Submission to the Essential Services Commission

2028 Water Price Review: Draft Guidance (July 2026)

FRIENDS OF THE GIPPSLAND LAKES

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Purpose and scope

We welcome the opportunity to comment on the draft guidance for the 2028 Water Price Review.[1] This submission adopts an environmental and social equity perspective. It does not seek changes to the design of the PREMO framework, which we support, and it does not ask the commission to set water policy, this being a matter for government through Statements of Obligations and the technical regulators.

Our submission makes six recommendations, each addressing a place where the draft guidance's information requirements, assessment criteria and incentive design sit at odds with obligations the commission already carries. Those obligations include:

- the statutory direction to have regard to environmental sustainability including water conservation;[2]
- the requirement to place particular emphasis on promoting the efficient use of prescribed services by customers;[3]
- the direction to have regard to costs and benefits including externalities;[4]
- the objective of promoting the long-term interests of Victorian consumers;[5] and
- the mandatory consideration of the interests of low-income and vulnerable customers.[6]

These obligations bear directly on the design question this consultation opens. PREMO is, by design, an incentive mechanism: it links a business's allowed return on equity to the ambition demonstrated in its price submission, precisely so that businesses are rewarded for delivering what matters.[7] Environmental sustainability, expressly including water conservation, is among the commission's statutory objects, and the WIRO requires particular emphasis on the efficient use of prescribed services by customers. An incentive framework that is silent on a statutory object will not deliver it; not because any business opposes the object, but because incentive frameworks produce what they measure.

> **A single proposition underlies all six recommendations: the framework is well equipped to price environmental expenditure and poorly equipped to recognise environmental value.**

Costs incurred for environmental sustainability purposes are visible throughout the guidance. They must be forecast, justified against prudency and efficiency criteria, benchmarked, reported annually, and (under the proposed

[1] Essential Services Commission, *2028 Water Price Review: Draft Guidance* (July 2026) ("*Draft Guidance*").
[2] *Water Industry Act 1994* (Vic) s 4C(c).
[3] *Water Industry Regulatory Order 2014* (Vic) ("WIRO") cl 8(b)(i); see *Draft Guidance* s 2.2.1, requiring businesses to place particular emphasis on the matters in cl 8(b).
[4] *Essential Services Commission Act 2001* (Vic) ("ESC Act") s 8A(1)(e).
[5] ESC Act s 8(1).
[6] WIRO cl 11(d)(iii).
[7] Essential Services Commission, *Water Pricing Framework and Approach: Implementing PREMO from 2018* (October 2016); see also Essential Services Commission, *Southern Rural Water Final Decision: 2023 Water Price Review* (23 June 2023) § 1.4 (the purpose of PREMO is to provide incentives for water businesses to deliver outcomes most valued by customers, with financial incentives provided by linking the return on equity to the PREMO rating).

efficiency scheme) measured against a penalty band. The commission has gone further, directing businesses to have regard to the Queensland Competition Authority's business case guidance in framing climate-related proposals.[8] We do not oppose disciplined expenditure by water authorities and corporations.

However, the value that expenditure produces is visible almost nowhere, because the framework counts value in only two ways: preference elicited from current customers through engagement, and cost saved within the regulatory period. Three kinds of environmental value are invisible, and so go unrecorded:

- value that exists because the law or a licence requires it, rather than because customers asked for it;
- value that goes to people and places outside the engagement: future customers, and the rivers, aquifers and wetlands themselves; and
- value that only appears after the five years are over.

The PREMO assessment tool reflects this. It treats water conservation, demand reduction and supply resilience as risks to be managed and costs to be justified, rather than as desirable outcomes whose delivery attracts recognition.

The framework does reward delivering customer outcomes at lower cost, and we do not suggest otherwise. Our concern is narrower: where a benefit falls outside both, the expenditure is assessed on its cost alone, and the sustainability benefit is implicitly valued at zero. In a framework that ties a business's allowed return to how ambitious its proposal is, that creates a capital bias: the option whose costs enter the regulatory asset base is favoured over the option whose costs are expensed, independently of their relative efficiency. Once in the asset base, that cost is recovered from customers through prices for decades. It falls hardest on households for whom water is already a large share of income.

Each of our six recommendations falls within one of three categories the commission directly controls:

- information requirements issued under clause 13 of the WIRO;
- the PREMO assessment criteria and assessment tool, which the draft states will be updated following consultation;[9] and
- the design of the proposed efficiency benefit sharing scheme.

We acknowledge at the outset that the draft guidance makes real advances. The 20-to-30 year capital planning horizon, forecasts extended to 2042–43, the requirement to reconcile forecasts against the outlook presented at the previous review, the strengthened First Nations engagement requirements, and the new pricing framework for large and complex connections are each material improvements.[10] Our recommendations are directed at what the guidance does not yet reach.

The conditions in which this guidance will operate make the gap material now. East Gippsland Water's own outlook projects, for its largest system, a 34 per cent reduction in streamflow and a 27 per cent increase in demand by 2040, with restriction risk deteriorating from 1-in-41 years to 1-in-6.[11] Nineteen current and proposed data centres in Greater Western Water's region could represent combined demand of approximately 19.7 GL a year, largely absent

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[8]*Draft Guidance* s 3.1 ("we are open to considering climate change expenditure proposals by regulated businesses") and s 3.9.2, adopting Queensland Competition Authority, *Guideline: Climate Change Related Spending* (September 2023).

[9]*Draft Guidance*, Summary: "For this draft guidance, we have not amended Appendix E and the PREMO Assessment Tool. We will update this section in the final guidance to reflect our position following the consultation period."

[10]*Draft Guidance* ss 3.9, 3.3, 3.22; Summary.

[11]East Gippsland Water, *Annual Water Outlook Summary 2025* (30 November 2025), as summarised in Friends of Gippsland Lakes, Parks and Reserves Inc, *Submission to East Gippsland Water:* Urban Water Strategy 2027 and Price Submission 2028–33: Community Survey *Feedback* (26 June 2026) ("FOGL Submission") § 4.6.

from current forecasts.[12] And the *Central and Gippsland Region Sustainable Water Strategy* commits to returning more than 100 GL to flow-stressed rivers by 2030–32, a commitment that depends on recycled water, stormwater and demand management substituting for river extraction.[13] Businesses will decide their response to all three inside the incentive settings this guidance fixes.

