

4 July 2024

Mr Rex Reaves
Australian Energy Market Commission
Level 15
60 Castlereagh Street
Sydney NSW 2000

Electronic Submission – ERC0380

AEMC draft determination and draft rule – Bringing early works forward to improve transmission planning

Dear Mr Reaves,

Energy Networks Australia (ENA) welcomes the opportunity to make this submission to the AEMC’s draft determination and draft rule for bringing early works forward to improve transmission planning, to support timely and efficient transmission investment.

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

Timely and efficient delivery of actionable Integrated System Plan (ISP) projects, together with other transmission infrastructure, is critical for continuing the energy transition to a renewable and interconnected electricity system. These major projects typically involve complex technical, environmental and social licence considerations, that require transmission network service providers (TNSPs) to undertake significant early works (including substantive stakeholder engagement) to develop and understand the feasibility of investment options.

Accordingly, ENA fully supports the stated objective of the rule change to “encourage TNSPs to undertake more and earlier planning activities to improve cost estimate accuracy and timely delivery of actionable ISP projects” and supports the proposed commencement date of 29 August 2024.

However, to effectively deliver on this objective, it is important that the rules are sufficiently flexible to allow for a meaningful range of early works to occur prior to the Regulatory Investment Test – Transmission (RIT-T) completion, where the expected benefits for consumers from undertaking these early works outweigh the costs imposed on them.

ENA is concerned that the principles proposed in the draft rule are too restrictive, because:

- » each principle individually is too narrowly constructed, and
- » this is compounded by the expectation that both principles must be met.

In practice, these principles would prevent the majority of early works activities that would benefit consumers from being pursued ahead of RIT-T completion, defeating the Rule's objectives. For example, early works activities involving community consultation on corridors for a transmission line project are unlikely to meet the principles individually or collectively.

The body of our submission provides further examples of early works activities that we consider would not meet the draft principles.

ENA encourages the AEMC to include a less restrictive set of principles for the Australian Energy Regulator (AER) to have regard to, which are able to accommodate a broader range of early works activities being included in a Contingent Project Application (CPA) ahead of RIT-T completion. ENA has provided some proposed principles, and their supporting rationale, in the body of this submission. ENA considers that adopting these principles will better support the objective of the Rule change being met and strike the right balance in investing in targeted early works to manage the risks of cost uncertainty and timely delivery of ISP projects for consumers.

In addition to the proposed modification to the principles, ENA considers that adopting the current CPA threshold (i.e. \$30 million or 5% of Maximum Allowed Revenue (MAR)) is not appropriate for an early works CPA lodged ahead of RIT-T completion, as there will be activities which could be pursued at the RIT-T stage to improve cost estimate accuracy and timely delivery, which may not meet this threshold. ENA suggests an alternative threshold of 1% of MAR be adopted. This is consistent with the materiality threshold applied to cost pass through applications.

Finally, ENA supports a delay to the AEMC's review of the ISP framework, to accommodate learnings from the other reforms to the framework currently in train. The AEMC may wish to consider delaying its review further until 1 July 2029, as a completion date of 1 July 2027 would still not allow sufficient time for the learnings from the 2026 ISP and subsequent progression of the actionable ISP projects to be adequately considered.

Each of the above points is expanded on in the attachment.

ENA looks forward to engaging with the AEMC in finalising this important Rule change. Should you have any queries on this response please feel free to contact Verity Watson, vwatson@energynetworks.com.au.

Yours sincerely,



Dominique van den Berg
Chief Executive Officer

Attachment

Guidance on early works activities to protect consumers from inefficient expenditures

- » Do the proposed principles adequately address the risks associated with submitting an early works CPA and undertaking early works prior to completing a RIT-T?

ENA supports including principles in the rules to guide the AER in determining whether particular works should be eligible for inclusion in an early works CPA lodged ahead of RIT-T completion. Setting these principles out in the rules, rather than in AER regulatory guidance, will provide greater certainty to all concerned.

Improved certainty around the recovery of early work costs at an earlier project stage will allow for enhanced consideration of social, cultural, heritage and environmental factors, and benefit consumers through mitigating the risk of later cost increases or delays to investment.

However, to effectively deliver on this objective, it is important that the principles, and therefore the rules, are sufficiently flexible to facilitate a meaningful range of early works to occur prior to RIT-T completion, where the expected benefits for consumers from undertaking these early works outweigh the costs of the activities.

Concern that principles in the draft rule are too restrictive and undermine the objective of the rule change

ENA is concerned that the principles proposed in the draft rule are too narrow. In practice, these would prevent early works activities that would benefit consumers from being pursued, defeating the rule's objectives. This concern is exacerbated by the AER being required to have regard to both of the proposed principles concurrently.

The definition of early works already places a tight boundary on the activities that are potentially eligible to be included in an early works CPA, i.e. the activities must improve the accuracy of cost estimates for the actionable ISP project or facilitate that project being delivered within the timeframes specified in the most recent ISP.

The proposed principles in the draft rule restrict this further by requiring that, in addition to meeting the definition, early works proposed in a CPA lodged pre-RIT-T completion would need to be:

- » common to all ISP candidate options, as well as to any other options identified; and
- » able to be sold or utilised for other projects.

