

SUBMISSION TO THE DRAFT REPORT- TRANSMISSION PLANNING AND INVESTMENT REVIEW STAKEHOLDER FEEDBACK TEMPLATE

SUBMITTER DETAILS

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PROJECT DETAILS

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CHAPTER 2 - THE REVENUE FRAMEWORK SHOULD HAVE SUFFICIENT FLEXIBILITY TO ADDRESS ANY FUTURE FINANCEABILITY CONCERNS

The current revenue framework is not flexible enough to address the financeability challenges that may arise in the future

1. We welcome stakeholder views on this finding that financeability challenges could arise in the future under realistic future ISP development plans and that it is appropriate for the AER to have sufficient flexibility to address this issue.

ENA strongly supports the recognition by the AEMC that concerns around the financeability of major transmission investments raises the risk of those investments being delayed, which would not be in the long-term interests of consumers.

ENA does not however agree with the AEMC's characterisation of financeability concerns only being likely to occur in 'exceptional circumstances' (p.16) for future actionable ISP projects. Financeability issues are already posing a very real challenge for current actionable ISP projects, given the multiple large ISP projects currently being progressed concurrently and in close sequence. The concessional funding provided by the Clean Energy Finance Corporation to support investment in EnergyConnect is clear evidence of the current difficulties with financing major projects.

ENA considers that the AEMC's proposed change to allow a more flexible approach to depreciation for major projects (discussed below), although a step in the right direction, will not by itself fully mitigate financeability concerns for major projects. As noted in the AEMC's report, the AER's current Rate of Return Instrument review also has a role to play in continuing to ensure efficient levels of capital expenditure, accompanied by depreciation profiles of assets, combined with the rate of return settings deliver financeable outcomes to the benchmark firm.

ENA notes that the Australian Energy Regulator's (AER's) draft Rate of Return Instrument released on 16 June proposes two significant changes relevant to the AEMC's considerations:

1. Movement to a term of the risk-free rate matched to the regulatory period (typically 5 years), which has the impact of further lowering investment incentives for new capital investment, such as major transmission projects.
2. Not proceeding with the capital expenditure weighted trailing average return on debt, a measure highlighted in the AEMC's Stage 2 report as potentially mitigating financeability concerns.

These developments mean that, relative to the environment in which the AEMC formed its views on the capacity of the Rate of Return Instrument to support financeability of ISP projects, prospective ISP projects are likely to face, on average, even greater financeability barriers than the AEMC considered.

This strengthens the need for an approach such as recommended by the AEMC in the draft report, which supports better flexibility around depreciation allowances.

In the longer term, these developments suggest that focused and dedicated policy consideration needs to be given to the role of the Rate of Return Instrument. Currently, the Instrument is intended to provide an unbiased market-based rate of return to enable all efficient transmission and distribution investments which support the NEO and NGO. The Instrument is not intended as, and has never been characterised or designed

as, an Instrument which should be solely focused on providing a rate of return only capable of supporting financeable access to capital for mature or established network assets.

Providing more flexibility to adjust the rate of depreciation is an appropriate and proportionate approach to addressing the issue

2. We welcome stakeholder views on whether this draft recommendation to increase the AER’s discretion to vary depreciation profiles for actionable ISP projects is an appropriate response to financeability challenges that may arise. We also welcome views on alternative approaches that stakeholders consider would better promote the NEO.

ENA supports the AEMC’s draft recommendation for changes to the Rules to make clear the discretion available to AER to accept proposals from TNSPs to adopt alternative depreciation profiles for actionable ISP projects (including accelerated depreciation), where the TNSP can provide compelling evidence that this will help address difficulties with financeability for that specific project.

