12 November 2021

Ms Kate Norris
Director, Strategic Energy Projects
Department of Planning, Industry and Environment

Email: Electricity.Roadmap@dpie.nsw.gov.au

Electricity Network Infrastructure Projects (Part 5 of the Electricity Infrastructure Investment Act 2020) Policy Paper

Dear Ms Norris,

Energy Networks Australia (ENA) appreciates the opportunity to comment on the NSW Electricity Network Infrastructure Project Policy Paper.

ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

There are benefits to a more connected grid in the transition to a highly renewables-based energy mix. ENA supports network projects being delivered in a timely manner, however, ENA notes that no Integrated System Plan (ISP) projects has been fully developed under the new actionable rules and progressed to the point of funding. There are however some learnings that will be considered in the Australian Energy Market Commission's (AEMC) Transmission Planning and Investment Review regarding improvements to the actionable ISP framework. The robustness and transparency of the actionable ISP framework will need to be weighed against a more confidential commercial process with less transparency of the benefits for customers of each investment.

ENA has provided a detailed response in the attachment, in summary:

Guiding Principles

- ENA supports the framework ensuring that critical enabling transmission network developments are financeable by the Network Operator (NO) and also suggest a guiding principle of minimising total system costs over the longer term.
- The guiding principles would also benefit from a further principle of aligning risk and returns.

Classes of Network Infrastructure

- Class 4 assets covering system security may not be required, if it proceeds its purpose should be clear
- A clearer framework is needed for transmission services related to connection and network operations under the National Electricity Rules (NER) and clarity of the Primary Transmission Network Service Provider (PTNSP)/NO responsibilities under this framework and other regulations

- The framework is complex with EnergyCo, Infrastructure Planner (IP), Consumer Trustee (CT), TransGrid, NO, Australian Energy Market Operator (AEMO), connecting parties, DPIE, Regulator etc. and will benefit from very clear roles, responsibilities and accountabilities.

Identifying, assessing and authorising a network infrastructure project

- ENA support a longer term, whole of asset life, view when assessing projects. This will minimise the long-term total system costs for consumers.
- NSW Regulations should clearly define when the opportunity for contestability may be used for the delivery of transmission and distribution assets and should only be undertaken where any benefits clearly outweigh the costs, including any risks associated with having more than one network owner in a meshed transmission system.
- ENA have provided suggestions for eligibility criteria, however these should be only considered once the NO role is better defined.

Funding and financing preparatory activities and development works

- ENA supports keeping the option open to utilise both funding options for the IP's costs. It may be preferable to recover the IP's costs directly from the Scheme Financial Vehicle (SFV) in all cases to reduce any risks to commercial deliverability. In any event, NO should only need to reimburse EnergyCo as they receive the revenue.
- Transparency of costs is afforded if there is a separate application to the SFV for preparatory work and for development of early works.
- Shifting responsibility for social licence from the IP to the winning bidder part way through the overall process creates material challenges. It is worth clarifying the responsibilities of the IP in relation to social licence vs the winning bidder's role. This handover point should be tightly defined, and it may be preferable to evaluate the benefits of involving the bidder(s) earlier or later in the process.

Transmission Efficiency Test (TET) and Regulator determination

- Large transmission infrastructure development needs to be financeable and the impacts on consumers needs to be transparent and supported.
- The Regulations should provide clarity of which aspects of the national economic regulatory framework will be utilised and are not up for negotiation in the tendering and revenue setting process and the rationale for any variation should be provided
- ENA note that the AEMC Transmission Planning and Investment Review is considering the financeability issue more broadly and urge the NSW Government to work with the AEMC to ensure maximum possible consistency with any solution delivered under the national arrangements.
- ENA support NSW Regulations providing clarity of the scope of the Revenue Determination Guidelines and the Regulator being able to develop Guidelines to clarify how the revenue determination process will be undertaken and how costs will be assessed
- In any event, all businesses who respond to a competitive tender should be treated on an equal footing in the setting of a revenue allowance. This will require all parties being subject to the same standards, requirements and legal obligations that TransGrid is subject to in NSW. This includes

those relating to TransGrid's licence, the National Electricity Law and Rules, the National Critical Infrastructure Act, including enhanced requirements for Systems of National Significance.

