail to be required for subject matters of contractual nature included in NER/NGR.</p> <p>(g) Where a retailer is financially responsible for a connection point, all such retailers are obliged to supply a Move-in Customer of a Specified Class of Customer.</p> <p>(h) The Move-in customer regime should be specified in NER/NGR:</p> <ol style="list-style-type: none"> a. imposing a deemed contract between customer and financially responsible retailer for that connection point; b. notice requirements to customer disclosing details about deemed contract price and minimum terms of supply; and c. price to be determined with reference to published offer of retailer or referenced to standard offer of local retailer for a limited specified period after which retailer gains the right to disconnect e.g. 3 months. <p>These principles are applied based on the following assumptions:</p> <ul style="list-style-type: none"> • Specified Class of Customer will be nationally consistent, and determined after public consultation about appropriate threshold levels. • Standard terms and conditions of supply will consist of the minimum necessary to afford consumer protection to a customer who does not wish to exercise its right to switch to a competitive offer. • The terms and conditions may diverge depending upon the type of fuel supplied and the jurisdiction where terms relate to transfer, metering, or other differing state government policy.
6. Retailers' obligations in respect of small end customer retail market contracts	ENERGEX agrees it is not appropriate to have prescriptive regulation of energy market contracts when there are appropriate constraints upon behaviour of retailers by the fair trading legislation. However, due to the essential nature of the energy supply service, some customer classes deserve some limited consumer protections in any energy specific contract. These "model" terms would be a small sub-set of the standard terms and conditions by which a local retailer is obliged to supply customers of a certain class.

Regulatory Issue	
	<p>Recommended Approach</p> <ul style="list-style-type: none"> (a) Retailers may enter into market contracts with small customers where informed consent is obtained from the customer. (b) The details of the model terms will be provided for in the Rules and should be limited to: <ul style="list-style-type: none"> a. cooling off period; b. termination and early termination; c. billing; d. payment difficulties; e. dispute resolution; and f. disconnection processes in certain situations. <p>The definition of small customer will be nationally consistent and provided for in the national rules for electricity and gas. The terms of a market contract applying to smaller end customer are inextricably linked to requirements to monitor reasonable marketing conduct in paragraph 7.</p>
<p>7. Retailers' obligations in respect of marketing to small end customers</p>	<p>Recommended Approach:</p> <ul style="list-style-type: none"> (a) Marketing Rules are prepared as part of the NER/NGR applying to retailers; (b) the Marketing Rules address the following: <ul style="list-style-type: none"> a. Pre-contract disclosure requirements for key contractual provisions. Customers have the ability to shop around, and have the necessary protections in place by continuing to take supply through the local retailer. It is not appropriate to provide direct comparisons with standard terms and conditions, provided disclosure about possible differences is made. No set parameters around disclosure are necessary. b. Cooling off period, commencement and operation. c. Information about rights to refer disputes to approved ADR scheme. <p>Given the comprehensive marketing codes which apply to retailers in Victoria, South Australia and New South Wales it is anticipated a limited transitional period will be necessary for retailers to comply with the conversion to the national regime. The MCE should not attempt to reinvent the wheel and only impose those requirements that are essential to achieve the purpose of protecting customers from unfair conduct by marketers.</p> <p>Customers are reasonably sophisticated in their ability to shop around for energy services. A customer does not require copious amounts of documentation to understand an offer; yet there is a legitimate expectation of full disclosure. A customer will make a decision based on what is important to them in the energy service, whether it is price or service.</p>

Regulatory Issue	ENERGEX Response
	Imposing comprehensive disclosure and term comparisons will result in additional costs to the retailer with little or no value to the majority of customers.
8. Mechanisms for dispute resolution between retailers and small end customers	<p>ENERGEX agrees that small- end customers should have access to informal, fair and efficient dispute resolution arrangements. The jurisdictions have ADR schemes in place.</p> <p>Recommended Approach is the same as distribution (see above):</p> <ul style="list-style-type: none"> (a) Retailers are required to have internal dispute resolution procedures in place. The standard should adhere to the AS 4269 – 1995 Complaints Handling. (b) Retailer obligation to comply with jurisdictional ADR scheme. (c) Jurisdictional Minister to designate ADR scheme.