ENA notes that the AEMC’s recommended changes to the Rules leave the AER with a wide discretion in deciding whether to approve a TNSP’s proposal for an alternative depreciation profile. ENA encourages the AEMC to also include, as part of the recommended Rule change, principles that the AER should have regard to in making its decision on a TNSP’s proposed depreciation profile:

- Without inclusion of specific, additional principles, ENA is concerned that the AEMC’s recommended change to the Rules may not in practice result in different outcomes and therefore may be ineffective in addressing financeability concerns.
- Inclusion of guiding principles in the Rules would also provide greater clarity and certainty earlier on in the regulatory process as to whether a TNSP’s proposal for an alternative depreciation profile for a specific project is likely to be accepted by the AER, rather than leaving this issue uncertain until the final contingent project application (CPA).
- The principles could include consideration of the timing of benefits expected as a consequence of investment in the major project, in order to balance project financeability and inter-generational equity considerations. The ISP and RIT-T assessments of major projects have often demonstrated an immediate, material benefit to consumers in the near term, which helps to allay concerns in relation to intergenerational equity from accelerated depreciation profiles.
- ENA suggests the following draft principles as a starting point and would welcome the opportunity to collaborate with the AEMC and other interested stakeholders to embed principles that are fit for purpose and protect the long-term interests of consumers:
 1. *In developing its approach to determining whether a financeability issue arises in relation to a major transmission project, the AER must ensure that its approach:*
 - a) *is in the long term interests of consumers, in accordance with the National Electricity Objective;*
 - b) *is capable of being applied consistently across major transmission projects;*
 - c) *employs benchmark parameters that are consistent with the AER’s building block approach in accordance Chapter 6A of the Rules;*
 - d) *is sufficiently transparent so that stakeholders are able to understand the AER’s assessment and findings; and*
 - e) *has regard to the revenue and pricing principles in the National Electricity Law, including the relative risks to consumers of under or over investment in transmission networks.*

	<p>2. <i>In determining its approach to remedying an identified financeability issue, the AER must ensure that its remedy:</i></p> <p><i>a) only permits the minimum changes to the cashflows that are necessary to address the identified financeability issue; and</i></p> <p><i>b) is sufficiently transparent so that stakeholders are able to understand the basis of the remedy.</i></p> <p>In terms of implementation, the specific drafting proposed by the AEMC warrants further thought:</p> <ul style="list-style-type: none"> • It would seem appropriate to have the proposed wording of clause 6A.6.3(d) apply to all actionable ISP projects (rather than being framed in the context of clause 6A.6.3(c), which is not applicable to actionable ISP projects) – given the AER’s concern with its ability to deviate from straight line depreciation more broadly. • The Rule change would also need to facilitate TNSPs proposing specific depreciation profiles as part of their contingent project applications (and the AER making a determination on those applications). • Given the intent for the AER to be able to vary depreciation profiles on a case-by-case basis, it is important that the guideline be kept up to date.¹ Therefore, proposed clause 6A.6.3A(a) should state that the AER must, in accordance with the transmission consultation procedures, develop, publish and maintain the Depreciation Guidelines.²
<p>Implementation challenges appear to be manageable</p>	
<p>3. We welcome stakeholder views on whether these are practical and workable approaches to implementation and whether there are any further challenges that we have not highlighted in this report.</p>	<p>ENA supports a rapid implementation of the proposed rule change and development of the AER guideline. As noted above, financeability issues are already posing a very real challenge for current actionable ISP projects.</p> <p>The suggestion that the AER could approve shorter depreciation profiles as an ‘interim step’ appears to run counter to clause 6A.6.3(b)(1) which requires assets to be depreciated over their economic lives. A transitional Rule may therefore be required to enable this to be used as an interim measure.</p> <p>The AEMC has enabled a transitional rule for the AER to commence consultation on the Depreciation Guidelines prior to the commencement date of the rule. The AEMC has also advised that a rule change may be able to be expedited if it were in line with the Final Rule. ENA suggests that 9 months to prepare and finalise a guideline is too long; ENA suggest that 4 months is more appropriate as much of the upfront work could be undertaken once any rule change was submitted to the AEMC.</p>

¹ Treatment of non-network options (NNOs) in the RIT-T process is an example of uncertainty that can be created by an AER guideline not being maintained. Transgrid’s [Revised PADR](#) (p. 20) for the [Broken Hill Supply](#) project explained that ‘discussions’ between Transgrid and the AER (based on the AER’s Final Decision on Guidelines to make the ISP actionable) had led to a revised approach to assessing NNOs. For the benefit of all industry stakeholders, and RIT-T proponents in particular, it would be better if the AER updated its RIT-T Application Guidelines to explain any changes in its treatment of NNO costs.

