

3 March 2022

Anna Collyer
Chair
Australian Energy Market Commission
Level 15, 60 Castlereagh Street
SYDNEY NSW 2000

Submitted via email [anna.collyer@aemc.gov.au]

Dear Anna

Rule change request: Establishing a revenue determination for an Intending Transmission Network Service Provider

Marinus Link Pty Ltd (MLPL) is submitting the attached National Electricity Rule change request to enable the Australian Energy Regulator (AER) to establish a revenue determination for an Intending Transmission Network Service Provider (TNSP). By 'Intending TNSP', we refer to a party that intends to provide prescribed transmission services, but does not currently do so, and who is registered by AEMO as an Intending Participant under Chapter 2 of the Rules.

What is the issue to be resolved?

As you are aware, Project Marinus is currently progressing through its design and approvals stage, which will culminate in a final investment decision in relation to the project comprising the Marinus Link interconnector, being progressed by MLPL, and the North West Transmission Developments, being progressed by Tasmanian Networks Pty Ltd (TasNetworks). The majority of the capital expenditure¹ relating to Project Marinus will be undertaken by MLPL, which does not currently provide prescribed transmission services, but expects to do so. At present, MLPL finds itself in a 'catch 22' situation in which:

- a revenue determination for MLPL is a key input to making an investment decision to proceed with Project Marinus; but
- the AER cannot commence a revenue determination process until the project is completed and MLPL is providing prescribed transmission services.

¹ TasNetworks will be responsible for the North West Transmission Developments, while Marinus Link Pty Ltd will be responsible for the DC interconnector and converter stations that make up the majority of Project Marinus costs.

Certainty in relation to the future revenue stream is a key pre-requisite to making a final investment decision to proceed with the project through to construction. More specifically, a major infrastructure project such as Project Marinus could not obtain project financing through capital markets if there is no certainty regarding its future revenue stream. For example, providers of equity and debt financing will want to assess the risk that the actual costs of completing the project will be higher than the AER's subsequent assessment of the project's regulatory asset base. As MLPL's project costs are likely to be in the order of \$3 billion (\$2021), the magnitude of the potential shortfall in the regulatory asset base could be highly material. If the AER's view on the regulatory asset base is unknown, commercial investors will not be willing to fund the project because the risk of financial loss would be too great.

The issue being addressed in this Rule change proposal is a separate and independent matter to transmission cost allocation. Transmission cost allocation is currently under consideration by a number of stakeholders and, if a pricing Rule change is ultimately required, it would be the subject of a separate and independent Rule change proposal.

We are seeking a standard application of Chapter 6A

The above observations do not imply that MLPL is seeking 'special treatment' in the application of the revenue setting arrangements in Chapter 6A. On the contrary, MLPL's view is that the existing Chapter 6A provisions should apply in its standard form to MLPL. Therefore, the revenue setting process and timetable would be unchanged from the current arrangements in the Rules.

The Rule change that MLPL is proposing would enable Chapter 6A to apply to an 'Intending TNSP', so that a revenue determination can be made in advance of the final investment decision for projects such as Project Marinus. For providers of finance, this change is significant because it would, amongst other things, reveal the AER's assessment of the regulatory asset base. More broadly, it would provide certainty regarding the ability of MLPL to earn regulated revenue and the timing of that revenue recovery.

The proposed Rule change would enable the AER to undertake a revenue determination for an entity that does not presently provide prescribed transmission services, but is expected to do so. We have proposed criteria that the AER would apply to assess whether the entity seeking a revenue determination is reasonably likely to provide prescribed transmission services during the regulatory control period nominated by that entity. The purpose of these criteria is to minimise the risk that the AER will be required to conduct revenue determinations unnecessarily.