- The incentives arrangements in the NER apply to regulated, prescribed services under the NER. NSW is adopting a competitive approach and these incentives could form part of the negotiated contract arrangements.

Reviewing a regulatory determination

- Re-opening revenue determinations may be better left as a matter between the incumbent Network Service Provider (NSP) or NO and the Regulator. The CT does not need limited rights to seek a re-opening.
- ENA agree that the Regulator should have limited rights to re-open a revenue determination, these rights should be limited and aligned with those in the NER.
- Any transitioning of assets from the NSW framework to the NER should only be on request from the NO or with the NO's approval.
- The framework should not prevent novation of the network assets and the revenue allowance over to a new party.

There is benefit in developing a "swim lane" diagram of the authorisation and contracting processes of the CT and IP, revenue determination and commissioned connections for a project to assess realistic timeframes for tasks – consultation, negotiation, and decisions, from the commencement of an Infrastructure Investment Objectives Report (IIOR) and identification of a need to the delivery a commissioned project. This would provide more clarity for stakeholders, but also map out any opportunities for further streamlining before the Regulations are finalised.

The NSW Government also needs to provide more clarity on how costs and revenues will be determined for work that is undertaken through a non-contestable process.

ENA and its members are keen to better understand the framework and would welcome the opportunity to meet with DPIE to discuss aspects of this submission.

Should you have any queries on this response, please contact Verity Watson at vwatson@energynetworks.com.au.

Yours sincerely

Jill Cainey

General Manager Networks

Attachment

Guiding Principles should be enhanced

The purpose of the framework is to enable important network projects to progress to development in a faster timeframe than has traditionally occurred. The guiding principle on timeliness should be limited to faster delivery not the same delivery timeframes. A framework that establishes the costs of new administrative bodies for the purpose of better coordination and faster delivery than the current arrangements should have guiding principles to meet its intent and ensure benefits to energy consumers.

ENA supports the statement that social licence should be maintained for network delivery and operations, however it is not clear in this Policy Paper who has clear responsibilities for ensuring this and where and how best the hand off points can be managed. There are examples of contestable network delivery in the National Electricity Market (NEM) where this has not worked well, these learnings should be taken into account in the development of this framework.

The guiding principles would also benefit from a further principle of aligning risk and returns. Existing responsibilities are not intact – a Transmission Network Service Provider (TNSP) designs, builds, owns and operates their network and takes the risk for a regulated return. If the incumbent TNSP is operating and maintaining someone else's network there are changes to processes and risks. Renewable Energy Zones (REZs) are likely to be larger than Designated Network Assets (DNAs) with varying processes and oversights between the two frameworks. Some questions remain for resolution - Which NSW body is project managing the contract, quality and reliability of the delivered product, commissioning? If the delivered solution is not up to scratch where do the accountabilities and liabilities rest?

ENA supports the framework ensuring that all projects are financeable by the NO and also suggests a guiding principle of minimising total system costs over the longer term.

Classification of REZ network infrastructure aligned to the NER is supported

Class 4 – system security may not be required its covered by class 1 and 3

Under the AEMC's recent system strength rule, TransGrid has the responsibility to deliver system strength services to meet the system strength standards and may coordinate with other networks, seek re-tuning or other non-network options, or consider network options. TransGrid has the responsibility to deliver the system strength services in planning timeframes and should have the discretion as to how they are delivered in NSW. If load and generation connections within the REZ wish to mitigate their own system strength needs, they have the ability to do this under the NER framework. Class 4 is not a feature of the NER. TransGrid will be able to deliver these services under class 1 or 3.

If the NSW framework does proceed with the class 4 system security, it would be useful to make the purpose clear and the implications. Under the NER arrangements there is a clear methodology for calculation (and charging) of system strength services for generator or load connections that consume system strength services. Any remaining under recovered costs of providing system strength services are recovered through the System Strength Service Providers prescribed transmission charges.

If the IP seeks to organise system strength provision in the tenders sought will the system strength costs be subsumed into the network capital, considered as part of the TET and only charged to distribution customers? Will the respective REZ be carved out of TransGrid's responsibility with the NO taking on that

role and all costs? What incentive is there for a connecting party to reduce their system strength requirements?