In ENA's view, these principles are so restrictive that no meaningful early works will satisfy them.

Table 1 sets out an illustrative assessment of early work activities that are typically required for actionable ISP projects, and where there could be benefits from

undertaking these activities earlier alongside the RIT-T, assessed against the principles in the draft rule. It shows that requiring the AER to have regard to these principles together would be highly restrictive, with the consequence that many of the early work activities that the AEMC envisions the rule change could assist with are unlikely to be able to be progressed earlier as a result of the rule change. Consequently, ENA is concerned that the capacity for TNSPs to deliver actionable ISP projects would not improve with the rule change as currently drafted, forgoing opportunities to manage uncertainty and risking delays and cost increases.

Table 1: Illustrative early work examples assessed under draft principles

| Early works examples | Common to all candidate options? | Can be sold or used on other projects? | Meets both criteria? |
|---|---|--|----------------------|
| Detailed stakeholder engagement on specific options | Depends on the nature of stakeholder engagement. Likely to only be partially common | No | x |
| Corridor assessment on different route options | Depends on whether there are common corridors between individual options | No | x |
| Early procurement | Only where options share common components, and unlikely where non network options are being considered | Maybe | ? |
| Planning approvals preparation | Will depend on the degree of commonality among options. Likely to only be partially common. | No | x |
| Easement acquisition | Easements are typically specific to each option. Will only be common where options have sections that use the same route. | No | x |
| Land acquisition | Possibly, where options share common land requirements (e.g. substation land parcel), and unlikely where non network options are being considered | Yes | ? |

As a further example, the Australian Energy Market Operator (AEMO) has identified the South Australia Mid North Renewable Energy Zone expansion as an actionable ISP project in South Australia in the final 2024 ISP. ElectraNet expects that several routes will be credible options in the forthcoming RIT-T. It is consistent with the objective of

the rule change that activities that inform the necessary route selection for the RIT-T assessment are treated as early works. However, these activities are unlikely to be applicable to all potential routes. Further, even to the extent that route related activities (such as environmental studies) are common to all, or even multiple, options, none will qualify as early works under the draft principles, because they are likely to be time and location specific to the extent that they could not reasonably be expected to be able to be later sold. Nor could they reliably be used for other projects.

ENA also notes more broadly that early works that are specific to one option may identify that that option may not be credible, and in doing so enable the preferred option for that actionable ISP project to be identified earlier. For example, community engagement revealing that a specific route for one option is not feasible from a social licence perspective can inform routes for other feasible options and therefore contribute to the identification of the preferred option, despite not directly being related to those other options.

More flexible principles are required to realise benefits for consumers

It is ENA's view that a more flexible set of principles would provide a more practical and appropriate basis for assessing early works activities in a CPA lodged prior to RIT-T completion.

ENA encourages the AEMC to adopt principles that the AER can consider on an individual basis, and which accommodate a broader range of early works activities being included in a CPA ahead of RIT-T completion.

ENA proposes the following principles that the AER may have regard to:

In assessing whether to approve the costs of early works for an actionable ISP project where that project has not been the subject of a completed regulatory investment test for transmission, the AER may have regard to whether the early works activities reflect one or more of the following:

- a. are identified as early works by AEMO in the latest ISP
- b. are likely to reduce cost uncertainty for one of the *credible options* in the RIT-T for that *actionable ISP project*
- c. are likely to provide greater confidence as to whether or not an option could be progressed, and so that it is a *credible option*
- d. are likely to reduce project lead times and deliver benefits to consumers in line with the timeframes in the most recent ISP
- e. would ultimately still be needed if a credible non-network option were identified as part of the RIT-T preferred option (for example because a non-network option would defer rather than replace the need for network investment), or

- f. can be sold or re-purposed to support other projects if a different option is subsequently found to pass the RIT-T (ie the extent to which costs are not sunk).

A critical aspect of these proposed principles is that they would not all need to be met concurrently for early works activities to be considered appropriate to be included in a CPA ahead of RIT-T completion, but would apply individually.

The first proposed principle is that the early works activities were identified by AEMO in the latest ISP. ENA suggests that this principle would be sufficient by itself, without the AER also having to consider whether the activities meet the other principles. This principle avoids duplication of regulatory expense by the AER in re-considering early works activities that have already been identified (and typically also consulted on) by AEMO as likely to be beneficial.

The second and third principles capture early works activities that are beneficial in informing the RIT-T outcome, by refining the option cost estimate and/or confirming that an option can be delivered. These principles are in line with the AEMC's proposed definition of early works.

Similarly, the fourth principle also reflects the definition of early works.

The fifth principle reflects the option value of undertaking the activity, in that it will still be needed even if the RIT-T consultation identifies an opportunity for the option to be delayed through adopting a non-network solution.

The final principle relates to the extent to which the cost of the early works activities would be sunk, and is the same as one of the principles included in the draft rule.