As explained in the attachment, our view is that relatively modest drafting changes are needed to allow Chapter 6A to apply to Intending TNSPs. A key aspect of the Rule change is to enable an Intending TNSP to activate the Chapter 6A process by submitting an application to the AER, which would explain why the revenue determination is being requested and setting out the proposed timetable for the review. The draft Rule requires that the timetable must be consistent with the existing Chapter 6A process, so that stakeholders are afforded the same engagement and consultation opportunities.

Evidently, the start date for the process and the proposed commencement of the regulatory control period are matters that should be addressed in the application, and assessed by the AER. If the timetable is accepted by the AER, the existing Chapter 6A building block process for determining the maximum allowed revenue would apply. In this regard, the proposed Rule also requires the AER to conduct the review in accordance with the accepted timetable by, for example, making a request for the Revenue Proposal to be submitted in accordance with the timeframes specified in clause 6A.10.1(a)(2).

Regulatory asset base

As already noted, our position is that a standard revenue setting process should apply to Intending TNSPs, so that they are treated no more or less favourably than any other TNSP. In conducting our review of Chapter 6A for the purposes of this Rule change proposal, however, MLPL became aware of an interpretation issue that may arise in relation to the existing Chapter 6A drafting in clause S6A.2.1(d)(2), which relates to establishing the regulatory asset base for a new entity, such as MLPL.

We have therefore proposed an additional clarifying clause which has the effect of confirming that expenditure incurred prior to the commencement of the first regulatory period should be included in the regulatory asset base, providing that it is prudent and efficient. Our view is that this clarifying clause is consistent with the intention of the existing Rules provisions.

National Electricity Objective and Revenue and Pricing Principles

Our view is that the proposed Rule change would advance the National Electricity Objective. Specifically, as Project Marinus has satisfied the regulatory investment test and has been identified as an actionable Integrated System Plan (ISP) project by AEMO's draft 2022 ISP, it is expected to deliver substantial net market benefits. Evidently, these benefits could not be achieved if Project Marinus is unable to be financed. Our view is that a revenue determination is a pre-requisite for obtaining finance from the capital markets (and ultimately proceeding with the project), and a revenue determination for a new TNSP cannot be made under the existing Rules.

We are aware that the Commission is required to consider the Revenue and Pricing Principles in the National Electricity Law in assessing this Rule change proposal. These principles are drafted with reference to existing regulated network service providers and, therefore, tend not to apply to this proposed Rule change which concerns Intending TNSPs.

Notwithstanding this observation, we note that the proposed Rule change addresses the 'economic costs and risks of the potential for underinvestment in the transmission system', in accordance with section 7A(6) of the National Electricity Law. Our Rule change proposal does not raise any issues in relation to the remaining Revenue and Pricing Principles. As a general observation, however, we note that the Rule change would apply Chapter 6A in a standard form to Intending TNSPs and, as such, will achieve outcomes that are consistent with the Revenue and Pricing Principles.

Is a Rule change necessary?

In preparing this Rule change proposal and discussing the issues with the AER, we have given careful consideration to whether the Rule change is required. In particular, under the existing Rules provisions relating to 'Intending Participants' the AEMC recently approved amendments to AEMO's Schedule of Rights & Obligations of Intending Participants so that Chapter 6A applies to Intending TNSPs, in accordance with clause 2.7(d) of the Rules. This amendment means that the rights and obligations that apply to a registered TNSP under Chapter 6A also apply to Intending Participants.

However, based on our discussions with the AER, our understanding is that this amended Schedule is not capable of imposing obligations on the AER to conduct a revenue determination under Chapter 6A, and therefore cannot address the timing issues associated with MLPL needing a determination prior to a final investment decision.

This amendment to the Schedule under clause 2.7(d) does not resolve the 'catch 22' issue described above, as the AER is still unable to commence the revenue determination process prior to MLPL providing prescribed transmission services. As a result of our discussions with the AER, therefore, we have concluded that a Rule change is required.

Treatment as a non-controversial Rule

In making this Rule change request, we note that it is entirely procedural in nature as it only seeks to allow the existing Chapter 6A provisions to be applied to an Intending TNSP. Furthermore, the proposed Rule change essentially gives effect to AEMO's rationale for this suggested amendment to the existing Schedule of Rights & Obligations of Intending Participants.