Clearer framework is needed for transmission services related to connection and operation

The Policy Paper framework is not clear whether a competitive NO operates and maintains its network. The term and parts of the Policy Paper suggests the NO does operate their network and other parts of the framework suggests that TransGrid would undertake the system operations. The types of assets in the DNA rule change in relation to transmission services and connection, NER 5.2A.4 (a), need to be made clear in this framework as to who has what responsibility for designing and procuring them. The DNA framework was intended for networks that were paid for fully by the connecting parties and was limited to radial network. This may not be the case with larger scale REZs.

Responsibilities for functional and technical design and delivery need to be clear for the supervisory control and data acquisition system, communications equipment and control settings. It is likely that there will be a need for TransGrid to commit resources/funds to deliver some components for the system operation, provide information as needed for procurement activities and the IPs network strategy and participate in commissioning. The Regulations should make it clear that TransGrid can negotiate the operating cost with the NO.

Need to improve the clarity of NSP/NO responsibilities under this framework and other regulations

ENA note that the Policy Paper states that contestability will be an option where it is practical and feasible. As mentioned above, the framework for DNAs was intended for minimal use where generators collaborated and fully paid for their designated network assets and not consumers. The network could only be radial and could not mesh back to existing network.

The framework here is unclear, the use of a DNA type approach is mentioned only in a footnote. The need to provide for a contestability option on a Distribution Network Service Provider (DNSP) network has not been justified and further the DNA framework doesn't apply on distribution networks. Greater justification and practical explanation of how this will work is required.

There are many questions raised by the Policy Paper in this area. Does the NO maintain their assets and the NSP operate them? This is one potential interpretation of the Policy Paper and is a different framework to that operating in Victoria or under the DNA rules. How does a NO integrate with an NSP, what are the state licencing obligations and NEM registration obligations of the NO, where do liabilities and responsibilities lie? For example, for bushfire and extreme weather events, do both parties need to seek insurance in a dwindling insurance market with increasing premiums? Who has the list of NMIs to assign to connection points, who processes connection requests under the NER and works with AEMO on Generator Performance Standards etc. The framework is complex with EnergyCo, IP, CT, TransGrid, NO, AEMO, connecting parties, DPIE, Regulator etc. and will benefit from very clearly defined roles, responsibilities and accountabilities.

In addition, there are likely to be elements of some network projects that are not suitable for contestability and which need to continue to be owned and operated by the incumbent network operator. For instance, elements of a project relating to the cyber security and communications functions of the assets are not suitable to be contestably provided. This is because these functions are integral to the incumbent NSP meeting the obligations placed on it in relation to the overall safety and security of the network. We would appreciate further clarity on this issue.

Careful consideration of funding of preparatory activities and development works is required

NO should only need to reimburse EnergyCo as they receive the revenue

The Policy Paper poses two options for recovery of EnergyCo/IP costs for early works;

- Recovery from the NO who recovers as part of the overall project cost in the regulator's determination. EnergyCo could also seek underwriting/ pay interest until the winning bidder provided cost recovery, or
- Recovery of costs directly from the SFV.

These costs could cover preparatory work, tendering and procurement activities and early works and could include soil sampling, significant community engagement and may include negotiation of land access or land acquisition. The costs to be paid by the NO could be significant covering 3-4 years or preparatory and early works. The NO should only need to reimburse EnergyCo as they receive the revenue.

Where there has been a material change in costs, market benefits or policy direction and a project does not proceed then the only option is to recover from the SFV. It may be preferable to recover the IP's costs directly from the SFV in all cases to reduce the deliverability concerns. ENA support both options remaining.

When considering option value and future REZ expansion then a project could overbuild a REZ or the IP procure land in advance and treatment of these costs should be made clear.

Transparency of preparatory and early works costs is supported

Transparency of costs is afforded if there is a separate application to the SFV for preparatory work and for development of early works. The work required for the preparatory works may be similar to the scope in the NER for a REZ design report. It is worth defining the scope of the development or early works further – land purchase or access, payment of bio-diversity costs, extent of soil sampling, payment to community benefits, payment of tender documentation preparation and assessment etc.

In particular, shifting responsibility for social licence from the IP to the winning bidder part way through the overall process does create material challenges. It is worth clarifying the responsibilities of the IP in relation to social licence vs the bidders role.

