

30 October 2024

Mr Anthony Weir
Assistant Director
Australian Energy Regulator

Email: Anthony.weir@aer.gov.au

Dear Mr Weir,

AER draft guideline – System security network support payment guideline

Energy Networks Australia (ENA) welcomes the opportunity to respond to the AER's draft system security network support (SSNS) payment guideline.

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. This response is on behalf of ENA electricity transmission members.

The AER's draft guideline follows the AEMC's final determination and change to the National Electricity Rules (NER) in March 2024 for the *Improving security frameworks for the energy transition* rule change, which provides for the AER to make an ex-ante determination where requested by TNSPs for financially significant network support contracts to non-network providers of system security services. The AER is required to make and publish guidelines (the SSNS payment guidelines) in relation to this new process.

For system strength services, the draft SSNS payment guideline interacts with guidance on the efficient management of system strength, which is being developed concurrently by the AER. It is important that the SSNS payment guideline and the efficient management of system strength guidance note work together to deliver beneficial outcomes for consumers.

ENA appreciates the efforts of the AER in preparing both pieces of draft guidance and its engagement with stakeholders throughout the process. Both documents will assist TNSPs in managing a key part of the energy transition – maintaining system security – and improve outcomes for consumers with respect to the delivery of system security services at an efficient cost.

The use of network support contracts to manage system security will represent a step-change in both the number of contractual arrangements TNSPs are expecting to enter into, as well as the financial value of the services under contract. At the same time, the sector's collective understanding of how particular technologies can provide system security services is evolving, as are the technologies themselves.

As a consequence, the contracts between TNSPs and service providers are likely to evolve and adapt to changing circumstances. One of the key objectives of the new ex ante process, as highlighted in the AER's draft guideline, is to improve TNSPs' confidence in entering into a network support contract that they will be able to recover their efficient costs. This increased confidence will, in turn, level the playing field in the TNSP's consideration of network and non-network solutions. The AER's ex ante determinations are likely to be particularly key in this regard in the early years of the new frameworks, as both TNSPs and non-network providers become more familiar with the contracting arrangements

and there may be less competitive pressure on non-network options. At the same time, the near-term deadline of 2 December 2025 for the provision of system strength services means that the timeframe for the first tranche of ex ante determinations is relatively short.

Given this context, ENA considers it is important that the AER's guideline is flexible and does not preclude the AER and TNSPs from agreeing and adopting new approaches as circumstances may require, and as the sector continues to evolve. ENA strongly encourages the AER to adopt an approach in the guidelines that allows for flexibility around timeframes and the contracts that are eligible for consideration in an ex-ante determination, as well as focussing where possible on setting out key principles, illustrated by examples.

In this regard ENA:

- suggests that the materiality threshold for submitting an application to the AER for an ex-ante determination should be able to be applied to a single contract or to a grouping of contracts of a similar type or which address a similar need (where the TNSP can make the case to the AER for considering contracts together as a group);
- considers that allowing some flexibility on the timing of when a TNSP can submit an application for an ex-ante determination would improve the ability of all parties to facilitate the delivery of system security services in the timeframes required (particularly ahead of the commencement of the new system strength obligations on 2 December 2025);
- is supportive of the proposed principles the AER intends to adopt in assessing the prudence and efficiency of SSNS payments. ENA has suggested some minor extensions of these principles in the case of assessing efficiency; and
- appreciates the contextualisation of the SSNS payment guideline within the regulatory framework, and considers that this section could be further extended to provide a greater degree of certainty around the ability of TNSPs to recover efficient operating costs in a subsequent network support payment (NSP) cost pass through determination, where the TNSP has faithfully applied the approved ex ante methodology.


Each of the above points is expanded on in the attachment. We have also attached a marked up version of the draft guideline itself to support this submission.

Overall, ENA is supportive of the direction of the guideline and considers that the ability to apply for an ex-ante determination as to the prudence and efficiency of a proposed payment methodology in a SSNS contract will lead to better outcomes for consumers as the energy transition progresses.

ENA looks forward to engaging with the AER on SSNS payments and related issues going forward.