Under the National Electricity Law, a 'non-controversial Rule' means a Rule that is unlikely to have a significant effect on the National Electricity Market. In our view, the timely application of the Chapter 6A provisions will not have a significant effect on the National Electricity Market, other than to promote efficient transmission investment in accordance with the National Electricity Objective. Accordingly, we request that the Commission treats the proposed Rule change as non-controversial, recognising that it does not necessarily follow that the Commission will adopt an expedited Rule change process.

Additional explanatory information to assist the Commission and stakeholders

To further assist the Commission and stakeholders, we have provided a clause-by-clause explanation of the rationale for the proposed Rule as Attachment 1 to the Rule change proposal. Our intention in providing this additional information is to provide the clearest explanation as to why each amendment is being proposed.

In addition to providing a clause-by-clause explanation, we have also included a 'Q&A briefing' as Attachment 2, to address specific questions that may be raised by the Commission or stakeholders. While we consider that each of the matters raised in the Q&A briefing are addressed in the main body of our Rule change proposal, our view is that this presentation should further assist the Commission and stakeholders in understanding the scope and purpose of the proposed Rule change, which are limited.

Timing and next steps

We appreciate that the Commission is extremely busy at present in undertaking reviews and considering various Rule change proposals, including those arising from the Energy Security Board's recent reforms. In relation to the timing of this Rule change, however, the AER cannot commence the revenue determination process for Marinus Link Pty Ltd until the new Rule is made. It would therefore be helpful if the Rule determination could be made by mid-2022.

We look forward to working with you and your team in relation to this Rule change request. Any questions on this Rule change request should be directed to Heath Dillon, Executive Manager Customer and Revenue, at heath.dillon@marinuslink.com.au.

Yours sincerely



Bess Clark
Chief Executive Officer

Rule change request: Establishing a revenue determination for an Intending Transmission Network Service Provider

1. Statement of the issues to be addressed

Chapter 6A of the Rules sets out the revenue determination process for Transmission Network Service Providers (TNSPs) that provide prescribed transmission services. However, Chapter 6A cannot apply to an 'Intending TNSP', being an entity that does not currently provide those services but expects to do so, and who is registered by AEMO as an Intending Participant under Chapter 2 of the Rules.

In the absence of a Rule change, the AER is unable to make a revenue determination for MLPL in respect of the Marinus Link interconnector and supporting assets that will form part of Project Marinus. This is because MLPL will only provide prescribed transmission services once Project Marinus is commissioned and therefore will only be able to register as a TNSP at that time. Clause 6A.2.1 of the Rules places a duty on the AER to make transmission determinations, but only in respect of registered TNSPs. Furthermore, the procedural provisions for submission of Revenue Proposals set out in clause 6A.10.1 of the Rules only apply to TNSPs. Therefore, under the existing Rules, the AER does not have the power to make a revenue determination for an Intending TNSP.

Project Marinus is currently progressing through its design and approvals phase, which will conclude with a final investment decision. However, MLPL may be unable to reach a final investment decision without first knowing the outcome of the AER's revenue determination, which is a key driver of the project's commercial viability.

Specifically, providers of debt and equity finance will want to understand the AER's assessment of the project's regulatory asset base (amongst other things) before committing to the project, as this parameter is a key determinant of the financial viability of the project from the perspective of investors. Furthermore, prospective debt and equity holders would also want to have confidence in the project's revenue profile and the cash flow projections for the project before committing project funding. This information cannot be known to the required level of certainty in the absence of a revenue determination.

As the current Rules do not allow the AER to make a revenue determination for an Intending TNSP, it fails to provide the revenue certainty required by a new entrant in order to finance the project through the capital markets. This is not an issue faced by existing TNSPs who can access the contingent project mechanism under an existing regulatory determination.