ENA understand that the IP will ensure that preparatory work and development or early works are undertaken, but they may contract out this task. This could for example be contracted to one or more companies likely to bid on the final project. Where these works are contracted out there must be clear accountability and responsibilities for the hand over points. Where one party decides on the preferred option and route and another party bids on the construction work care needs to be taken to ensure that this works well. This handover point should be tightly defined, and it may be preferable to evaluate the benefits of involving the bidder(s) early or late in the process rather than having a hand over point part way through.

It is noted that the IP can undertake these activities or engage parties to undertake specific activities. Either way good governance and controls need to be in place and probity, given these are large contracts.

ENA is also mindful that if potential bidders for the construction work are paid to undertake these early works to refine their bids, then consumers may be paying for duplicated effort.

Separate public application for funding may meet transparency. There is a balance between a straight pass through of these costs with consumers ultimately paying and Regulator oversight on the efficiency and prudency of these costs. It is not clear from the Policy Paper whether the IP submits the costs for preparatory works and development works to the SFV or to the bidder and whether the Regulator will waive these costs through as capex in the TET or opex in the bidders revenue application regardless of who has undertaken the work. There does not appear any regulatory oversight or assessment of efficient costs for IP and early works expenditure. Under the NER early works are subject to regulatory oversight and can be disallowed if deemed inefficient. The treatment as opex or capex in these two options will vary the cost volatility borne by distribution consumers.

Network infrastructure project authorisation

NSW Regulations should clearly define when contestability may be used

ENA support a long-term view of the most effective network project scope and design that seeks to minimise the long term total system costs for the benefit of consumers. The Policy Paper in some cases considers that the NO builds, owns and finances a REZ, whilst in other parts the NO also operates their own network. The term NO seems to imply the latter definition. In any case, the roles and responsibilities need to be clear for all bodies involved.

ENA agrees that where existing network infrastructure requires upgrading due to a REZ project then the incumbent network e.g. TransGrid or the relevant DNSP undertake the work, these assets are already part of the regulated framework under the NER. The same should apply to meshed infrastructure or infrastructure likely to be meshed. The NSW Regulations should clearly define when the opportunity for contestability may be used for delivery of network assets. Any infrastructure that is contestable needs to be limited to radial, separable assets above a certain cost threshold and should be likely to remain radial, that is, not likely to be meshed in the future.

The Regulations will need to ensure that the benefits of contestability outweigh the costs and will result in a realisable long term system cost reduction for consumers and not add unnecessary complexity, risks to system security, reliability, emergency management etc. Farrier Swier[1] have also considered a number of principles and criteria for contestability at the transmission level, these should also be considered in more detail for any distribution contestability. The Policy Paper provides a footnote to imply the DNA type arrangements could be used, however these do not apply on distribution networks.

The potential to have a daisy chain of frameworks should be made clear, including the roles and responsibilities for connection etc. For example, DNA connected to Electricity Infrastructure Investment Act (EIIA) REZ to NER regulated shared transmission network. This is complex and will need clarity of accountabilities and liabilities.

[1] https://www.energynetworks.com.au/resources/reports/2021-reports-and-publications/farrier-swier-transmission-contestability-principles/

Clarity of the IPs process and the CTs – timings of the chicken and the egg

The IP develops a 10 year network strategy and progresses the pre-construction work for a REZ project. The IP can recommend a winning bidder or NO to develop a REZ project to the CT or can propose a preliminary recommendation.

Options analysis undertaken by the IP is likely to include technical parameters, combinations of network and non-network options, route options, staging, sequencing, funding and cost recovery for project. It appears that the IP may be informed by expressions of interest or tenders in refining the optimal network design and may seek an interim authorisation

The interim authorisation, Long Term Energy Service Agreement (LTESA) auctions and influence on network design appears to be iterative, reflecting the coordination need of network and generation. It appears that the LTESA auction, access rights and network infrastructure tendering may occur in parallel. ENA welcome the coordination of generation and transmission investment and delivery. However, there may still be a risk that network contracting, revenue allowance determination and construction take longer than the delivery of commissioned generators. In the DNA framework it was noted that there cannot be a connection agreement progressed until the network is delivered.