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

Yours sincerely,



Dominic Adams
GM Networks

Attachment

This attachment sets out ENA's comments in relation to the draft guideline, ordered and referenced by the relevant section of the guideline. In cases where there are several issues covered under the same guideline section, ENA has split out the issues into separate sections for the purpose of providing comments.

For each section in the draft guideline, the attachment describes:

- the particular changes to the guideline wording ENA recommends; and
- the reasons for the suggested changes, together with examples of how the suggested wording changes would improve outcomes in practice.

ENA has also attached a marked-up version of the draft guideline which reflects these comments.

1. Purpose and nature of ex ante determination within regulatory framework (section 2)

ENA supports the general structure of the draft guideline, particularly that it starts with a section that situates the ex-ante determination process within the overall regulatory framework.

The regulatory framework section appropriately lists the aims of the ex-ante determinations, as stated by the AEMC, ie:¹

- providing a level of comfort to TNSPs, before signing the contract, about the AER's expectations and approaches to making ex-post assessments of expenditures incurred under the executed contract (i.e. as part of the AER's subsequent NSP pass through determinations). This should improve TNSPs' confidence when entering into a contract that they will be able to recover efficient operational costs;
- improving the efficiency and ability of TNSPs to contract SSNS services; and
- leveling the playing field between network and non-network expenditure in meeting system security needs.

ENA supports the presentation of these objectives as a starting point, followed by clause 6A.6.6A itself in Box 1.

ENA considers that it would be helpful if this section was expanded to:

- provide direct guidance regarding the presumptive relationship between the ex-ante determination and the subsequent NSP pass through determination, in order to provide TNSPs with greater certainty around the recovery of efficient operating expenditure under financially significant contracting arrangements:
 - ENA recognises that such guidance may ultimately be better located in the separate AER process guideline on network support pass through applications,² but also understands that this existing guideline is unlikely to be updated prior to TNSPs signing the first set of contracts under the new system strength arrangements; and

¹ AEMC, *Rule determination, National Electricity Amendment (Improving security frameworks for the energy transition) Rule 2024*, March 2024, pp 51-52; and AER, *System security network support payment guideline*, AER draft guideline, October 2024, p 5.

² AER, *Process guideline on how to prepare a transmission network support pass through application*, 2011.

- use wording that is consistent with clause 6A.6.6A where possible to describe the purpose and nature of the ex-ante determination.

The implementation of these suggestions would support the ability of TNSPs to negotiate and enter into efficient contracts with SSNS service providers, for the reasons set out below.

1.1. Suggested changes to the draft guideline

In order to provide greater comfort regarding the recovery of efficient operating costs, ENA suggests two changes to the draft guideline:

- first, ENA suggests that the AER add an additional paragraph within section 2.1 of its final guideline below the reference to ‘any future related NSP pass through determination’, regarding the presumptive relationship between the ex-ante determination and the NSP pass through determination. Such a paragraph could be framed as follows:

Where the AER has made an ex-ante determination with respect to a payment or payment methodology, then the presumption is that any future related NSP pass through determination will not re-examine whether that payment or payment methodology is consistent with the relevant opex and network support payment criteria. However, it will examine whether any payment methodology has been applied faithfully by the relevant TNSP, alongside the other criteria that the AER is required to consider in making a pass-through determination under clause 6A.7.2A(i)(3a).

- second, ENA has suggested some minor wording adjustments in the sections describing the purpose and nature of the determination to increase the consistency with the wording in clause 6A.6.6A itself. ENA’s suggestions can be found in the attached mark-up.

1.2. Reasons and examples

ENA’s proposed changes would further support the objectives of the rule change, by providing TNSPs and stakeholders with greater certainty around cost recovery.

In particular, it is important that if:

- the AER makes an ex-ante determination that the payment methodology contained in a contract will be consistent with the factors set out in clause 6A.6.6A (a) (1)-(4);
- the TNSP then enters into that contract, unchanged; and
- the TNSP and SSNS service provider faithfully apply the methodology that was subject to the ex-ante determination;

then the TNSP has a high degree of confidence that it will be able to recover the operating costs incurred as a result of applying that methodology.

ENA considers that the addition of the suggested paragraph (see above) would help to clarify the presumptive relationship between the ex-ante determination and the subsequent NSP pass through determination.