PART D: Other Distribution and Non-price Retail Regulation

Regulatory Issue	
2. Business Authorisation (Distribution)	<p>ENERGEX supports the consultation paper’s proposed approach of including legal obligations for market participants in the NEL and NGL, particularly for retailers and distributors, but does not support that there be no licensing arrangements to accompany these legal obligations. The consultation paper argues that licence regimes should not be included as they are a barrier to entry.</p> <p>While licensing regimes may create a small barrier to entry there are good reasons why licences are used within workably competitive markets. Generally, governments use licence regimes to overcome or address failures within markets, for example:</p> <ul style="list-style-type: none"> (a) Information asymmetry – the majority of consumers would not know how to distinguish between a safe and unsafe electricity or gas supplier. Accordingly, a statutory licence with legal obligations overcomes the consumers’ lack of information by signalling that the licence holder has met certain conditions of business. (b) Reduces consumers’ search and experience costs – without licensing a consumer would spend time and effort on finding a reputable supplier. Licensing reduces consumers search and experience costs. (c) Adverse selection – the greater the information asymmetry the more likely that consumers choose poorly – there are inefficient costs to the economy associated with poor decisions. <p>There are substantial public benefits⁸ from licensing because the government effectively acts to provide a statutory signal assuring consumers that the supplier is safe and appropriate.</p> <p>Accordingly, ENERGEX supports the continuation of a licensing regime providing that the MCE agrees to consistent principles to guide what is included and excluded from the licence regime. These principles or guidance notes could incorporate issues of:</p> <ul style="list-style-type: none"> • reliable and safe supply of energy distributions; • the setting of legal obligations to connect and supply; • the setting of arrangements that require the achievement of minimum service standards and to make GSL payments for those customers that are not covered by commercially negotiated contracts; • display of appropriate capabilities to undertake energy distribution or retailing; and • other arrangements that the MCE considers as being relevant.

⁸ Another example of where statutory licensing providing public benefit is the licensing of motor vehicle and real estate sales agents.

Regulatory Issue	
	<p>Alternatively, another type of licensing regime (with potentially greater applicability to the retail sector) would be to have participants register with the AER self-attesting that they are compliant with statutory criteria, where the statutory criteria would be incorporated within the NEL and NGL. The statutory criteria could include:</p> <ul style="list-style-type: none"> • financial solvency; and • self-attestation that the business is compliant with all relevant legislation, ie safety, environmental etc. <p>The AER would then publish the schedule of registered distributors and retailers. Critically, the AER would need to have the power to monitor and enforce participants to maintain compliance with the statutory criteria.</p>
<p>3. Distribution Interface with Retailers</p>	<p>The status of the relationship between retailer, distributor and customer is not important with respect to the suitable interface between retailer and distributor. The legal relationship can be managed effectively whether a linear or triangular relationship exists.</p> <p>The important issue is that the relationship between a retailer and distributor must be governed in a co-ordinated manner regardless of the legal basis of the three-way relationship with the customer. Chiefly the interface assists a retailer with the management of a distributor to ensure adequate service to customers, as a retailer is reliant upon the functions of a distributor to supply energy to an end-use customer.</p> <p>The terms governing the relationship should be minimised to allow the parties to effectively co-ordinate business activities and negotiate specific commercial terms if necessary. Keeping in mind a distributor is still providing a monopoly service to all customers, a retailer's responsibility to customers and compliance with regulated consumer protections should not be compromised. For this reason it is appropriate for the terms governing the relationship to be established by a third party in co-ordination with the distributor and retailer to enable a balance to be reached between the competing interests of the two businesses. This will avoid comprehensive regulatory intervention and allow the parties to negotiate commercial outcomes, where appropriate.</p> <p>ENERGEX considers it is inappropriate to align electricity and gas when providing for the interface between the distributor and a retailer. Access arrangements are commercial agreements which include the use of system terms upon which a network operator provides access to its pipeline to retailers. This covers the issues provided in a use of system agreement and therefore a default use of system agreement is not a practical solution for the gas industry.</p>