There is benefit in developing a "swim lane" diagram of the authorisation and contracting processes of the CT and IP and commissioned connections, this may be beneficial to clarify process and timings to ensure the earliest coordinated commissioned infrastructure. If the national arrangements also involve any connections batching arrangements, application of these in the NSW process steps would also need to be considered, including AEMO's role on NEM advisory matters in establishing the Generator Performance Standards.

Eligibility criteria should be further refined once the NO's role is clear

The final framework should make it clear who is managing the programme of REZ works and project delivery. Whilst the IP undertakes community engagement and land acquisition to facilitate the REZ, they potentially should continue to be involved to ensure continuity of community and landowner engagement. It is not clear who in the NSW framework is the ultimate programme manager with day-to-day accountability for the delivery of the network aspects of the roadmap, including interoperability and quality. A winning bidder or prospective NO is authorised to carry out the project by the CT but who is overseeing the prospective NO delivery?

There are a number of factors for inclusion in eligibility criteria:

- Proven ability to manage large electricity transmission construction programmes including delivering on time and on budget, manage stakeholder engagement and reporting;
- Proven capacity to undertake the works- resources, partnerships with vendors;
- Understanding of the technical requirements in the NER and NSW transmission licence and ability to comply with them, including compliance with critical infrastructure arrangements, foreign ownership etc;
- Ability to proactively work with stakeholders on data requests, power system operations on an ongoing basis eg TransGrid and DNSPs on NER matters eg power system risks, additional monitoring, data provision, AEMO, NO infrastructure commissioning etc;
- Proven capability to engage local content – training, housing, community, cultural;

- Proven engagement and collaboration for linear above ground electricity transmission infrastructure;
- Agreement to comply with transparency of costs in the TET and revenue determination process; and
- Demonstrated ability to finance the project and meet any prudential requirements, including the up front IPs costs.

The eligibility criteria should be reassessed once the NER connections and registration process becomes clear, the NSW licencing and NEM registration arrangements of the NO etc.

Suggest careful use of Directions powers

Assuming that the network infrastructure is needed and in the long-term interests of consumers and supported by consumers and local community Directions powers could be an option. However, the Direction of a party needs to be accompanied by acceptable contract terms and conditions. The project needs to be financeable and the directed party able to remain solvent.

It is not clear whether community acceptance and land access issues, planning approvals have been resolved satisfactorily by the IP or left to the winning bidder, with the Directions power being to force the winning bidder to deliver the project.

It is not clear whether the powers would be used to force a winning bidder to continue a fixed price contract that is making significant losses.

Transmission Efficiency Test and the Regulator's determination

Clarity of a robust, transparent revenue determination process is supported

ENA support NSW Regulations providing clarity of the scope of the Revenue Determination Guidelines and the Regulator being able to develop Guidelines to clarify how the revenue determination process will be undertaken and how costs will be assessed. The Regulations should make it clear how the IP's costs, if they are included in the NO's revenue determination are treated, are they assumed to be prudent and efficient? The Regulations should also make it clear how the contestable process works and whether confidentiality can be claimed in the revenue setting process. It is important that consumers have confidence in the IIOR and the underlying projects and costs that they ultimately bear.

Figure 6 suggests that there is meaningful consultation with stakeholders on the revenue determination process and that the Regulator will be informed by the responses. The boundaries of what is required for meaningful consultation so stakeholders are well informed should be clear in the NSW Regulations.

ENA supports the elements outlined in the Policy Paper for inclusion in the Guideline. The Regulations should provide clarity of which aspects of the national economic regulatory framework will be utilised and are not up for negotiation in the tendering and revenue setting process and the rationale for any variation should be provided.

This approach is consistent with the ESB's decision document endorsed by National Cabinet[2][3]

'*To avoid unnecessary divergence in the NEM framework, the ESB suggests that economic regulation arrangements associated with REZ infrastructure projects should only diverge from the National Electricity Rules to the extent necessary to give effect to government policy and any material departures should be transparent (R.3.3). Where a regulatory arrangement is not directly related to the public policy objective then the alternative arrangements should seek consistency so far as possible.*'

Treatment of Government financing arrangements should also be made clear in the revenue setting process and the benefits of such an approach returned to consumers.

Until the matters outlined above are teased out, the Regulator role may be quite limited and mechanistic if determining the revenue allowance consistent with the competitive tender outcome, without the need for any further scrutiny or consultation. This would have the effect of closing stakeholders out until the impact is felt on consumers bills. The Regulators discretion may be quite limited regarding prudency, efficiency and reasonable cost assessments for the network infrastructure in setting a revenue allowance.