By contrast if a TNSP and SSNS provider alter the payment methodology contained in a contract that was the subject of an ex-ante determination, then it would be appropriate for the AER to reconsider whether the payment methodology used was prudent and efficient at the time of an ex-post determination. The exception would be if the change in the methodology was as a consequence of a request from AEMO to vary the contract in order to facilitate the scheduling processes under its *Security Enablement Procedures* (which is contemplated under section 2.5 of AEMO’s current draft of

those procedures³). ENA has suggested including the above example in the guideline, in the attached mark-up.

Without a high degree of confidence regarding cost recovery, the significant financial outlays expected under network support payments means that TNSPs are likely to continue to have a disincentive to enter into non-network contracts compared to implementing network solutions. While TNSPs are supportive of using non-network solutions to address system security needs, the adoption of these solutions is only feasible if there can be certainty over the recovery of the efficient operating costs that TNSPs will incur, given the likely magnitude of those costs.⁴

2. Lodging an application – timing (section 3.2)

There will be a timing crunch affecting all parties in delivering system strength, inertia and NSCAS services. This is particularly acute for the delivery of system strength services, ahead of the full commencement of the system strength procurement requirements on 1 Dec 2025.⁵ This timing issue is not the AER's sole responsibility to solve – it will require cooperation from all parties involved. However, any additional flexibility around timing that can be provided by the SSNS payment guideline, particularly in the near term, would be particularly helpful in enabling TNSPs, the AER and other stakeholders to ensure that system security services are delivered in a cost-effective and timely manner.

The timing and eligibility for making an application are key levers in the draft guideline through which the ENA considers this flexibility could be supported.

Notwithstanding, ENA also supports the AER in recognising the benefits of early engagement before applying for a determination (ie, in section 3.1 of the draft guideline). TNSPs will work with the AER so that applications can be made and assessed as efficiently as possible, for example, by providing as much notice as possible of when a TNSP is intending to make an application.

2.1. Suggested changes to the draft guideline

ENA recommends that an extra sentence be added in this section to the effect that the AER is open to receiving applications at an earlier stage of the relevant regulatory process if a TNSP can justify why it is necessary to do so (see example below). This could include prior to the end of the dispute period following completion of the RIT-T, or during the RIT-T process itself. ENA notes that an earlier lodgement of an ex-ante determination request is not ruled out by the wording of NER clause 6A.6.6A.

ENA suggests that the guideline could provide for a TNSP to engage with the AER to justify why it considers there would be benefit in the AER considering an earlier ex ante application, having regard to factors including:

- the likelihood of the draft contract changing before it is executed;

³ AEMO, *Provisional Security Enablement Procedure (Improving Security Frameworks)*, 30 June 2024.

⁴ For example, in FY2028, make-whole costs of system strength enablement have been estimated at approximately \$54 million in Queensland, \$293 million in New South Wales and \$24 million in South Australia, including significant monthly variation: Endgame Economics, *Modelling make-whole costs for system strength enablement*, Final report for Energy Networks Australia, 28 September 2023, pp 9-11. This estimate does not include estimated operating costs for procurement of inertia and NSCAS services.

⁵ AEMC, *Improving security frameworks for the energy transition*, Rule determination, 28 March 2024, pp 18-19.

- the number of ex ante applications that the TNSP is expecting to make and the numbers of contracts contained within them; and
- the risks to the overall timing and cost of the system security solution in delaying the application.

ENA also suggests a more minor wording change to clarify that the timing for lodgement is not after both completion of the RIT-T and also confirmation that there has not been a material change in circumstances (MCC) (which ENA does not understand to be the AER's intent)..

2.2. Reasons and examples

Allowing for flexibility will give all parties the best chance of ensuring that system security services are provided in cost-effective manner, particularly for system strength ahead of the full commencement of system strength requirements in December 2025.

ENA appreciates the benefits of minimising the administrative burden by ensuring that contracts are as close as possible to final before the AER makes its decision. However, there may be cases where there is a good reason for a TNSP to lodge an application earlier, in agreement with the AER, that is highly unlikely to increase the administrative burden on the AER.