ENA considers that these principles provide an appropriate balance between flexibility to enable activities to be undertaken early where they are expected to provide a benefit to consumers, and the need to appropriately manage risks to consumers from undertaking early works activities prior to the completion of a RIT-T.

Delaying the AEMC's ISP review

- » Do stakeholders agree with delaying the AEMC ISP review by two years, which would mean the AEMC has to complete its ISP review by 1 July 2027? Or do stakeholders prefer an alternative to the two year delay? If so, why?

ENA supports a delay for the AEMC's ISP review, to accommodate learnings from the other reforms to the framework currently in train, including the Energy and Climate Ministerial Council's (ECMC) ISP review, as well as providing time for the suite of TPIR rule changes to the economic assessment processes to settle, as noted in the AEMC's draft determination.¹

¹ AEMC, *Draft rule determination: National Electricity Amendment (Bringing early works forward to improve transmission planning) Rule 2024*, May 2024, p 13-14.

Further, ENA supports a longer delay than the two years proposed by the AEMC. An ISP review by 1 July 2027 would only benefit from learnings from reforms that have been finalised in time to be applied to the 2026 ISP. The AEMC may wish to consider delaying its review further until 1 July 2029, to allow sufficient time for the learnings from the 2026 ISP and subsequent progression of the actionable ISP projects to be adequately considered.

Other issues

A lower materiality threshold is required for an early works CPA lodged prior to RIT-T completion

The approach proposed in the draft rule is to adopt the same CPA threshold (of \$30 million or 5% of the value of MAR) that currently applies in a standard CPA that covers a whole project. ENA considers that this is overly restrictive for early works activities conducted prior to the completion of the RIT-T, as these activities only form a small portion of a whole project.

The risk of adopting the standard threshold is that many beneficial early works activities (such as community consultation and surveying costs) may fall below this threshold. This means they could not be progressed at a pre-RIT-T stage, even where they meet the principles set out in the National Electricity Rules (NER).

The threshold may also introduce incentives for TNSPs to bundle early works activities to meet the threshold, delaying initial early works activities in order to combine them with later activities to meet the threshold.

ENA recognises that an appropriate threshold for early works CPAs is necessary to best utilise the AER's finite resources. An alternative threshold of 1% of MAR could be adopted as the threshold for early work CPAs, consistent with the materiality threshold applied to cost pass through applications.

Clarification of 'expenditure' needed in the drafting of the rule change

As currently drafted, clause 6A.8.A1(b)(2) from the AEMC's draft NER changes states:²

6A.8.A1 Eligibility for consideration as a contingent project

A contingent project in relation to a revenue determination means:

(a)...

(b) an actionable ISP project for which:

(1)...

(2) The actionable ISP project, stage of an actionable ISP project or early works the subject of the application (as relevant) exceeds either \$30 million or 5% of the value of the maximum allowed revenue for the relevant Transmission Network Service Provider

² AEMC, *Indicative changes to the National Electricity Rules: Draft National Electricity Amendment (Brining forward early works to improve transmission planning) Rule 2024*, May 2024.

for the first year of the relevant regulatory control period, whichever is the larger amount.

The drafting of clause 6A.8.A1(b)(2) is unclear as to whether the threshold for an early works CPA applies to the proposed capital expenditure or to the proposed total expenditure (ie, capital expenditure and operating expenditure).

ENA recommends clarifying the draft rule such that the threshold is clearly related to capital expenditure, in line with the standard CPA threshold.

Cap on early works CPA not required

ENA understands that some stakeholders have suggested caps on early works CPAs. While it is understandable that the intent of this suggestion is to reduce consumer exposure to risks from incurring early works costs, a cap would not be an effective means to address these risks.

ENA notes that the nature of early works on its own will limit the extent of activities and therefore costs that would be eligible for an early works CPA. As the AEMC describes, early works activities include (but are not limited to) stakeholder engagement, corridor assessment, procurement of equipment and assets with long lead times, preparation of jurisdictional planning approvals and easement acquisition.³ These activities form only a small proportion of all the activities required to deliver an actionable ISP project, while the bulk of activities and costs will be associated with construction and delivery of transmission assets.

Further, operational flexibility for TNSPs to determine what early works are necessary is important. The nature and cost of early works required for an actionable ISP project will depend on the individual projects. Being responsible for delivering transmission assets, TNSPs are the most informed parties to determine what early work activities are required for actionable ISP projects. An arbitrary cap could materially constrain the ability of TNSPs to undertake appropriate and necessary early works, which in turn could prevent the realisation of potential benefits for consumers.

Further, early works CPAs will be assessed by the AER, who will consider whether the proposed early works activities are appropriate and cost efficient. The AER's process in making its early works CPA determination is sufficiently robust to effectively manage the risks associated with incurring early works costs, while maintaining the flexibility required to deliver benefits to consumers.

Commencement date

ENA supports the commencement date on 29 August 2024 for the rule, as this would allow TNSPs to use the early works CPA cost recovery arrangements for any actionable projects in the 2024 ISP.

³ AEMC, *Draft rule determination: National Electricity Amendment (Brining early works forward to improve transmission planning) Rule 2024*, May 2024, p 1.