Summary of recommendations

#	Guidance section	Proposed change	Outcome supported
1	s 2.7 (EBSS)	Exclude demonstrably avoided-cost demand-side expenditure from penalty calculation, and extend exogenous-event adjustments to proactive responses	Demand reduction and leakage control
2	Appendix E; Table 3.3	Make least-cost options analysis assessable, tested over the long-term planning horizon	Least-cost, least-impact investment and supply resilience
3	s 3.3	Require engagement instruments, sample method and capacity-to-pay disaggregation to be disclosed	Whose values are counted, including environmental value
4	s 3.22; s 3.17.2	Test ongoing charges on long-run incremental cost; harden reservation charges; disclose recycled-water reallocation and uncommitted large-load demand	Extraction pressure and recycled water protection
5	s 2.6; Appendix E (Performance)	Require annual reporting of demand-side measures relied upon to defer augmentation	Delivery of demand-side commitments
6	s 3.19.3	Extend the marginal-cost disclosure requirement to continuing tariffs	Conservation price signal

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Recommendation 1: Efficiency benefit sharing scheme (s 2.7)

Guidance section	s 2.7 (efficiency benefit sharing scheme)
What we ask	Exclude demonstrably avoided-cost demand-side expenditure from the penalty calculation, and extend exogenous-event adjustments to proactive responses
Nature of the change	Scheme design

Proposed drafting change

That the EBSS methodology (a) permit exclusion from the penalty calculation of expenditure on non-revenue-water reduction, demand management and water efficiency where the business demonstrates a quantified avoided or

[12]Australian Broadcasting Corporation, "Greater Western Water data centre proposals revealed under FOI" (15 July 2025), as collated in Concerned Waterways Alliance, *Hyperscale Data Centres and Victoria's Water: Protecting a Public Resource for Communities and Rivers* (February 2026) ("CWA Position Paper"), "Reservoir scale demand".
[13]Department of Energy, Environment and Climate Action, *Central and Gippsland Region Sustainable Water Strategy* (2022), flow restoration commitments; volumes collated in CWA Position Paper, Appendix 2.

deferred capital cost; and (b) extend the exogenous-event adjustment to proactive responses to the same events for which reactive costs are already excluded.

In plain terms

The scheme counts what a business spends to save water, but not the water it saves.

> **Money spent finding leaks, helping customers use less, or running recycled water schemes is counted as a cost that may attract a penalty.**

What that spending produces (water left in a river or aquifer, a plant or pipeline not needed for another decade) is counted nowhere, because it arrives after the four years the scheme measures. We are not asking the commission to weaken the scheme. We are asking that spending which demonstrably avoids a larger cost later should not be treated the same as spending that simply overruns.

We support the commission's diagnosis. The evidence of significant operating expenditure over-runs (seven of 14 businesses materially exceeding benchmark in 2024–25) indicates that the reputational incentive alone is insufficient, and an EBSS is a proportionate response.[14] Our concern is with two features of its scope:

- the carve-outs exclude reactive drought costs but not proactive ones; and
- the scheme applies to operating expenditure only, while the capital alternatives it pushes businesses toward carry no equivalent test.

(a) The scheme's carve-outs privilege reactive drought response over proactive

The draft names, as costs outside a business's control and therefore excludable, drought costs "for example, pumping or water carting costs".[15] Those are the most expensive and least sustainable drought responses available. A business that responds to the same drought by spending more on demand management, leak detection and water efficiency gets no adjustment at all, because that spending is discretionary and so counts as controllable. The way the exclusions are drawn makes the worse response the financially safer one. The fix is symmetrical treatment of proactive and reactive responses to the same triggering event, auditable through the annual regulatory accounts process the draft already proposes.

(b) The scheme is opex-only, and the draft identifies the resulting distortion itself

The guidance observes that "operating expenditure can be reduced by reducing service levels, or in some cases by investing capital instead. The uneven application of incentive schemes could therefore distort business decisions", before declining to introduce capital or service-delivery counterparts.[16] We accept the reasoning offered, that most businesses are not overspending against their capital expenditure benchmarks. But the distortion the commission identifies does not depend on overruns. It arises because efficient capital expenditure earns a return on the regulatory asset base while efficient operating expenditure earns nothing and is now measured annually against a penalty band.

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[14] *Draft Guidance* s 2.7; see also Essential Services Commission, *Directions Paper: Preparing for the 2028 Price Review* (1 April 2026) ("*Directions Paper*") at 4, setting out the distribution of 2024–25 controllable operating expenditure against benchmark.
[15] *Draft Guidance* s 2.7.1.
[16] *Draft Guidance* s 2.7.

The practical consequence is visible in our region. East Gippsland Water's most recent *Annual Water Outlook* records non-revenue water well above the business's own 10–20 per cent target in several systems:[17] Dinner Plain, 52 per cent; Buchan, 41 per cent; Cann River, 35 per cent; and Mitchell, by contrast, within target at about 12 per cent, with leak-detection programs underway. Reducing losses in the first group is almost purely controllable operating expenditure (survey crews, acoustic monitoring, pressure management, repair labour), with benefits (deferred augmentation, reduced extraction, lower pumping and treatment energy) that materialise outside the four-year assessment window. It is also the hardest kind of spending to budget for in advance, because nobody knows how much water a neglected network is losing until crews go out and look. The scheme puts penalty risk on exactly that spending, while the capital alternatives (pressure-management infrastructure, mains replacement) carry none. What that spending would achieve is water conservation, the object s 4C(c) names: water left in stressed rivers and aquifers, and lower pumping and treatment energy for water no longer lost.

> **The scheme as drafted attaches penalty risk to expenditure that directly serves a statutory object.**

There is a further contrast worth drawing. PREMO already assesses operating expenditure against a benchmark, but it does so qualitatively as well as quantitatively: the Performance element's guiding question is "to what extent has the business rationalised any discrepancies?", and a business that clearly identifies and explains a variance in terms of what customers obtained for it can still achieve its rating.[18] The scheme proposed here has no qualitative dimension. Above five per cent, a penalty applies, subject only to the one-off and exogenous exclusions. On this point it is a blunter instrument than the element it is meant to reinforce, because it removes the qualitative judgement the framework currently exercises.

What falls inside the 'controllable' category, in practice

East Gippsland Water publishes controllable operating cost per connection as one of its outcome measures, and has missed the target in both years reported so far: $1,015 against a target under $897 in 2023–24, and $1,041 against under $885 in 2024–25.[19] We should be clear that this is not the measure the scheme would use (the scheme compares a business's aggregate controllable operating expenditure against the benchmark set at its price review), and we draw no conclusion about where this business would sit under it. What the business's own explanation does show is the kind of spending that falls inside the controllable category. Among the drivers it identifies are a change in how its recycled water farms are managed, which "increased operating costs significantly ($600K), predominately aimed at ensuring our environmental compliance is maintained", and an increase of over $500,000 in electricity costs for similar usage after the business entered the State Purchasing Contract.[20] Neither would be excludable under the categories the draft proposes. The first is a deliberate operational change made to keep the business compliant with its environmental obligations. The second comes from a government procurement arrangement, not a flood or a drought. Spending of that character would count in full toward the comparison the scheme makes, and we ask the commission to consider whether that is intended.

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[17] East Gippsland Water, *Annual Water Outlook Summary 2025* (30 November 2025), as summarised in Friends of Gippsland Lakes, Parks and Reserves Inc, *Submission to East Gippsland Water:* Urban Water Strategy 2027 and Price Submission 2028–33: Community Survey *Feedback* (26 June 2026) ("FOGL Submission") § 6.2.
[18] *Draft Guidance*, Table 3.3 (Performance guiding questions) and Appendix E (Performance). The example reflecting achievement of the current rating reads: "Variations to controllable operating expenditure relative to the benchmark are clearly identified and explained in terms of its impact on customer value."
[19] East Gippsland Water, *Performance Scorecard: Customer Outcomes*, Price Submission Customer Outcomes 2023–2028 (2024) and (2025), Outcome 2 ("Fair prices for all"), measure b.
[20] East Gippsland Water, *Performance Scorecard* (2025), Outcome 2, business comments.