For example, if a TNSP is preparing a PADR or PACR for system strength or inertia services, has already undertaken stakeholder engagement, and is assessing several credible options that all include a particular component for which the TNSP will need to contract with a SSNS provider, the TNSP may approach the market to obtain offers for providing the service during preparation of the PADR/PACR (to help manage the timely delivery of services). This is also consistent with the AER's separate guidance on the efficient management of system strength, which suggests that system strength service providers (SSSPs) could run a tender for services in parallel with completing the RIT-T, to address concerns around a lack of competition.⁶ It would improve the timeliness and efficiency of this process if the TNSP was able to apply for an ex ante determination at this time, rather than waiting until the RIT-T is complete.

The flexibility to submit the application prior to completion of the PACR in this circumstance would be particularly helpful because:

- it would provide additional flexibility in considering ex ante determinations prior to market start;
- it may allow the TNSP to contract for a 'no regrets' solution with a SSNS provider that requires significant lead time to begin providing a SSNS service, which would be more cost-effective than an alternative solution procured later in the process;
- it allows the TNSP to reconsider its options with stakeholders during the RIT-T process, if the AER determines that the proposed payment methodology would not be consistent with the prudence and efficiency criteria; and
- it gives consumers greater assurance that the costs to be passed through as part of the preferred option in a RIT-T will be prudent and efficient, if the AER has already determined that the proposed payment methodology is prudent and efficient.

3. Lodging an application – eligibility (section 3.3)

ENA appreciates the need for eligibility criteria to ensure that applications received by the AER will have direct relevance to the costs that are likely to be subject to cost-pass through determinations.

⁶AER, *The Efficient Management of System Strength Framework - AER draft guidance*, October 2024, p. 25.

ENA considers that some adjustments to the wording may be beneficial to both make the criteria clearer, and to align with the suggestions above regarding additional flexibility in the timing of making an application.

3.1. Suggested changes to the draft guideline

The AER's draft guideline proposes three eligibility criteria, ie:

- the application must be made after completion of all relevant regulatory processes (including RIT-T appeals and material changes in circumstances) and before a contract is executed (**'first criterion'**);
- all services in the draft contract being assessed must be 'preferred options' under a completed RIT-T, or a 'secondary option' approved by the AER on the basis it is a lower cost option than the RIT-T preferred option (**'second criterion'**); and
- the application must include the relevant information outlined in Chapter 4 of this Guideline (**'third criterion'**).

ENA recommends that the AER:

- modifies the wording of its first eligibility criterion to allow for some flexibility in instances where a TNSP can justify to the AER why it would be beneficial to submit an application before the closure of the RIT-T dispute period, or before the RIT-T process itself is finalised (as discussed above); and
- clarifies the wording in the second criterion.

3.2. Reasons and examples

The reason for the change in the first criterion was discussed above.

Regarding the second criterion, ENA understands this is intended to capture a circumstance in which a TNSP is seeking an ex-ante determination following an MCC event (rather than following completion of the RIT-T). Following an MCC event, the AER may approve a course of action which includes pursuing an option that may now be the option with the highest net market benefit, or an alternative option that need not have the highest net market benefit (and which need not be the option with the lowest cost). ENA suggests that the AER amend the references to a 'secondary option' (both here and elsewhere in the guideline) to delete the text 'on the basis it is a lower cost option than the RIT-T preferred options, to recognise that the option progressed following an MCC need not necessarily be a lower cost option.

ENA considers the third criterion is appropriate.

4. Lodging an application – thresholds (section 3.3)

ENA understands the need to have a materiality threshold and supports aligning the threshold with that applying more generally in the Rules to the cost pass through arrangements, ie, one per cent of AER approved unsmoothed revenues in a regulatory year for the current regulatory control period.

ENA also supports the point of reference against which the materiality threshold will be applied, ie, the expected average annual payment under the contract.

However, ENA considers that the materiality threshold should be able to apply to a single contract or to a grouping of contracts, in circumstances where the TNSP provides clear reasons explaining why it would be reasonable to assess particular contracts as a group.