On the other hand if a commercial IP was appointed for a REZ, other than EnergyCo, the preparatory and development works costs should be subject to efficiency and prudency.

The broad aspects of the building block approach outlined in Fig 7 are consistent with details in the Act and are supported. It is the next level down of RAB indexation, depreciation commencement, depreciation schedules, rate of return etc that could be considered for variation. Large transmission infrastructure development needs to be financeable, and impacts on consumers need to be transparent and supported.

In any event, all businesses who respond to a competitive tender should be treated on an equal footing in the setting of a revenue allowance. This will require all parties being subject to the same standards, requirements and legal obligations that TransGrid is subject to in NSW. This includes those relating to TransGrid's licence, the National Electricity Law and Rules, the National Critical Infrastructure Act, including enhanced requirements for Systems of National Significance.

The scope of commercial arrangements, Regulator discretion and NSW/national/state rules needs to be made clear

The interactions of the commercial arrangements and the NSW, national and state rules need to be made clear.

There are significant questions outstanding - The Regulator only assesses capex costs in the TET, does this mean that all the opex cost recovery for the IP's work, the community schemes the land access payments,

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[2] Energy Security Board, Interim Framework for REZs, Final recommendations, June 2021, p25 https://esb-post2025-market-design.aemc.gov.au/32572/1631503418-esb-decision-document-renewable-energy-zones-recommendations-final-1-june-2021-to-encrc.pdf

[3] Energy security Board, Summary of the final reform packages and corresponding Energy Security Board recommendations, https://www.energy.gov.au/sites/default/files/2021-10/Summary%20of%20the%20final%20reform%20package%20and%20corresponding%20Energy%20Security%20Board%20recommendations0.pdf

maybe ongoing opex negotiated by the IP are all passed through without question? EnergyCo is the IP for the first 5 REZs, however other IPs could also be appointed in future.

Under the national regulatory arrangements these early works, or development costs would be assessed in a contingent project application by the Australian Energy Regulator (AER) for efficiency and prudency, consumers should be afforded a similar protection in the NSW framework. The Regulator should calculate the prudent, efficient and reasonable capital costs for development and construction of the infrastructure project but also any ongoing opex costs.

NSW REZs are likely to be far greater in size than DNA's and may mesh back to shared transmission network. Should the NO have some direct national rules obligations to participate in risk reviews and remediation actions in a rapidly transforming energy mix? Is it the NO or the PTNSP who has the responsibility for ongoing maintenance? The framework needs to be clear upfront for tendering parties and enable seamless integration for system operation.

ENA support the Regulators guideline making it clear information to be provided by the NO, and the Regulators timeframe for undertaking public consultation and finalising a revenue determination. There is benefit in "swim lane" diagram of the interactions of the IP's expression of interest, tendering, negotiation of best offer and contract signing and the interactions with the CT's preliminary and final authorisation, timeframe for the prospective NO to submit a revenue proposal and the Regulators time to reach a final determination. The Policy Paper implies that the bid is binding and all these processes can just follow, however our understanding is that the NO is not under any obligation to undertake the project until the Regulator makes a determination. This may clarify some of the discretion the Regulator may have on prudency and efficiency of costs and incentive arrangements.

There should be a clear consultation requirement in the Regulations to clarify the Regulators views, particularly on cost matters that deviate from the national framework and alter the revenue profile. Noting that like the Regulator, consumers are not in a position to challenge the need for the project or the technical solution, just cost and (limited) revenue allowance matters.

For a major network failure would the NER cost pass through type approach be adopted? Who makes the call if the infrastructure shouldn't be replaced or replaced with something different, the IP?

Improved clarity of Regulator discretion

The IP will tender for a network project and negotiate with 1 or more bidders to seek the best offer in terms of price and reliability. To enable the IP to make a recommendation to the CT, they will need to be able to trade off rates of return, capex, opex, depreciation timing, overall long-term reliability outcomes for NSW consumers etc and potentially across a number of bids.