Precedent

The draft describes the proposed scheme as similar to that used by the Australian Energy Regulator.[21] The AER, however, applies its efficiency benefit sharing scheme alongside a demand management incentive scheme and innovation allowance, and within a rules framework requiring non-network options to be tested before augmentation.[22] Those complements exist because an operating expenditure efficiency scheme, layered over a framework that remunerates capital, otherwise biases providers against demand-side solutions.

We ask that the scheme be completed rather than weakened. In the AER's framework the efficiency scheme is paired with a demand management incentive scheme and an innovation allowance; the carve-outs we propose are the minimum equivalent available within this guidance. Should the commission prefer the fuller design, a demand management incentive would achieve the same result more directly, and we would support it. Either way, the carve-outs do not reduce discipline on genuine cost blowouts.

Timing

We anticipate a response that the EBSS methodology will be settled in the 2033 guidance. But the decisions that shape how businesses behave (that the scheme covers operating costs only, what it excludes, and where its penalty threshold sits) are being made now, and businesses will write their September 2027 submissions knowing them. A business planning its next five years will already be choosing the capital option over the operating one, and the reactive drought response over the proactive, well before the methodology is finalised.

Calibration

The penalty threshold is proposed at five per cent of benchmark. It is worth asking on what distribution of actual performance that figure was set, because the commission has published two accounts of the same year that do not match. The Directions Paper of April 2026 and the Draft Guidance of July 2026 both report 2024–25 controllable operating expenditure against benchmark for the same 14 businesses, and both support the headline that seven of 14 significantly exceeded it. But the underlying spread differs:

2024–25 result vs benchmark	Directions Paper (Apr 2026)	Draft Guidance (Jul 2026)
Under benchmark	3 businesses (up to 13.5%)	2 businesses (~2%)
Within 5% over	4 businesses	5 businesses
5–10% over	1 business	1 business
10–15% over	4 businesses	6 businesses
Over 15% over	2 businesses	none

The later account shows no business above 15 per cent, where the earlier one showed two. Whichever is the corrected figure, the difference matters: the tail of the distribution is exactly the part a penalty threshold is meant to address, and a five per cent threshold with a one per cent revenue cap should be calibrated on data the

[21] *Draft Guidance* s 2.7.1: "We are proposing to adopt an efficiency benefit sharing scheme (EBSS) similar to the one used by the Australian Energy Regulator."

[22] Australian Energy Regulator, *Demand Management Incentive Scheme* (DMIS) and *Demand Management Innovation Allowance Mechanism* (DMIAM), published 14 December 2017, replacing the earlier Demand Management Innovation Allowance. The DMIS provides distribution network service providers with a financial incentive of up to 50 per cent of expected costs of efficient demand management projects, capped at 1 per cent of the distributor's allowed revenue in any year; the DMIAM provides a fixed innovation allowance for research into demand management techniques. Both operate alongside the Regulatory Investment Test for Distribution (RIT-D) under the *National Electricity Rules*, which requires distributors to test non-network options before approving augmentation.

commission is confident in. We raise this not as a criticism but because the scheme's parameters and the evidence for them are being consulted on together, and the two should be reconciled before the parameters are fixed.[23]

Recommendation 2: Least-cost options analysis in the PREMO assessment tool (Appendix E; Table 3.3)

Guidance section	Appendix E; Table 3.3
What we ask	Make the quality of least-cost options analysis assessable, tested over the long-term planning horizon rather than the regulatory period
Nature of the change	Assessment criteria

Proposed drafting change

That Appendix E, when updated following consultation, include under the Risk and Outcomes elements assessable examples reflecting the quality of options analysis, specifically:

(a) whether demand-side, water efficiency, stormwater, recycled water and integrated water management alternatives were evaluated on a comparable basis against supply augmentation, including their contribution to long-term supply resilience;

(b) whether that evaluation was conducted over the business's long-term planning horizon rather than the regulatory period, so that costs and benefits falling in later periods are counted; and

(c) whether the option selected was the least-cost, least-impact option so identified.

Consequential amendment to the guiding questions at Table 3.3.

In plain terms

Before a water business proposes to build something, it should have to show that it checked whether fixing leaks, helping customers use less, or reusing stormwater and recycled water would have been cheaper and less damaging, and it should get credit for having done that work properly.

> **At present the tool gives credit for keeping costs down and consulting customers well, but says nothing about whether the cheapest, most sustainable, and least damaging option was selected.**

Limb (b) is essential to the recommendation. An options analysis assessed only on costs and benefits arising within the regulatory period would repeat the blind spot rather than close it, because money spent on saving water or developing alternative sources typically pays off in the period after the one in which it is spent. We note the commission already applies a long-horizon test on the expenditure side: forecast capital expenditure must be that which a prudent service provider would incur "to achieve the lowest cost of delivering service outcomes, taking into account a long-term planning horizon", against a planning horizon the guidance sets at 20 to 30 years.[24]

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[23]Essential Services Commission, *Directions Paper: Preparing for the 2028 Price Review* (1 April 2026) at 14; *Draft Guidance* (July 2026), § 'Our approach to the price review'. The two sets of figures are reproduced above.
[24]*Draft Guidance* ss 3.9 and 3.9.1.

> **Our recommendation asks that the assessment tool apply the same long-term horizon the guidance already requires when it tests whether expenditure is prudent.**

PREMO is the framework's reward mechanism, and the incentive it creates was intended to be substantive rather than procedural.[25] Water conservation and the resilience of supply are not optional interests: the first is named in the commission's statutory objects, and the efficient use of water by customers is a matter on which the WIRO requires particular emphasis.[26] A tool that rewards only cost efficiency and elicited customer preference will systematically under-deliver an object it does not measure.

The assessment tool frames Advanced and Leading ambition in terms of customer value, cost efficiency, risk transfer, service targets and engagement quality.

> **We have not identified any example or guiding question in the draft guidance that addresses water conservation, demand reduction, potable substitution or the resilience of supply, notwithstanding that water conservation is named in the commission's statutory objects.[27]**

The Risk element comes closest, but its examples concern how risk is allocated and financed rather than how much water the business uses or saves. A tool that sets out how to assess some of the commission's statutory duties, while saying nothing about others, is not neutral between them.

We anticipate the objection that PREMO was designed so that customer engagement, not the regulator, determines which outcomes matter.[28] Two responses. First, the tool already tells businesses plenty about what the commission values: cost efficiency, stable price paths, taking risk off customers, and keeping submissions short. Second, the commission has already done this once. Having concluded that asset management was not getting enough attention across the sector, it wrote a question about it into the tool: "Has the business demonstrated sound asset management in the current regulatory period?" now sits among the Performance guiding questions.[29] The same reasoning applies here with at least equal force.