Regulatory Issue	ENERGEX Response
	<p>A default use of system agreement for electricity or, an alternative structure imposed by specific regulatory rules, will govern the relationship between a retailer and distributor where no commercial arrangement has been entered into between the parties. The AEMC is in a position to establish the appropriate terms for the default arrangement in consultation with the appropriate stakeholders taking account of the existing use of system agreements in place and the desirability to spread the commercial risk between the parties.</p> <p>Given the current structure of the gas and electricity markets, it is not appropriate to align electricity and gas for default use of system arrangements. Consistency across jurisdictions in electricity and separately in gas will meet the objectives of the MCE reform, however as the use of system terms for gas are incorporated within the access arrangements this process works effectively and should continue. For these reasons, the mandated default use of system terms are not an imperative to the proper working of the gas industry. As the present arrangements have been accepted by the gas industry it would be impractical to consider changing a working structure which will impose a cost to the industry and consumer simply in the interest of consistency.</p> <p>The suggested provisions to include in a default DUOS Agreement set out in paragraph 3.2(d) are relevant and should include provisions setting out the consequences of failure to comply with disconnect and reconnect requests including liability for losses borne by retailers. This is necessary to appropriately signal the risks which distributor activity brings to retailers.</p> <p>ENERGEX agrees commercial arrangements cannot be unravelled by the new Law. The transition to any new electricity arrangement must be managed in a manner which avoids disruption and costs to jurisdictions that presently have use of system agreements in place.</p>
<p>4. Distribution Interface with embedded generators</p>	<p>ENERGEX considers that the consultation paper’s proposed approach to connection of embedded generators is overly prescriptive. It potentially establishes regulation as the preferred approach to the provision of these distribution services rather than commercial negotiation. ENERGEX considers this is a retrograde step and believes that commercial negotiation should be the primary approach to connection of embedded generators with fallback to dispute resolution where a commercial outcome cannot be achieved. Further, it is critical that distributors are not financially disadvantaged in negotiating rebates to embedded generators subject to compliance with overarching principles contained within the Rules.</p> <p>ENERGEX considers that there is a need for national rules for the connection and operation of embedded generators, but that these need to be developed with a view of resolving:</p>

Regulatory Issue	ENERGEX Response
	<ul style="list-style-type: none"> • the impact of embedded generation on network augmentation, which has critical linkages with the current NER regulatory test for distribution network investment in excess of \$10 million; • the allocation of costs for connection of embedded generators with specific remedy of asset specificity; and • how operational risk is allocated between network operator and embedded generator. <p>The consultation paper addresses none of these issues. Accordingly, ENERGEX recommends that the MCE looks at establishing a national working group to progress the matter with a view to referring any rule change process to the AEMC.</p>
<p>5. Balancing regimes, settlements, customer transfers within the balancing and settlements system</p>	<p>It is agreed the balancing, settlement and customer transfer regimes are inconsistent amongst the jurisdictions which in turn has implications upon compliance costs. There are distinct differences in the transport and the settlement of energy within the electricity and gas markets that do not simply translate to a consistent approach in regulation. As a result of these differences, the rules governing the balancing, settlement and transfer of electricity and gas supply have significantly diverged in order to properly govern the different fuel markets.</p> <p>The recommendations relate only to aligning gas with the current National Electricity Law and Rules as recently enacted. The regulatory regime should not be revised simply for consistency. It is imperative a regulatory change has a sound basis to justify change. ENERGEX agrees with the position in the paper that any variation should be limited to that which is practically necessary and can be accommodated within a national regulatory regime.</p> <p>It is appropriate for the independent market administrator (IMA) to be an approved body within the regulatory framework, however there should be no mechanism to require approval if the body is currently performing a role as IMA within a jurisdiction. It is appropriate for the AEMC to have the power to approve any new schemes, should any arise in the future.</p>
<p>6. Metering</p>	<p>ENERGEX supports, in principle, the development of a national framework for metrology. For electricity, the Joint Jurisdictional Review of the Metrology Procedures presents the best body of work on metrology, and in ENERGEX's view seeks to achieve the objectives of the national regime as recommended in the NERA paper. ENERGEX considers that the current body of work on metrology is substantial and its progression can be appropriately used for this process.</p> <p>The approach of the NERA paper to have metering rules provided for in NGL, and set out in the retail rules developed by the relevant Independent Market Administrator will achieve consistent rights and obligations of parties across the jurisdictions. For the gas distribution sector, ENERGEX supports the approach of adopting Australian Standards for</p>