² Chapter 3 of the NER requires AEMO to develop/determine, publish **and maintain** a number of subordinate instruments.

CHAPTER 3 - THE NATIONAL FRAMEWORK SUPPORTS SOCIAL LICENCE ACTIVITIES AIMED AT BUILDING AND MAINTAINING COMMUNITY ACCEPTANCE

The national framework allows TNSPs to recover the costs of activities that contribute to building community acceptance in several ways

<p>4. We welcome stakeholder feedback on the Commission's view that the current cost recovery mechanisms are appropriate and allow TNSPs to recover the costs associated with landowner compensation payments, stakeholder engagement, and other social licence activities associated with major transmission projects.</p>	<p>ENA agrees with the AEMC that, overall, the current arrangements for cost recovery for social licence activities are appropriate and sufficiently flexible (with one potential exception, noted below) to capture the expected range of social licence activities. However, it would be helpful to provide greater clarity and principles in the Rules to guide the AER's determination on whether these costs are efficient:</p> <ul style="list-style-type: none"> • In relation to landowner compensation, ENA notes that the level of compensation may not always be fully determined by jurisdictional arrangements. In some instances it may be efficient to incur land acquisition costs at above 'fair value' and the legal minimum, where that assists in obtaining and maintaining social licence.³ • However, it is also important that TNSPs are able to demonstrate to the AER that land acquisition costs are prudent. Whilst ENA is supportive of appropriate compensation to landowners impacted by new transmission infrastructure, as regulated businesses this is funded by all consumers. In contrast new generation and storage are usually developed by commercial entities who may be able to pay higher levels of compensation to fewer directly impacted landowners, and so the rates paid by these entities are not necessarily an appropriate guide as to the costs that should be paid by regulated transmission businesses.
<p>5. We also welcome stakeholder feedback on whether there are any other activities undertaken to support building and maintaining social licence that are not captured under the existing cost recovery mechanisms.</p>	<ul style="list-style-type: none"> • Principles would also be helpful in setting expectations as to what costs can be considered prudent and hence eligible for cost recovery under the NER framework. Expenditure on community investment not directly related to the electricity sector may be a cost-efficient way of establishing and maintaining social licence in some circumstances, outside of any mandated government requirement. This is especially the case for long-lived network infrastructure where impacted communities will host the assets for many decades. However, it is not clear whether the AER would approve inclusion of such costs as part of a TNSP's regulated expenditure. <p>ENA suggests that it would be helpful to elevate the recognition of social licence costs at the RIT-T stage by explicitly amending the Rules to include social licence as a relevant cost category under the RIT-T. This would be in line with the recent NSW AEMO Services Draft Network Authorisation Guidelines,⁴ which include a definition of 'community engagement, environmental and social licence costs.'</p> <p>ENA also propose that the Rules be amended to explicitly allow TNSPs to recover opex costs to conduct studies, analysis and consultation required to demonstrate that the preferred network option is deliverable (as part of the RIT-T) – discussed further below.</p> <p>The AEMC states that costs incurred as a result of changes to route alignment and/or planning processes should not be treated as a cost pass-through as there is sufficient information and opportunities available to TNSPs to manage uncertainty associated with such changes – either through quantifying the risk or via a staged CPA process. ENA notes that there may be circumstances in which it would be more appropriate (lower cost to consumers) to manage the risk of route changes via a cost pass-through process, rather than pricing the risk into the CPA. The</p>

³ NSW AEMO Services Draft Network Authorisation Guidelines, May 2022 p. 16-17.

⁴ NSW AEMO Services Draft Network Authorisation Guidelines, May 2022, p. 17

issue of risk allocation is one the AEMC has flagged that it will look at in Stage 3 of the review and ENA suggests that the AEMC re-consider this point in the context of its broader consideration at that time.

Further opportunities for TNSPs to improve stakeholder engagement outcomes

6. We welcome stakeholder feedback on whether the current stakeholder engagement requirements in the NER provide sufficient flexibility for TNSPs to develop and implement appropriate stakeholder engagement plans for major transmission projects.