We do not propose that the assessment tool reward technology shares, such as the proportion of supply drawn from rainfall-independent sources. Our objection is to the metric, not to the investments. A share metric would treat desalination, the most energy-intensive and capital-intensive source available, as the highest expression of resilience; it would give no credit to demand management or leakage reduction, because neither is a source; and it would misclassify sound decisions. East Gippsland Water's Woodglen 3 raw water storage would score nil on any such measure, yet it is the right answer for its system: a capital project that makes fuller use of an existing Bulk Entitlement rather than seeking expansion, selected on a demonstrated comparison against the higher-extraction

[25] farrierswier, *Victoria's Water Sector: The PREMO Model for Economic Regulation* (28 March 2019), report prepared for the Essential Services Commission.

[26] *Water Industry Act 1994* (Vic) s 4C(c); WIRO cl 8(b)(i).

[27] *Draft Guidance*, Table 3.3 (guiding questions for PREMO assessment) and Appendix E (PREMO assessment tool), reviewed in full; *Water Industry Act 1994* (Vic) s 4C(c).

[28] See *Directions Paper* at 2: PREMO "was designed to make the customer, not the regulator, central to a water business's price submission."

[29] *Directions Paper* at 10 ("We will also consider demonstration of sound asset management when considering PREMO ratings, potentially through inclusion of a specific reference in the management (M) component of the PREMO assessment tool"). The question appears in the *Draft Guidance* among the Performance guiding questions at Table 3.3 and Appendix E.

alternative.[30] The framework currently has no means of recognising that reasoning as ambition rather than as ordinary prudent capital expenditure. The department's own guidelines point the same way, requiring options to be assessed on a technology-agnostic basis.[31]

> **Fit-for-purpose stormwater and recycled water do not need a technology metric to be incentivised; they need the analysis to be conducted over the horizon on which their value appears.**

Their benefits (potable supply substituted, extraction avoided, augmentation deferred) accrue across decades, which is what limb (b) requires the analysis to count. A business that selects them where they are the least-cost, least-impact option should be recognised as ambitious for having done so; that is the incentive we propose. Where a business commits to reuse or substitution, the commitment should enter the outcomes framework as an output measured in water substituted rather than dollars spent, a point we return to at Recommendation 5. And where governments contribute funding, as the Commonwealth has toward the Woodglen storage design, the contribution is deducted from the regulatory asset base, so the resilience is built without the cost entering customer bills, including the bills of those least able to pay.[32]

This matters more now than it would have a decade ago. The same Outlook projects, for East Gippsland Water's Mitchell system, a 34 per cent reduction in streamflow and a 27 per cent increase in demand by 2040, with restriction risk deteriorating from 1-in-41 years to 1-in-6 and the minimum level of service no longer met.[33] A business facing that trajectory has no option of doing nothing. What it does depends on what the framework incentivises; infrastructure earns a return on the asset base while reducing demand earns a penalty band. A business that does the harder analysis and reaches the cheaper answer is worse off for it.

The commission has already accepted the parallel proposition on the expenditure side, incorporating the Queensland Competition Authority's climate-spending business case guidance into its assessment of proposals.[34] Our recommendation extends the same recognition to the reward side of the framework.

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[30]FOGL Submission § 5, citing East Gippsland Water, *Annual Water Outlook Summary 2025*.
[31]Department of Energy, Environment and Climate Action, *Guidelines for the Development of Urban Water Strategies and Drought Preparedness Plans*, requiring a technology-agnostic, integrated water management approach that considers all sources and all demand-reduction options; as summarised in FOGL Submission § 3.2.
[32]FOGL Submission § 6.6 ($1.11 million from the Australian Government's National Water Grid Fund, with Victorian Government support, toward the Woodglen storage design). On the treatment of contributions, see Essential Services Commission, *Southern Rural Water Final Decision: 2023 Water Price Review* (23 June 2023), Tables 4.5 and 4.6 (regulatory asset base rolled forward net of government and customer contributions).
[33]FOGL Submission § 4.6, citing East Gippsland Water, *Annual Water Outlook Summary 2025*.
[34]*Draft Guidance* s 3.9.2 and Appendix D, adopting Queensland Competition Authority, *Guideline: Climate Change Related Spending* (September 2023).

Recommendation 3: Engagement evidence disclosure (s 3.3)

Guidance section	s 3.3 (customer engagement)
What we ask	Require engagement instruments, sample method and capacity-to-pay disaggregation to be disclosed
Nature of the change	Information requirement

Proposed drafting change

That a price submission be required to:

(a) annex the engagement instruments used and the information materials presented to participants;

(b) state sample method, achieved sample size and any weighting;

(c) report participation and any willingness-to-pay findings disaggregated by capacity-to-pay indicators, at minimum concession status and housing tenure, collected on an optional basis;

(d) where engagement informs level-of-service or investment choices, demonstrate that cost and service consequences were presented at the point of the choice and in both directions, including the business's own published long-term supply and demand outlook; and

(e) describe the engagement program relative to that undertaken for the previous review and justify any material reduction in depth or reach.

Under PREMO, what a business asks its customers is the evidence for the outcomes and prices it then proposes. But the business writes the survey, runs it, interprets the answers, and submits them in support of its own case. There is no requirement to publish instruments, no methodological standard, and no mechanism by which the commission would detect a leading question. The draft acknowledges that the commission knows less than a business does about its own operating costs.[35] The same gap exists here, and the commission has fewer ways to close it.

In a recent example, a community organisation's review of a live 2026 engagement survey for the 2028 cycle documented a series of design features that a research firm would flag:[36]

Survey feature	The difficulty
Level-of-service question	Presented only the benefit of fewer restrictions; the capital cost was not introduced until twelve questions later, and the extraction consequence not at all.
Willingness-to-pay question	Anchored solely on rising positive dollar amounts, with no matching option to accept more frequent restrictions in exchange for a lower bill.
Infrastructure question	Offered four upgrades, not mutually exclusive, with no stated cost, so a respondent could support all four.
Priming item	Invited acceptance of any new source before any trade-off was raised.
Two ranking questions	Near-duplicates of one another, with inconsistent option lists.

[35] *Draft Guidance* s 2.7: "Even under PREMO, information asymmetry exists between the business and the commission."

[36] FOGL Submission §§ 4.2, 4.3, 4.6, 4.7, 4.9, analysing East Gippsland Water, *Urban Water Strategy 2027 and Price Submission 2028–33: Community Survey* (2026).

An instrument with these features tends to generate support for the higher-service, higher-cost, higher-extraction path: the path that expands the regulatory asset base and raises bills for decades.

Three things about that case matter beyond the business concerned.