The nature of the system security services in question, and potential for innovation in those services, means that TNSPs are likely to contract with many providers to address a particular need. It is possible that many individual contracts with the same type of providers (eg, BESS) may not meet the materiality threshold individually, but that the total grouping of those solutions is likely to be financially significant.

4.1. Suggested changes to the draft guideline

ENA recommends the AER adjust the wording of the materiality threshold from ‘the draft contract’s expected average annual payment must exceed 1% of AER approved unsmoothed revenues...’ to ‘the expected average annual payment, under the draft contract or group of contracts, must exceed 1% of AER approved unsmoothed revenues...’.

ENA suggests adding a second bullet to clarify that the AER will only assess a group of contracts:

- where a TNSP can justify why contracts need to be grouped together for assessment, and
- where it is feasible for the AER to make its assessment within the decision making timeframe.

4.2. Reasons and examples

The suggested modification to the guideline would greatly support the achievement of the objective of the rule change, ie, to improve TNSP confidence that they will recover their efficient operational costs associated with network support contracts.

It is likely that the optimal contracting arrangements for a TNSP to deliver on a particular need for a system security service will involve several contracts of a similar nature that do not exceed the materiality threshold individually, but that comfortably exceed the materiality threshold as a portfolio. For example, Transgrid’s current system strength RIT-T is indicating that the preferred option may involve contracting with up to a dozen BESS proponents over the coming few years from December 2025.

ENA appreciates that, over time, TNSPs will be able to have regard to previous AER ex ante assessments as indicative of whether a contract is likely to be deemed prudent and efficient, and so may have a reduced need to seek an ex-ante determination. ENA also notes that making an ex ante application will involve resources from the TNSP as well as the AER, and so TNSPs will have an incentive to leverage comparable AER ex ante determinations where they can to provide comfort on cost recovery, rather than necessarily always seeking an ex ante determination.

However in the near term, the untested nature of the system security network support contracts and the substantial financial implications for TNSPs from the overall portfolio of contracts they are expecting to enter into, means that it would greatly assist with improving confidence around cost recovery if the AER were to provide an ex ante view on contracts which may individually fall below the materiality threshold, but which collectively exceed it. Allowing for a bundle of contracts to be considered together will also remove the incentive that would otherwise exist for TNSPs to contract with a smaller number of providers, so that the resulting contract is above the materiality threshold and therefore eligible for an ex-ante determination.

ENA notes that this suggested approach does not imply that the entire portfolio of network support contracts would need to be reviewed by the AER, but it would instead provide flexibility for the AER to provide ex ante assurance on material groupings of contracts.

Further, ENA also considers that providing for the flexibility to apply the materiality threshold to a grouping of contracts need not increase the administrative burden on the AER overall, as where the

prudence and efficiency of the contract methodology is not reviewed ex ante, this is still likely to be a consideration for the AER as part of its later NSP cost pass through determination.⁷

5. Consultation on an application (section 3.4)

ENA is supportive of the AER's draft guidance regarding consultation on an ex-ante application, and has not proposed any changes to this section of the guideline.

Under clause 6A.6.6A (c) of the final rule, the AER may (but is not required to) consult in a manner it considers appropriate on the application before making determination.

ENA considers that it would be helpful for AER to express its reasoning through the consultation process on whether the draft contract meets the prudence and efficiency criteria, to the extent possible, noting that there will be commercial sensitivity issues (that will need to be dealt with on a case-by-case basis). Being transparent in this reasoning will help to create precedent that, while non-binding, is still an effective mechanism for providing TNSPs with confidence in recovering their efficient operating costs for similar contracts, and for enabling the SSNS payment guidelines to be leveraged during the contract negotiation process to ensure efficient cost outcomes for consumers.

6. Assessing prudence (section 3.5)

ENA is generally supportive of the AER's draft approach to assessing the prudence of contracts, but considers that some refinements to the guideline wording could provide greater clarity.

6.1. Suggested changes to the draft guideline

The central question for the prudence assessment is whether there is a reasonable need to contract for the service in question. ENA therefore suggests replacing 'to include the proposed SSNS payment or payment methodology in the draft contract being assessed' with 'to contract for the service that is subject to the proposed SSNS payment or payment methodology'. ENA considers that this is the more pertinent question given that there will always need to be a payment or payment methodology included within a contract.