This uncertainty adversely affects the efficient and timely delivery of Project Marinus, contrary to the National Electricity Objective. Similar issues would apply to any future Intending TNSP that requires a revenue determination before proceeding with a final investment decision.

We recognise that transmission cost allocation remains an outstanding issue for Project Marinus; however this Rule change proposal is independent of any potential changes to transmission cost allocation arrangements.

Commencement and application of the revenue determination process for MLPL in order to achieve confidence in the total revenue stream, and how important matters such as capital expenditure and the regulatory asset base will be treated, is the subject of this Rule change and is a separate and independent matter to transmission cost allocation. The important matter of transmission cost allocation is currently under consideration by a number of stakeholders and, if a Rule change is ultimately required, it would be the subject of a separate and independent Rule change proposal.

2. Description of the proposed Rule change

The proposed Rule change amends Chapter 6A to enable the AER to make a revenue determination for an Intending TNSP, who is registered by AEMO as an Intending Participant under Chapter 2 of the Rules. It must be emphasised that the standard Chapter 6A process would then apply to the Intending TNSP, without amendment. Similarly, the Intending TNSP would be subject to the AER's guidelines and schemes. The proposed Rule change achieves this outcome by requiring references to 'TNSP' or 'NSP' to be read as referring to 'Intending TNSP'.

In order to activate the Chapter 6A revenue setting process, the proposed Rule requires the Intending TNSP to submit an application to the AER specifying the proposed timetable for its revenue determination, including the proposed regulatory control period. The Intending TNSP's proposed timetable must comply with the standard revenue determination process in Part E of Chapter 6A. The Intending TNSP is also required to explain why it expects to provide prescribed transmission services during the proposed regulatory control period.

The proposed Rule only requires the AER to make a revenue determination if it is satisfied that the proposed timetable is reasonable in the circumstances and accords with the standard revenue setting process in Chapter 6A. If the AER is not satisfied that the timetable is reasonable, it may propose an alternative timetable or reject the application, setting out its reasons. The purpose of these provisions is to ensure that the AER is not required to undertake revenue determinations unnecessarily, while also addressing the issues described in the previous section.

The proposed Rule does not specify a particular timeframe prior to the proposed regulatory period for an Intending TNSP to submit an application to the AER. Whilst an Intending TNSP could submit an application to the AER at any time, the proposed timetable included in the application must comply with the Chapter 6A process. Therefore, to obtain a revenue determination for the proposed regulatory period, the Intending TNSP would need to submit the application at such a time that allows for the full Chapter 6A revenue determination process, and associated timeframes, to be fulfilled.

Furthermore, the proposed Rule allows the AER to consider whether the proposed timetable is reasonable. In considering the question of reasonableness, the AER is likely to consider the impact on its resources in conducting a revenue determination particularly if the request is made at short notice. Rather than mandating a fixed minimum gap between the application and the commencement of the revenue determination process, our view is that it is better to provide the AER with some discretion in relation to this issue, having regard to all the relevant circumstances. As already noted, the principal point is that the timetable must conform with the standard process in Part E of Chapter 6A and our view is that it this requirement that should be mandated in the Rules, with other timing matters to be left to the AER's assessment of what is reasonable in that particular case.

As a housekeeping matter, the proposed Rule also requires the AER to conduct the revenue determination in accordance with the agreed timetable.

Evidently, as this provision applies in circumstances where the AER has accepted the timetable, it is uncontroversial that the AER should then apply the determination process in accordance with that timetable. From MLPL's perspective, the proposed clause provides assurance that the revenue determination process will proceed in accordance with the overall project timeframes, including the proposed final investment decision.

The proposed Rule also clarifies that in making a revenue determination, the Intending TNSP should be treated as if it will provide prescribed transmission services at the commencement of the relevant regulatory control period. This provision allows the AER to make a revenue determination one or more years prior to the Intending TNSP providing prescribed transmission services, as the revenue determination may be required before the relevant transmission assets are constructed.