Capacity-to-pay data is absent from an instrument used to test willingness to pay

The survey collected town, gender, age and Aboriginal or Torres Strait Islander status, but no household income, household size, tenure or concession status.[37] The business therefore cannot analyse how service-level choices and higher bills fall across its community, nor distinguish the preferences of those who can absorb increases from those who cannot. That is hard to reconcile with a guidance document that says it reflects the commission's *Getting to Fair* equity strategy,[38] and with the commission's duty to take the interests of low-income and vulnerable customers into account when it makes a determination.[39]

Engagement depth can regress between cycles

For its current submission the same business engaged more than 900 community members between February 2021 and September 2022, including a deliberative forum, which led directly to hardship funding being lifted from $150,000 to $250,000 a year.[40] That is a concrete affordability gain a survey would not have produced, and it answers the objection that deliberative engagement costs more than it is worth.

Engagement is the door through which environmental value enters, and an instrument can close it

The same survey asked respondents to rank water for rivers, environment and ecological health against swimming pools and water for economic development, as competing preferences.[41] Environmental water is not a consumer preference to be voted down: it has legal and policy standing under Victorian water law and the *Central and Gippsland Region Sustainable Water Strategy*. The point matters to this recommendation because engagement is the first of the two ways the framework counts value. If environmental value is to register anywhere, it registers here, and an instrument built this way can rank it out of the evidence before the price submission is written. Disclosure of the instrument is what lets the commission see whether that has happened.

This is an alignment ask, not a bar-raise

We note and accept the commission's position that it does not intend to raise engagement expectations, and seeks the right type of engagement rather than more of it.[42] Every element above concerns quality, representativeness and transparency rather than volume, and each aligns with the Victorian Government's *Public Engagement Framework*, which applies across the Victorian public sector and sets out principles requiring engagement to be

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[37] FOGL Submission § 4.1.

[38] *Draft Guidance* s 1.2, listing Essential Services Commission, *Getting to Fair: Advancing Equity Strategy* (July 2026) among the documents the guidance reflects.

[39] WIRO cl 11(d)(iii).

[40] FOGL Submission § 4.8.

[41] FOGL Submission § 4.4, describing survey question 6.

[42] Gerard Brody, Chairperson, Essential Services Commission, remarks to the VicWater Chairs Forum (8 April 2025): "for future water price reviews, we're not planning on raising the bar when it comes to engagement and consultation. What we'd like to see is the right type of consultation and engagement, rather than just more consultation."

meaningful, inclusive, transparent, informed, accountable and valuable.[43] Three features of that Framework bear directly on our recommendation:[44]

- It directs that the public be told at the outset how their involvement will influence the decision, and be given enough information in advance to take part on an informed basis.
- It includes, among its own performance measures, the proportion of participants drawn from diverse backgrounds, reported by cohort.
- It treats reporting back and "closing the loop" as a required step, not an optional courtesy.

Those are the same three things we ask the guidance to require businesses to demonstrate.

The Legislative Council Environment and Planning Committee's March 2026 inquiry into community consultation practices reached consistent findings:[45]

- opt-in engagement attracts a narrow demographic, missing younger people, renters and the time-poor;
- random-selection and deliberative methods are more representative and more credible;
- information given to participants can be selectively framed;
- publishing a demographic breakdown of participants strengthens trust;
- exclusively digital engagement excludes regional and rural Victorians; and
- agencies should report back on how input was used.

The Committee's recommendations are directed to the whole-of-government Framework rather than to water businesses, and we do not suggest otherwise.

On rights-based engagement

We welcome the strengthened First Nations engagement requirements.[46] We ask that the guidance also state that engagement on matters in which Traditional Owners hold rights and interests must proceed on a partnership basis, and that presenting water for Traditional Owners as one rankable customer preference among others does not satisfy the requirement. This is a clarification of an existing expectation, consistent with the department's Urban Water Strategy Guidelines, which treat Traditional Owners as partners in planning.[47]

Why disclosure rather than assessment

The commission may respond that weak engagement will be reflected in a low Engagement rating. Two difficulties. First, ratings have compressed: no business was rated Basic or Leading overall in 2023 or 2024, and no business was rated Basic on Engagement; the commission accepted the review's findings and committed to act on them.[48,49] Put simply, a rating system that does not discriminate at the lower end does not deter. Second, detection at assessment

[43] Victorian Government, *Public Engagement Framework* (18 November 2021), Victorian Government engagement principles 1–6.
[44] *Public Engagement Framework*, step 4 (Deliver) and step 7 (Report, "close the loop"); outcomes and measures, Domain One, Outcome 3 (proportion of participants from diverse backgrounds or cohort groups, by cohort group).
[45] Legislative Council Environment and Planning Committee, Parliament of Victoria, *Inquiry into Community Consultation Practices* (March 2026), Findings 15, 16, 18, 28, 56, 59 and 60–62, and Recommendation 28, as summarised in FOGL Submission §§ 4.1, 4.5, 4.6, 4.8 and recommendation 11.
[46] *Draft Guidance* s 3.3 and Summary; Essential Services Commission, *First Nations Self-Determination Framework* (July 2026).
[47] Department of Energy, Environment and Climate Action, *Guidelines for the Development of Urban Water Strategies and Drought Preparedness Plans*, as summarised in FOGL Submission § 3.2.
[48] Essential Services Commission, *Response to farrierswier's Review of the 2023 Victorian Water Price Reviews* (8 April 2025).
[49] farrierswier, *Review of the 2023 Victorian Water Price Reviews* (8 August 2024) at 9–10 and Table 3.1.

is too late, for by then the engagement has shaped the strategy, the strategy has shaped the capital program, and the commission is reviewing the proposal rather than the evidence. Disclosure requirements operate at the point where correction remains possible.

The commission's own 2023 decision for Southern Rural Water shows both difficulties operating together. Community groups submitted that the business had not consulted the community on the environmental matters informing its pricing proposal, and that its groundwater and rivers forum appeared to consist entirely of customers. The commission agreed the business "could have done more to engage with key community groups" holding a strong interest in environmental outcomes, and that those groups should have had a fair opportunity to take part while the pricing proposals were being developed. Participants argued the shortfall made a Standard rating more appropriate. The commission weighed that against the factors supporting the business's self-rating and declined to downgrade: Engagement was rated Advanced in both the draft and the final decision. It recorded instead its expectation that any future improvement would involve more expansive engagement with community on environmental outcomes relevant to the pricing submission.[50]

We make no criticism of that decision, which turned on a wider evidentiary record than the part we have described. The point is what the sequence demonstrates. A deficiency of precisely the kind this recommendation addresses was raised, accepted by the commission, and left the rating unchanged, and it was established at the final decision, years after the engagement it concerned had closed. Assessment at that point cannot cause the engagement to be conducted differently. It also leaves the commission's stated expectation for the next round resting on nothing that a later submission must demonstrate. Requiring the instruments and the participation data to be disclosed when the price submission is lodged would give that expectation something to bite on.

Nor is that sequence confined to one business or one review. In its April 2026 draft decision on Melbourne Water, the commission recorded that it had received two submissions raising concerns about the quality of engagement with environmental groups. It noted the feedback and encouraged the business to keep exploring tailored engagement with those groups; the Engagement element was rated Standard, matching the business's self-rating.[51] Two reviews three years apart, two businesses, the same result: environmental groups identify a gap in engagement, the commission accepts the concern, and the rating is unchanged. We do not say either rating was wrong. We say that a rating reached on the whole of a submission is not a sensitive instrument for this particular defect, and that disclosure is.