ENA suggests that it is also worth making clear in the guideline that there may be a variety of prudent contract structures, including different mixes of fixed and variable cost elements, depending on the circumstances. ENA has proposed minor wording changes to the AER's last paragraph in this section, to avoid singling out fixed costs and to make the language consistent with section 4.2 of the draft guideline.

ENA also suggests a further, minor wording change in relation to the reference to the payment components under AEMO's provisional security enablement procedure.⁸ AEMO identifies three minimum requirements (usage payment, activation payment, transfer of energy revenue) and two other components that may be included in contracts.⁹ As such, ENA recommends that the AER

⁷ Further, ENA considers that when making an ex post NSP pass through determination guideline in cases where there was no ex ante determination, it would be appropriate for the AER to apply similar principles to the prudence and efficiency principles set out in the SSNS payment guideline, notwithstanding that the specific criteria that the AER is required to consider in making an ex post determination differ from the ex-ante determination. ENA has not proposed any specific mark-up to include in the SSNS payment guideline on this point, but notes that any clarification (whether provided through the SSNS payment guideline or the separate AER process guideline on network support pass through applications) would be helpful.

⁸ See AER, *System security network support payment guideline*, AER draft guideline, October 2024, p 10.

⁹ AEMO, *Provisional security enablement procedure*, June 2024, pp 10-11.

changes the guideline wording to refer to 'energy revenue' rather than 'enablement', in order to reference all three of the minimum AEMO requirements.

6.2. Reasons and examples

Different contracting approaches (eg, different mixes of fixed vs variable payments) are likely to be appropriate and prudent in different circumstances. In addition, there are likely to be a variety of contracting approaches within and across TNSPs for system security services.

For example, greater reliance on variable costs makes the overall contract cost harder to estimate and places more risk on the TNSP from a cash flow perspective. As a consequence, higher variable costs may necessarily also lead to increased costs required for managing cashflows from the TNSPs end.

As a consequence, the onus should be on the TNSP to justify why its methodology is appropriate for the case at hand, which the AER recognises in section 4.2 of its draft guideline (section 4.2 says that the TNSP 'must also provide an explanation and supporting documentary evidence to demonstrate the prudence of the structure of the components of the payments'¹⁰). ENA has therefore suggested that the AER clarify, within section 3.5, that there could be a variety of prudent contract structures depending on the circumstances, and has reflected this in the attached mark-up.

7. Assessing efficiency (section 3.5)

ENA supports the principle-based approach taken in the guidelines in relation to assessing the efficiency of the payment contracts, and in particular the focus on the costs the TNSP will incur and on ensuring that the cost to consumers is 'the least cost the TNSP could reasonably achieve in the circumstances'.¹¹

ENA has suggested some minor changes to wording so that the focus of the efficiency assessment is made clearer. In particular, ENA considers that the focus of the efficiency assessment should be on whether the proposed payment methodology is best way of delivering the service having regard to realistic alternatives (ie, the lowest possible cost to consumers in the circumstances).

7.1. Suggested changes to the draft guideline

ENA has suggested some minor wording changes in its mark-up to make the focus of the AER's efficiency assessment clearer, and tie the proposed principles in with the additional factors highlighted in the separate system strength guideline – ie, payment methodologies should:

- reflect the least cost the TNSP could reasonably achieve in the circumstances; and
- not be unreasonable, having regard to realistic alternatives for obtaining the same service and the consequences if the service were not to be provided. up.

7.2. Reasons and examples

The AER's draft approach, with the minor modifications suggested, will provide flexibility to ensure that TNSPs and the AER can facilitate the delivery of services at the lowest cost to consumers in a variety of circumstances.

ENA considers that having regard to the best realistic alternative means of obtaining the service in question, as well as the consequences of not providing the service, are both relevant factors to consider in the efficiency assessment. The guideline should be open as to what the relevant alternatives and consequences might be, given the likely evolution of contracting arrangements and

¹⁰ AER, *System security network support payment guideline*, AER draft guideline, October 2024, p 13.

¹¹ AER, *System security network support payment guideline*, AER draft guideline, October 2024, p 10.

technologies, noting that one current consequence may be the costs associated with AEMO direction if such direction is required.