Is the Regulator TET guideline and stakeholder consultation just on the capex cost or the revenue allowance terms and conditions or both? It would be useful for the framework to clarify what discretion the Regulator has - which national economic framework aspects must/may be adopted and which aspects of a bid may be open for the Regulator to seek a variation. The role of the Regulator and stakeholder consultation may be quite limited.

Should the Regulators consultation paper make it clear the incremental cost to the consumer of any potential options or variations from the NER?

Once the project is up to TET and revenue determination, information should not have a confidentiality claim. Customers should understand what they are paying for. This places some discipline on the extent of variations from the NER.

Regulations need to consider financeability

There is benefit in clarifying the commercial arrangements that underpin the NSW Roadmap. The revenue determination outlined in Figure 6 suggests that the revenue determination is informed by the consultation process

ENA note that the AEMC Transmission Planning and Investment Review is considering the financeability issue more broadly and urge NSW to work with the AEMC to develop consistency with the national arrangements. The goal in this regard should be that critical enabling transmission infrastructure developments should be financeable on a benchmark basis taking into account existing regulatory settings.

The role and regulatory obligations on the NO should be made clear

The Energy Security Board's(ESB) final recommendations to the National Cabinet supported REZ incentive arrangements that aligned with those set out in the NER. If the arrangements depart from the NER, the ESB suggests that incentives on the relevant parties to promote efficient investment and delivery of REZ infrastructure as well as efficient operation and use of the commissioned assets are needed.[4]

The incentives arrangements in the NER apply to regulated, prescribed services under the NER. NSW is adopting a competitive approach and these incentives could form part of the negotiated contract arrangements.

Reviewing a revenue determination

Consumer Trustee should have limited rights to seek a revenue determination being remade

ENA agree that the rights of the Consumer Trustee to seek a review or remaking of a revenue determination outside of the 5 yearly cycle should be limited, if required at all. Re-opening revenue determinations may be better left as a matter between the incumbent NSP or NO and the Regulator.

Regulator should have limited rights to re-open a revenue determination

ENA agree that the Regulator should have limited rights to re-open a revenue determination, these rights should be limited and aligned with those in the NER. Under the NER the AER could re-open a revenue determination for a material error, a cost pass through event or a contingent project.

If the REZ project goes over the TET, is there an ex-post review e.g. in the next 5-year determination under the EIIA? Do some or all contracts allow variations at consumers expense, or will they be a capped price? The NSW framework will need to consider the implications for consumers like the Melbourne rail tunnel where the project encountered significant costs for treatment of contaminated soil pass through. Fixed priced contracts may price in risk but this can also limit overspend being passed onto consumers via contract variations.

[4] Ibid p26

The incentive arrangements that apply to a NO or assets built under the EIIA need to be considered as the framework is better defined.

Transitioning of assets between the NSW and national frameworks is only supported with agreement of the NO

Any transitioning of assets from the NSW framework to the NER should only be on request from the NO or with the NO's approval. As the Policy Paper notes any transitioning of assets into the national framework will depend on who the NO is and how similar the two frameworks are for regulating network assets. As noted in responses to the AEMC Transition Planning and Investment Review and the ESB post 2025 papers the frameworks could be quite different in terms of higher rates of return and shorter depreciation schedules.[5]

An alternative may to clarify the terms on which the infrastructure could move from the framework under the EIIA to regulation under the NER.

If the network assets become subject to the NER potentially the NER Transmission pricing methodology would prevail, shifting some costs to transmission connected load customers away from distribution connected consumers.

In the event a competitive NO became insolvent, TransGrid or the relevant NSP should have the discretion to accept the network assets and liabilities.

Novation of network assets from one NO to another should not be prevented

The framework should not prevent novation of the network assets and the revenue allowance over to a new party. The capability of the incoming NO in terms of licencing, NEM registration etc would also need to be considered. TransGrid or the relevant DNSP would also need to accept that the connection agreement could novate over. The incoming NO would also need to agree/accept the technical aspects, quality, liability and risks of the established network assets for the current revenue allowance.

[5] Spark Infrastructure Response to Consultation on Post 2025 Market design, 9 June 21, p3, https://www.energy.gov.au/government-priorities/energy-ministers/energy-ministers-publications/post-2025-market-design-options-consultation
APA Response to AEMC Transmission Planning and Investment Review, 30 Sept 21, p8 https://www.aemc.gov.au/sites/default/files/documents/apa.pdf