Recommendation 4: Large and complex connections (s 3.22; s 3.17.2)

Guidance section	s 3.22; s 3.17.2
What we ask	Test ongoing charges on long-run incremental cost, harden reservation charges, and disclose both recycled-water reallocation and uncommitted large-load demand
Nature of the change	Pricing principles and information requirement

[50]Essential Services Commission, *Southern Rural Water Final Decision: 2023 Water Price Review* (23 June 2023), § 3.1 (customer and community engagement), § 7.1.1 (Engagement) and Table 7.1. The submissions referred to are People for a Living Moorabool (9 May 2023) and Friends of Steele Creek (8 May 2023). The commission rated Engagement as Advanced in both its draft and final decisions, consistent with the business's self-rating.
[51]Essential Services Commission, *Melbourne Water Draft Decision: 2026 Water Price Review* (2 April 2026) § 3.1 and Table A. The submissions referred to are Concerned Waterways Alliance (12 December 2025) and Maribyrnong River and Waterways Association (11 December 2025).

Proposed drafting change

That s 3.17.2 be amended to:

(a) extend the demand disclosure requirement beyond firm commitments, to capture inquiries and applications from large load customers above a defined threshold, presented as a scenario range with the augmentation and marginal supply consequences of each.

And that s 3.22 be amended to:

(b) specify that the demonstration of how ongoing charges offset the revenue requirement recovered from other customers be made on a long-run incremental cost basis, referencing the marginal source of supply for the system concerned;

(c) provide that reservation charges will be expected rather than may be included where a connection reserves capacity ahead of realised demand; and

(d) require that where a proposed connection would draw on recycled water currently committed to an environmental or community use, the submission identify that use, quantify the volume and state the environmental consequence of reallocation.

We regard the new s 3.22 as a substantial and welcome addition. The requirement that special charges capture all costs (including new water entitlement, treatment, desalinated water, recycled water and environmental offsets), and that disconnection charges recover remaining capital costs to avoid stranded assets, is well designed.[52] We raise four concerns, all made urgent by a kind of connection the guidance itself now names: the large data centre.

Concern	What the guidance does now	What we ask
(a) Demand disclosure	Limited to firm commitments (s 3.17.2)	Extend to inquiries and applications above a threshold, presented as a scenario range
(b) Ongoing charges	Requires a business to explain how ongoing charges offset the revenue requirement recovered from others	Make the demonstration on a long-run incremental cost basis, referenced to the marginal source of supply
(c) Reservation charges	Provides that they may be included	Provide that they will be expected where capacity is reserved ahead of realised demand
(d) Recycled water	Silent on existing environmental commitments	Require disclosure where a connection would reallocate committed recycled water

Context: the scale at issue

Material obtained under Freedom of Information indicates that 19 current and proposed data centres in Greater Western Water's region could represent combined demand of approximately 19.7 GL a year, comparable to the capacity of a large regional reservoir, with individual sites reported at up to 14 GL a year.[53] The commission itself, in its April 2026 draft decision on Melbourne Water's 2026 price submission, has recorded that Melbourne Water was "generally slow to respond to the issue of large load demand (particularly from data centres) – there are no estimates of the impact of large loads in its proposed demand and expenditure forecasts, and interested parties were not

[52] *Draft Guidance* s 3.22.1 and Appendix G.

[53] Australian Broadcasting Corporation, "Greater Western Water data centre proposals revealed under FOI" (15 July 2025); Water Services Association of Australia, *Data Centres and Water in Australia* (December 2025). Both as collated in Concerned Waterways Alliance, *Hyperscale Data Centres and Victoria's Water: Protecting a Public Resource for Communities and Rivers* (February 2026) ("CWA Position Paper"), "Reservoir scale demand".

consulted on the addendum. We would have expected these issues to be addressed in the pricing proposal submitted in September 2025."[54] The Water Services Association of Australia reaches consistent conclusions and recommends transparent reporting, prioritisation of recycled water, and cost-recovery frameworks designed to prevent cross-subsidies.[55] We note that our asks below are consistent with the commission's own finding and with the position of the industry's own peak body. The same alternative sources are simultaneously committed elsewhere: the state's water strategy relies on recycled water and stormwater to return more than 100 GL to stressed rivers by 2030–32, so a gigalitre directed to a new connection is not a free gigalitre. We return to this at limb (d).

(a) The demand disclosure requirement captures only demand that is already committed, and the demand that matters is not yet

We welcome s 3.17.2's requirement that a submission provide "details of forecast demand from firm commitments for connection of new large load customers (data centres, for example)".[56] The words 'firm commitments' are the difficulty. Demand at the scale described above sits overwhelmingly in inquiry and application, not firm commitment, at the point a price submission is prepared, which is precisely why the commission has recorded that Melbourne Water's proposed forecasts contained no estimate of it. A requirement satisfied by disclosing only firm commitments would have captured little of the 19.7 GL identified in the Greater Western Water region. The consequence is a demand forecast that omits the largest single source of forecast risk, and an expenditure program built on it. Disclosure as a scenario range, with the augmentation consequences of each scenario stated, imposes no obligation on the business to predict which inquiries convert; it requires only that the commission be able to see the range.

(b) The ongoing-charge requirement is a disclosure obligation, not a test

The draft requires a submission to explain "whether and how ongoing charges from these connections offset the revenue requirement recovered from other customers".[57] An explanation can be satisfied on short-run incremental reasoning, under which any large load contributing above avoidable cost appears to reduce average prices, while the same load drives the next augmentation. The remedy is available within the draft's own framework: s 3.22.1 already defines incremental costs for capital contribution purposes to include "incremental shared network costs (for example, supply, transfer and treatment augmentations)".[58]

> **We ask that the same long-run logic govern the ongoing-charge demonstration, referenced to the marginal source of supply for the relevant system, which in metropolitan systems is desalinated water, and in regional systems facing streamflow decline may be an entitlement scarcity value rather than a construction cost.**

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[54] Essential Services Commission, *Melbourne Water Draft Decision: 2026 Water Price Review* (2 April 2026), Summary at viii, under the heading "We are considering Melbourne Water's proposed pricing principles for large and/or complex connections". The passage concerns Melbourne Water's *Addendum to Melbourne Water's 2026 Price Submission – large and complex connections* (27 February 2026). At ix the commission states it is "not yet able to accept the proposal", having found that adequate information and justification had not been provided and that other interested parties had not had an opportunity to comment.

[55] Water Services Association of Australia, *Data Centres and Water in Australia* (December 2025), as summarised in CWA Position Paper, "Scale, cost risk, and the need for rules".

[56] *Draft Guidance* s 3.17.2.

[57] *Draft Guidance* s 3.22.

[58] *Draft Guidance* s 3.22.1 (capital contribution charges pricing principles).