In relation to the costs of a service provider being directed on under AEMO's direction compensation recovery approach, ENA agrees that this is an appropriate consideration but notes that it should be considered in a holistic sense, having regard to the benefits of having a long-term system security contract in place, rather than only what the compensation for AEMO direction would be in a specific, limited case.

As a matter of consistency, ENA suggests the wording regarding 'unnecessary costs' should be made consistent with the wording that the AER has used in section 4.2 of its draft guideline. This point is reflected in the ENA's suggested mark-up.

8. Timeframe for decision (section 3.6)

As highlighted earlier, allowing for additional speed and flexibility around the AER's decision-making timeframe would be particularly helpful given the near-term timing crunch in procuring system security services (in particular system strength).

ENA supports the AER's proposed 40 business day timeframe for making an ex-ante determination. ENA also supports the AER only extending this timeframe in exceptional circumstance, in recognition of the need for TNSPs to have sufficient certainty to sign contracts ahead of the relevant obligations commencing.

8.1. Suggested changes to the draft guideline

ENA suggests that the AER's 40 business day timeframe for making a determination should not restart if the AER needs to seek further information, but should instead be expressed as a 'stop the clock' provision, with the 40 business day period automatically extended by the period of time taken for the TNSP to provide the information requested.

8.2. Reasons and examples

Including a stop-the-clock provision would be consistent with the approach taken in the NER for AER determinations on RIT-T disputes,¹² and would both enable the AER to make its determination as close to the 40 business day period as possible as well as provide strong incentives for TNSPs to provide the information necessary. The attached mark-up provides suggested wording reflecting this approach.

In addition, TNSPs emerging experience is that non-network providers are often only willing to hold their prices for a relatively short period in contract negotiations. Any reduction in the timing of the AER's decision-making process will therefore assist in ensuring that the contracts being assessed are as close to final as possible.

9. Information requirements (section 4)

The information requirements listed in section 4 of the draft guideline flow appropriately from the eligibility thresholds and the approach to assessing prudence and efficiency set out earlier in the draft guideline.

ENA recommends that the wording of these information requirements be adjusted in line with changes to the draft guideline suggested above.

¹² See NER 5.16B (f)(3).

10. TNSP decision tree on contracting system security network support services (Appendix A)

10.1. Suggested changes to the draft guideline

ENA recommends that the flowchart presented in Appendix A of the draft SSNS payment guideline be amended to reflect that the prudence and efficiency factors for 'contract review' in the AER SSNS payment guideline could feed into the TNSP's assessment during the RIT-T process.

10.2. Reasons and examples

It will improve the efficiency and timeliness of procuring system security services (and in particular system strength and inertia services) if the TNSP is able to leverage the AER's SSNS payment guideline to form a view on whether an option is commercially feasible (and therefore a credible option) during the RIT-T process, rather than needing to wait until the RIT-T has been completed having regard to the level of proposed network support payments.

By way of example, if it is apparent that a non-network option is not credible due to the level of network support payments being proposed while options are being canvassed during the RIT-T (including as a result of any parallel progression of contract negotiations), then it would be efficient to rule that option out prior to completion of the RIT-T where possible (to avoid an outcome where the contract payments proposed for the RIT-T preferred option are subsequently assessed as not prudent and efficient by the AER, leading to a delay while the RIT-T/MCC outcome and contract negotiations are revisited).

While this approach does not appear inconsistent with the AER's draft guideline, it would be helpful if the AER explicitly acknowledged that TNSPs may have regard to the principles in the SSNS payment guideline when determining if an option is commercially feasible during the RIT-T stage, so that TNSPs and SSNS providers are on the same page when negotiating a contract concurrent with the RIT-T process, and to also lessen the risk of a RIT-T dispute. ENA has suggested that this additional guidance may be best located in the separate system strength guidance note, and discusses this issue more substantively in its separate submission to that guidance note. However it would be helpful if the decision tree included in Appendix A in the SSNS payment guideline also showed the potential interaction between the Network support payment guideline (and the 'prudence and efficiency factors for contract review') and the TNSP network planning (ie, the RIT-T).