Community engagement and acceptance are key to ensuring the timely delivery of major projects.

TNSPs continue to remain best placed to engage with and manage their community and stakeholder engagement. The AEMC (pp.30–31) recognises that TNSPs are all evolving their approach to engagement on social licence issues, in response to stakeholder and customer feedback and guidance from the AER.

Social licence activities extend beyond just engagement with and compensation to directly affected landholders. The impacts of significant energy infrastructure are felt more broadly across the community, such as increased heavy traffic and noise during construction and during significant maintenance activities. Building social licence across the broader community is essential to support the initial investment in, operation and maintenance of and potential reinvestment in the infrastructure over its entire life.

ENA considers that prescribing additional requirements relating to engagement is not necessary at this stage. TNSPs and industry stakeholders are increasingly applying the IAP2 Public Participation Spectrum as a framework to guide and measure effective engagement. TNSPs are actively seeking to raise the bar in this area, and to work directly with stakeholders to implement effective consultation that meets the needs of affected communities on a case-by-case basis.

ENA does however see opportunities for the Rules to improve stakeholder engagement outcomes and reduce the social licence risks that TNSPs face when planning and delivering large transmission projects.

In particular:

- Stakeholders (including community groups) may lack clarity about when they should engage with the transmission planning process (e.g. ISP, RIT-T, CPA, statutory planning process etc).
- The RIT-T framework may lock in a preferred network option (e.g. corridor, technology, cost) without adequate consideration of whether it is deliverable from a social and environmental perspective.

There is an opportunity for the Rules to help TNSPs to manage these issues by confirming that a 'credible' network option that is identified during the economic assessment process (i.e. RIT-T) includes one that is "deliverable".

This amendment would:

- Demonstrate to communities that it is appropriate for TNSPs are to address social licence for transmission investment in a meaningful and consistent way (e.g. before key project decisions are made as part of the PACR).
- Improve implementation success and allow learnings from one project to flow into future projects to help build social capital.

<p>7. We welcome stakeholder feedback on whether there are any barriers to TNSPs bringing stakeholder engagement activities forward into the RIT-T stage.</p>	<p>ENA acknowledges the AEMC’s comment (p.30) that early engagement with the community is often challenging when the information most relevant to the community is not available at that time. However, stakeholder engagement is crucial and is becoming part of TNSPs’ BAU in conducting the RIT-T for ISP investments (with cost recovery falling under preparatory works). As noted above, the TNSPs are each evolving their approaches.</p> <p>The nature of the engagement during the RIT-T needs to reflect the considerations at that stage of the regulatory process (i.e., comparison across options rather than detailed route determination).</p>
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CHAPTER 4 – COST RECOVERY OF PLANNING ACTIVITIES

Project planning activities can be clearly distinguished based on whether they relate to the selection or delivery of a preferred option

<p>8. We welcome stakeholder views on whether this draft recommendation to distinguish planning activities based on their purpose improves clarity in how costs related to project identification and/or delivery are appropriately recovered.</p>	<p>ENA understands the distinction that the AEMC is seeking to draw between planning activities at the project selection (i.e., RIT-T) stage (‘preparatory activities’) and the project implementation stage. However, in practice planning activities will not always fall clearly into one or the other of these categories, and there may be a degree of overlap, including for social licence activities which are undertaken throughout the project planning and implementation stages.</p> <p>Further, the AEMC’s presumptive mapping of different planning activities to cost recovery routes is more prescriptive than current practice:</p> <ul style="list-style-type: none"> • For example, expenditure on ‘preparatory activities’ (including the RIT-T) will often be capitalised if the project proceeds, allowing those costs to be recovered from consumers over a longer timeframe than if they were required to be recovered via opex. Recovery of these costs through the CPA also avoids the need for a separate, cost-pass through process.
<p>9. We are interested in views on whether amending the definition of preparatory activities and removing references to ‘early works’ in regulatory documents is appropriate.</p>	<p>ENA therefore cautions against introducing more prescription in the categorisation and cost recovery of planning activities, and supports maintaining the flexibility to enable preparatory activity costs to be treated as capex where appropriate, noting that all cost recovery is subject to the approval of the AER.</p>