The current position illustrates why the test matters. The commission's own approved 2025–26 maximum prices schedule for Greater Western Water's central region (the region in which a number of these connections are located or proposed) sets the following water usage fees:[59]

Customer	Volumetric price	Structure
Residential, first 440 L/day	$3.6413/kL	Stepped
Residential, above 440 L/day	$4.1629/kL	Stepped
Non-residential, all volumes	$3.2649/kL	Flat: no step, any meter size

The largest and most continuous users therefore face the lowest volumetric price in the system, and no scarcity signal at the margin at all, while households face a rising block tariff. We do not suggest this arrangement is unlawful or that the business has erred: it is consistent with tariff principles that require only that class revenue sit between avoidable and standalone cost, and consistent with a determination the commission itself approved. We suggest it shows what those principles produce on their own when a new kind of customer arrives whose demand decides when the next dam, desalination order or recycling scheme is needed. Without a marginal-cost test alongside them, the result is not defensible.

(c) The risk that reserved capacity is never used should sit with the applicant

Hardening the reservation-charge provision is a small change with a material effect on risk allocation, consistent with the framework's general position that risk should rest with the party best placed to manage it. One feature of these loads sharpens the point: facilities engineered to high availability standards operate continuously, so where evaporative cooling is used the water demand is locked in by design rather than discretionary.[60] Interruptibility, which in other contexts is available as a means of sharing demand risk, is therefore not available here. Where a load cannot be curtailed, the reservation charge is the principal remaining instrument for allocating the risk of reserved-but-unrealised capacity, and it should not be left permissive. The same characteristic bears on level-of-service commitments: a business whose forecasts accommodate non-interruptible industrial demand should be able to show its customers what that implies for the frequency of restrictions falling on households.

(d) Nothing protects an established environmental recycled-water allocation

This is our principal concern with the new section. Recycled water committed to an environmental use has no status under the pricing framework. Where such an allocation exists and a revenue-generating connection applicant emerges, s 3.22 would facilitate the reallocation (costs assessed, charges negotiated, connection processed), with nothing requiring the business to identify what the water currently does.

The concrete case is Macleod Morass, a 520-hectare freshwater marsh forming part of the Gippsland Lakes Ramsar site, whose freshwater character is sustained by filtered recycled water from the Bairnsdale Wastewater Treatment Plant under a scheme built and co-funded by East Gippsland Water in 2002; Ramsar resource condition targets

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[59] Essential Services Commission, *Greater Western Water: Approved 2025–26 maximum prices*, Tariff and Price Component (Central Region), items 1.1 (Residential water tariff) and 1.2 (Non-residential water tariff), effective 1 July 2025 to 30 June 2026. The residential Step 1 rate applies to 0–440 litres per day, Step 2 to volumes above 440 L/day; the non-residential rate is a single volumetric price applying to all volumes and all meter sizes, without stepped structure.

[60] CWA Position Paper, "Victoria's water pricing framework: Strengths — and a blind spot", noting that facilities engineered to Tier III and Tier IV availability standards operate continuously through maintenance and component failure.

require median annual salinity to be maintained below 1 ppt.[61] The gap is compounded by a corresponding silence in the outcomes framework: the environmental service this recycled water performs is nowhere expressed as an outcome, measure or target, so a reallocation away from it would register neither in the connection assessment under s 3.22 nor in the business's Performance reporting.[62] We do not ask the commission to adjudicate water allocation, which is beyond its remit. We ask only that the trade-off be visible before a determination approves the charging framework that would enable it.

The same problem exists at state scale. The *Central and Gippsland Region Sustainable Water Strategy* commits to returning in excess of 100 GL to flow-stressed river systems by 2030–32, and a substantial part of that recovery depends on alternative sources (recycled water, stormwater and desalination) substituting for water currently harvested from rivers.[63] Those are the same sources for which large industrial connections are now competing.

> **Where recycled water is directed to a new industrial connection, the question of what it would otherwise have substituted for is not asked anywhere in the pricing framework.**

That is the disclosure our recommendation seeks, and it is the reason we frame it as disclosure rather than restriction: the commission is not the body that resolves the competition, but its determination should not be made blind to it.

A note on price signals and source

We support fit-for-purpose recycled water and stormwater being supplied to high-volume users such as councils for irrigation of parks, ovals and street trees. Our marginal-cost argument is therefore directed at source, not volume: potable water priced to reflect its marginal source, and recycled and stormwater priced to remain competitive against the potable supply they displace. A high-volume user should face a strong signal to switch source and, having switched, a weak signal to reduce volume, because the binding constraint is potable extraction rather than water use as such.

On existing large users

We do not propose repricing existing connections, which would offend the price-shock principle at clause 11(d)(ii). We ask instead for disclosure (volumetric prices for high-volume non-residential classes stated against long-run marginal cost, with divergence justified), and note that the draft already contemplates transition at contract renewal, providing that renegotiated agreements are subject to determination.[64]

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[61]FOGL Submission § 6.3, citing East Gippsland Water published information and East Gippsland Catchment Management Authority, *Gippsland Lakes Ramsar Site Management Plan 2024*.

[62]East Gippsland Water's Outcome 3 ("Improved environmental outcomes") comprises a plant upgrade milestone, a count of EPA licence non-compliances, and emissions against a net-zero trajectory; the recycled-water supply sustaining Macleod Morass does not appear among its measures or targets. East Gippsland Water, *Performance Scorecard* (2024) and (2025), Outcome 3.

[63]Department of Energy, Environment and Climate Action, *Central and Gippsland Region Sustainable Water Strategy* (2022), flow restoration commitments; see also *Water Security Plan for Greater Melbourne, Geelong and Connected Towns 2025*. Volumes collated in CWA Position Paper, Appendix 2.

[64]*Draft Guidance* s 3.22.1 (ongoing charges pricing principles).

Recommendation 5: Tracking deferral commitments (s 2.6; Appendix E, Performance)

Guidance section	s 2.6; Appendix E (Performance)
What we ask	Report annually on the demand-side measures relied upon to defer augmentation
Nature of the change	Information requirement

Proposed drafting change

That where a price submission relies on demand-side or alternative-source measures to defer capital augmentation, those measures be included as outputs within the outcomes framework, reported annually against the trajectory assumed in the submission, with material under-delivery addressed in the Performance element at the following review.

This recommendation is where supply resilience becomes checkable.

> **When a business defers augmentation on the strength of demand management, water efficiency or substitution, those measures are not an accounting device: they are the resilience strategy, the plan by which the system stays within its extraction limits while demand grows. A capital commitment of equivalent significance would be tracked through delivery. The demand-side commitment that replaces it should be tracked with the same seriousness, and in the unit that matters, water saved or substituted, rather than dollars spent.**

We support the expansion of annual performance reporting to include expenditure against benchmarks.[65] The Performance element addresses whether promised outcomes were delivered and how expenditure compared with benchmark. It does not currently ask whether the demand-management program that justified deferring an augmentation was in fact delivered.