Regulatory Issue	
	<p>gas metrology.</p> <p>Both these approaches are consistent with the recommended approach and criteria set down on pages 79 and 80 of the consultation paper. ENERGEX does not believe an effective national scheme hinges upon nationally consistent metering rules for gas and electricity. Lack of consistency between the specific metering rules for gas and electricity will not inhibit dual fuel opportunities.</p> <p>A consistent approach to metering across jurisdictions will allow for a smoother transition between jurisdictions for retailers, converting into simpler compliance requirements and less customer management processes. However, it is questionable that the absence of a national metering scheme will undermine the effectiveness of consumer protection and distribution price regulation.</p> <p>It is accepted that the national metering rules should support the balancing and settlement system, transfer rules and management of the profiling systems. However, a well managed metering protocol will ensure a fair and equitable settlement system for both retailers and customers at all levels.</p>
7. Load shedding and curtailment	<p>ENERGEX agrees with the recommended approach for electricity as presently provided in the national framework. It is agreed that the development of load shedding/curtailment rules for gas is a long term goal of a national framework. At present, the development of the national gas market (wholesale) is under consideration by the Expert Panel. Curtailment rules are in place in most jurisdictions with the State Ministers having emergency powers. For this reason, a curtailment rule for gas is not a priority issue and the national framework will not lose its viability if national curtailment rules are not in place at the time of transfer to a national framework. As stated in the paper in paragraph 7.4 the implementation of such rules in a national framework must consider the differences between jurisdictions in network systems and development, gas usage, and market structure. Hence, the transitioning to a national framework will not be jeopardised if gas does not have national curtailment rules.</p> <p>In relation to the recommended approach for gas, the components of the system articulated by the paper are generally agreed. The most important issue is the explicit power of statutory immunity offered to retailers and distributors from legal action due to implementation of the curtailment rules as enacted. Additionally, the framework would benefit from having these powers incorporated into another regulatory mechanism to reinforce the rules and their effect, e.g. into the standard connection agreements and retail supply agreements.</p>
8. Retailer failure arrangements	<p>ENERGEX agrees the policy behind retailer of last resort is to preserve the integrity of the wholesale settlements system in the relevant market and ensure continuity of supply to customers of the failed retailer. A further purpose is to ensure retailers have the means to have enforceable agreements with newly acquired customers and to avoid exposing</p>

Regulatory Issue	ENERGEX Response
	<p>smaller customers to the pool price.</p> <p>However, a retailer should not bear the full burden of managing the risk of high unhedged pool prices. The regulatory framework should at least provide for a means to recover costs including an amount attributable to managing additional portfolio risk. Additionally, ENERGEX maintains that a retailer should be made ROLR rather than the distribution business, that is, the provisions relating to ROLR should explicitly look at making it a pure retail responsibility. For these reasons, it is appropriate for a ROLR scheme to remain in place.</p> <p>It is not apparent that a ROLR scheme is necessary for gas, particularly where a contract carriage model exists in a jurisdiction. Further discussions about this part is essential before the MCE progresses with a national ROLR scheme.</p> <p>In any event, with respect to electricity ROLR schemes presently in place in the discrete jurisdictions, ENERGEX believes the current State based schemes are sufficiently robust to manage a ROLR event.</p> <p>Given these rules are in place and retailers designated with ROLR responsibilities are likely to have fulfilled obligations to prepare plans to manage such an event, ENERGEX considers ROLR is not a priority issue and should remain outside of the scope of any national scheme for the moment. This is not to suggest the ROLR function should not be transferred to the national framework, however the costs and planning associated with the immediate transfer is not essential to the current objective of the MCE to establish a national based energy framework.</p> <p>ENERGEX agrees that a failed retailer scheme should involve the features from paragraph 8.3(a) to (g), noting that ENERGEX does not accept it is appropriate to transfer ROLR at this stage given the nature of ROLR applying to jurisdictional based, designated distribution areas. A step-in retailer should have designated areas according to the designated distribution areas as required for the obligation to supply for distributors. These allocations will improve communication issues between distributors and the step-in retailer in the event of a retailer failure.</p> <p>It is noted that paragraphs 8.3(h) to (k) require further consultation regarding the appropriateness of this approach. In regard to paragraph (h), the supply arrangements imposed upon step-in retailers and customers requires considerable analysis to ensure protection for both customer and retailer. For example, a flexible price methodology could apply to a ROLR customer, that is, a fixed formula incorporating a variable component to account for high pool prices.</p>
9. Jurisdictional Directions (interaction with government policies)	As per ENERGEX's comments in section 1, the consultation paper's proposed approach in relation to Jurisdictional Directions is ambiguous and could potentially put in place a relatively straight-forward mechanism to assist jurisdictions to move away from 'national consistency'. This would effectively erode the expected benefits associated with the push

Regulatory Issue	ENERGEX Response
	<p>to have a national regulatory regime.</p> <p>At present, a number of jurisdictions have in place policy instruments, which will be impacted by moving to the national framework. Where these specific jurisdictional arrangements are the basis of a “code derogation”, ENERGEX would support these derogations being carried over to the new national energy framework. However, ENERGEX does not support the proposed process for making Jurisdictional Directions as it provides jurisdictions with the authority to effectively alter the form and substance of the national energy regulatory framework without seeking agreement from other jurisdictions.</p> <p>ENERGEX would be supportive of an approach, where the relevant jurisdiction was required to take any state based policy instrument on a proposed matter (e.g. environmental obligations, taxes and levies) to the MCE for agreement. If the other MCE members agree to the jurisdictional amendment then it can be accommodated within the national energy market arrangements or implemented in a transparent manner outside the operation of the national energy market so as not to undermine the national regime.</p>