<p>10. We are also interested in stakeholder views on whether anything further is needed to achieve an appropriate balance between the cost and quality of preparatory activities. We also welcome alternative approaches that stakeholders consider would better promote the NEO.</p>	<p>ENA does not feel that the use of the term 'early works' by AEMO and the AER is necessarily problematic in itself. If this term is removed from AER and AEMO documents, it would still be desirable for AEMO in the ISP to provide clarity on what implementation-related planning activities it considers should be progressed where an ISP project is staged.</p> <p>ENA agrees that there would be difficulties with distinguishing between preparatory activities and early works on a cost magnitude basis.</p>
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Preparatory activities may be nominated as a cost pass through event under existing arrangements

<p>11. We welcome stakeholder feedback on the Commission's recommended approach including examples where there has been unforeseeable expenditure on preparatory activities, as well as any rationale for potential changes to the existing cost pass-through arrangements that may be required to accommodate those specific circumstances.</p>	<p>ENA does not agree with the AEMC's statement that uncertainty around cost recovery creates an incentive for TNSPs to undertake 'less preparatory activities than required to assess the credible options to meet identified network needs' (p. 41). In practice TNSPs need to be able to demonstrate that they have selected the option that satisfies the RIT-T and need to undertake sufficient preparatory activities to demonstrate that to the satisfaction of stakeholders and the AER.</p> <p>ENA supports the clarity provided by the AEMC that TNSPs should be able to propose a nominated cost pass through event relating to 'unforeseeable preparatory activities', for which the materiality threshold could be applied on a cumulative basis (similar to the arrangements applying for cost pass through of REZ Design Reports).</p> <p>However, ENA considers that the inclusion of principles in the Rules may be needed to guide the AER's discretion in accepting a proposal for this type of nominated pass-through event (and cumulative materiality threshold), if this is to be accepted in practice when proposed by a TNSP.</p> <p>The cost pass-through for REZ Planning transitional rule commenced in May 2021, and allowed TNSPs to recover costs for one or more REZ Design Reports for the regulatory period in which the commencement date fell.⁵ The rule was not 'ongoing' in the sense implied in the AEMC's suggestion that a similar approach could be used for TNSPs to recover costs for preparatory activities into the future.</p> <p>Also, it is not clear whether the AEMC's view on grouping multiple preparatory activities for a cost pass through application means different <i>types</i> of preparatory activities for one actionable ISP project could be grouped, or whether activities across more than one actionable ISP project could be grouped together.</p>
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⁵ NER, clauses 11.137.2 and 5.24.1(b)(1); National Electricity Amendment ([Renewable Energy Zone Planning](#)) Rule 2021.

As shown in response to the Transgrid and Essential Energy bushfire cost pass through applications of 2019/20, the AER takes a strict approach to applying a 'single-event' interpretation of the cost pass through rules.⁶ If the AEMC consider multiple preparatory activities could be combined into a cost pass through application, it would need to make this very clear in the Rules. We encourage the AEMC to further expand its thinking on this point and implement its conclusions via amendments to the proposed Rules. If multiple preparatory activities may be grouped for an application, amendments to the NER may also be needed to clarify when any pass through 'event(s)' occur for the purpose of clause 6A.7.3(c) of the NER.

The staged CPA process appropriately manages cost recovery uncertainty and will be more effective as the process matures

<p>12. We welcome stakeholder feedback on whether the staged CPA process appropriately manages cost recovery uncertainty for expenditure that occurs before full CPA approval. We welcome views on alternative arrangements to manage this uncertainty.</p>	<p>ENA supports the staged CPA process as being an appropriate way both to manage cost recovery uncertainty for early planning expenditures, and also to facilitate more accurate cost estimates at the time of the later CPA stage, which will lower the costs borne by customers compared to if the risks of cost uncertainties were to be priced into a single CPA.</p>
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CHAPTER 5 - IMPROVING THE WORKABILITY OF THE FEEDBACK LOOP WILL ENABLE IT TO OPERATE AS A TIMELY AND EFFECTIVE CONSUMER SAFEGUARD