That gap has a predictable consequence. A business may defer augmentation on the strength of demand-side commitments, under-deliver those commitments, and arrive at the next review with a supply constraint that justifies the augmentation on grounds of urgency, having been credited at both reviews. The guidance actively encourages deferral through its treatment of uncertain projects,[66] which we support as cost discipline; the corollary is that the basis for deferral should be tracked.

A worked illustration from current outcomes reporting

East Gippsland Water's outcome "Prepare for population growth and a changing climate" carries exactly two measures:

- a project milestone for the Woodglen raw water storage (the supply-side limb); and
- the cumulative value of water efficiency rebates granted (the demand-side limb), against a trajectory rising from $90,000 in 2023–24 to $450,000 by 2027–28. The capital measure has progressed through business case approval to design development. The demand-side measure has not: $20,210 was granted in the first

[65] *Draft Guidance* s 2.6.
[66] *Draft Guidance* s 3.9, options 1–3 for projects not fully scoped or costed.

year against a $90,000 target, and $71,469 cumulatively by the second year against a $180,000 target, under 40 per cent of the committed trajectory, with the business recording the outcome as not met.[67]

We make no criticism of the business, which has reported the shortfall transparently and is expanding the program. The problem is built into the framework, not into this business. Within a single outcome, the building half is progressing and the water-saving half is not, and nothing responds to the difference.

A second feature of the same measure is this submission's whole argument in miniature. The demand-side measure is expressed as the value of rebates granted (a measure of expenditure) rather than as water saved or demand avoided, which is the value the expenditure was intended to produce.

> **Under the criteria at s 3.4.1, output measures must be relevant to or a reasonable proxy for the outcome they represent.[68] Where a demand-side measure is relied upon to defer augmentation, the quantity that matters is the demand avoided, and we ask that the guidance say so.**

The mechanism already exists. *Annual Water Outlook*s are prepared and published, and set out the planning scenarios against which delivery could be assessed. Extending the outcomes framework to capture deferral-enabling measures requires no new reporting vehicle.

Recommendation 6: Marginal-cost disclosure for continuing tariffs (s 3.19.3)

Guidance section	s 3.19.3
What we ask	Extend the marginal-cost disclosure requirement to continuing tariffs
Nature of the change	Information requirement

Proposed drafting change

That the requirement to describe the relationship between the proposed price and the associated short-run or long-run marginal cost be extended from new and amended tariffs to continuing tariffs, with divergence justified, and that long-run marginal cost be specified as including the cost of the next augmentation.

In plain terms

When a water business invents a new charge, it must currently explain how that price relates to what the water actually costs to supply. When it simply carries an existing charge forward (which is what happens to most of the prices people pay, year after year) it need explain nothing. We ask that the same question be put to the prices that are already there, and that "what the water costs" be understood to mean the cost of the next water the system has to find, including building whatever supplies it next, rather than the average cost of water it already holds.

The draft requires a business proposing a new tariff to describe the relationship between price and marginal cost.[69] Continuing tariffs carry no equivalent requirement, and the draft indicates that continuation of an existing structure

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[67] East Gippsland Water, *Performance Scorecard* (2024) and (2025), Outcome 4 ("Prepare for population growth and a changing climate"), measures a and b. The business rated the outcome amber in 2023–24 and red in 2024–25.

[68] *Draft Guidance* s 3.4.1 (proposed output measures must "be relevant to, or be a reasonable proxy for, the delivery of the outcome they represent").

[69] *Draft Guidance* s 3.19.3.

may satisfy clause 11 more readily.[70] The result is that the tariffs with the largest cumulative effect on both conservation signals and bills are the least examined. Table 3.5 already states that the volumetric charge should have regard to long-run or short-run marginal cost. But that principle is one the commission encourages businesses to consider, and no disclosure obligation attaches to it for a tariff that is simply carried forward. The gap sits oddly with the WIRO, which requires the commission to place particular emphasis on promoting the efficient use of prescribed services by customers; the volumetric price on a continuing tariff is the main instrument that emphasis has.[71] The Greater Western Water charges described at Recommendation 4(b) above are continuing tariffs, and would not attract a marginal-cost explanation under the requirement as presently drafted.

We confine this recommendation to disclosure. We do not propose rebalancing residential recovery between fixed and volumetric components. In Victoria there is no version of that change that does not fall on somebody who can ill afford it. The commission's own final decision for one regional business estimated a 2023–24 annual bill of $1,331 for a residential owner-occupier at 141 kL of consumption, and $359 for a residential tenant at the same consumption, implying that approximately $972, or some 73 per cent of the owner-occupier bill, is not related to consumption.[72] That fixed share falls on owner-occupiers including pensioners and low-income owners, while shifting recovery toward volumetric charges transfers cost to tenants, who under Victorian arrangements pay only the usage component.

What remains is not an argument about fairness between households, but about the signal the price sends. On those figures, only about a quarter of a residential bill changes according to how much water the household actually uses, in systems that in some cases face a third less streamflow within fifteen years. The commission should be able to see that, and disclosure is what would let it.

Closing

Each recommendation above is a change to what businesses are required to demonstrate, what the assessment tool recognises, or what the proposed incentive scheme measures. None asks the commission to substitute its judgement for that of businesses or their customers, and none departs from the propose-respond model. Together they address the same defect at the three points where it operates.

Value realised after the period closes. The efficiency scheme measures cost within a four-year window while the return on the expenditure it discourages arrives after it (Recommendation 1); the assessment tool evaluates ambition within the regulatory period while the guidance already requires expenditure to be justified across a twenty to thirty year horizon (Recommendation 2); and the Performance element asks whether commitments were met without asking whether the demand-side measures relied upon to defer investment were delivered (Recommendation 5).

Value accruing to parties not in the room. Engagement is how the framework finds out what customers value. But nobody can currently check whether a business asked the right question, of a representative group, on balanced information. So environmental value, the interests of future customers, and the question of who ends up paying all go unrecorded, for the same reason each time: the survey did not ask (Recommendation 3).

Value in the resource, as distinct from the cost of delivering it. Connection charges price the works but not the water, and a reallocation of recycled water away from an environmental use registers in neither the connection assessment

[70] *Draft Guidance* s 3.19.2.
[71] WIRO cl 8(b)(i); *Draft Guidance* s 2.2.1.
[72] Essential Services Commission, *East Gippsland Water Final Decision: 2023 Water Price Review* (22 June 2023), Table A (estimated typical annual water and sewerage bills, 2023–24, $2023–24). See also FOGL Submission § 4.3, reaching a consistent estimate of the fixed component.

nor performance reporting (Recommendation 4); volumetric prices reflect the cost of delivery rather than the cost of the next unit of supply (Recommendation 6). None of these requires the commission to assign a value to the environment. Each requires only that where value exists, the framework be capable of recording it.

> **Recorded value can be rewarded, and rewarded value will be delivered. That is the alignment these recommendations seek: an incentive framework that carries the commission's own objects, environmental sustainability including water conservation, particular emphasis on the efficient use of water, and the long-term interests of Victorian consumers.**

We would welcome the opportunity to discuss this submission and to participate in the further stages of the review.

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