The draft recommendation aligns the feedback loop with a draft or final ISP through an exclusion window

<p>13. We welcome stakeholder views on whether the draft recommendation to implement a feedback loop and PACR exclusion window between the final IASR and draft ISP is an</p>	<p>ENA supports the AEMC's proposed Option 2 (i.e., feedback loop and PACR exclusion window between the final IASR and draft ISP). This is a pragmatic approach to ensuring that the assumptions underpinning the TNSPs' RIT-T assessment and AEMO's most recent draft or final ISP are aligned, which will support the feedback loop being progressed in a timely manner.</p>
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⁶ AER, *Transgrid's 2019/20 Bushfire Natural Disaster Event, Determination*, May 2021, pp. 13–14; AER, *Essential Energy 2019/20 Bushfire Cost Pass Through, Determination*, March 2022, pp. 8–9.

<p>appropriate solution. We also welcome views on alternative approaches that stakeholders consider would better promote the NEO.</p>	<p>The AEMC may want to consider allowing some discretion for a PACR to be published ahead of the draft ISP (but no feedback loop request) – as this would allow the RIT-T dispute period to play out during this time, supporting the overall timeliness of the regulatory process.</p>
<p>The Commission is seeking stakeholder input on two elements of our draft recommendation</p>	
<p>14. We welcome stakeholder views on whether aligning the feedback loop with the draft ISP or final ISP best balances the timely and efficient delivery of major transmission projects.</p>	<p>ENA supports allowing a feedback loop assessment after the draft ISP (rather than final) – as it will improve the overall timeliness of investment.</p> <p>If the ODP changed materially between the draft and final ISPs, then the AER could be given the ability to require a new feedback loop assessment as part of its CPA assessment.</p> <p>ENA supports the feedback loop and CPA process being allowed to run concurrently, in order to prevent the timing of the feedback loop being a cause of delay to the end-to-end regulatory process.</p>
<p>15. We welcome stakeholder views on whether the potential for delay due to the bunching of feedback loop assessments will have a material effect on timely delivery and, if so, is allowing the CPA and feedback loop to run concurrently the appropriate means of managing this delay?</p>	<p>ENA notes that in practice the number of actionable ISP projects is quite low, and so 'bunching' is unlikely to be a major issue.</p> <p>In addition, ENA considers that it would be reasonable for a timeframe to be placed on AEMO to complete the feedback loop, similar to the 40 business day timeframe that applies to the AER to make its determination on a CPA.</p> <p>This approach would be consistent with the AEMC's proposal to allow the feedback loop and CPA processes to run concurrently, and also will help support the aim of the AEMC's proposed changes to enable the feedback loop to be completed in a timely manner.</p>
<p>16. We welcome stakeholder views on whether amendments to the AER's CBA Guidelines to give effect to aligning the feedback loop assessment with a draft ISP is suitable.</p>	<p>ENA supports the approach of introducing this change via amendment to the AER's CBA Guidelines, although notes that imposing a timeframe on AEMO to complete its feedback loop assessment may require a NER change.</p> <p>ENA appreciates that proposed amendments to paragraph (e) in clause 6A.8.2 are intended to support improved workability of the feedback loop, but clause 6A.8.2 relates to 'traditional' contingent projects (accepted by the AER in a Revenue Determination) <i>and</i> actionable ISP projects. The drafting of the amendments to paragraph (e) may need to be revised as not all contingent projects are subject to the feedback loop.</p>

OTHER COMMENTS

17. Please provide any further comments on this report.

ENA notes that the AEMC has decided not to progress the following issues and agrees that these issues are not a priority for the AEMC's review:

- whether the RIT-T and ISP should be a "market benefits test" – in the interest of all who consume, produce and transport electricity – or a "customer benefits test" – specifically in the interest of those that consume electricity only
- guidance on the treatment of benefits that are hard to quantify in the RIT-T and ISP processes
- the treatment of uncertainty of project benefits in the RIT-T and ISP processes
- the treatment of non-network options as part of the RIT-T and ISP processes.