As noted in the covering letter, we considered whether the existing Intending Participant provisions could resolve the identified issue without the need for a Rule change. Specifically, AEMO has recently amended its existing Schedule of Rights & Obligations of Intending Participants so that Chapter 6A applies to Intending Participants.² As explained in the covering letter, however, this approach does not impose an obligation on the AER to conduct a revenue determination process and, therefore, would not resolve the issue.

In addition to the changes described above, we also propose a clarifying clause in Schedule 6A.2.1(d), which sets out the arrangements for establishing a regulatory asset base for a new entity, such as MLPL. The clarifying clause confirms that expenditure incurred prior to the commencement of the first regulatory period should be included in the opening regulatory asset base, providing that it is prudent and efficient. We consider this clause to be necessary because clause S6A.2.1(d)(2) currently reads:

The value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of the first *regulatory control period* for the relevant *Transmission Network Service Provider* is the prudent and efficient value of the assets that are used by the *Transmission Network Service Provider* to provide those *prescribed transmission services* (but only to the extent that they are used to provide such services), as determined by the AER. In determining this value, the AER must have regard to the matters referred to in clause S6A.2.2.

The highlighted words illustrate the need for a clarifying clause. At the commencement of the first regulatory control period, MLPL will have already incurred significant expenditure that is integral to the construction of the assets that will provide prescribed transmission services. However, the above provisions refer to the value of assets that are **used** by the TNSP (but only to the extent that they are **used** to provide such services). It is arguable, therefore, that if no assets are actually used by the Intending TNSP at the commencement of the regulatory period that expenditure already incurred could be excluded from the opening regulatory asset base, even if that expenditure is prudent and efficient.

MLPL's view is that the above reading of clause S6A.2.1(d)(2) would not be consistent with good regulatory practice or the revenue and pricing principles in the National Electricity Law, which require (amongst other things) that a regulated network service provider should be provided with a reasonable opportunity to recover its efficient costs³.

² AEMC, letter from Anna Collyer to Daniel Westerman, dated 7 February 2022, approving the updated Schedule of Rights and Obligations of Intending Participants, submitted to the AEMC on 21 January 2022, consistent with clause 2.7(d) of the Rules.

³ National Electricity Law, Section 7A(2).

Accordingly, a better reading of clause S6A.2.1(d)(2) is that the opening regulatory asset base should include the prudent and efficient value of the assets that are *required* by the Transmission Network Service Provider to provide prescribed transmission services. We recognise, however, that the current wording refers to ‘used’ rather than ‘required’, and therefore it is appropriate to include a clarifying clause to explain how clause S6A.2.1(d)(2) should be interpreted.

We have therefore proposed an additional clarifying clause which has the effect of confirming that expenditure incurred prior to the commencement of the first regulatory period should be included in the opening regulatory asset base, providing that it is prudent and efficient. Our view is that this clarifying clause is consistent with the intention of the existing Rules provisions and the revenue and pricing principles in the National Electricity Law⁴.

3. How does the Rule change contribute to the National Electricity Objective?

The National Electricity Objective is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

The proposed Rule change will contribute to this objective by enabling MLPL and future Intending TNSPs to obtain a revenue determination prior to making a final investment decision. A Rule change that facilitates a final investment decision is consistent with promoting efficient investment in electricity services for the long term interests of consumers. Specifically, as Project Marinus has satisfied the regulatory investment test and has been identified as an actionable Integrated System Plan (ISP) project by AEMO’s draft 2022 ISP, it is expected to deliver substantial net market benefits.

4. Consideration of the Revenue and Pricing Principles

As the proposed Rule change relates to Chapter 6A, section 88B of the National Electricity Law states that the Commission must take into account the revenue and pricing principles in making a Rule. To assist the Commission in this regard, MLPL makes the following observations in relation to the application of the revenue and pricing principles to the proposed Rule change:

- The revenue and pricing principles are expressed in terms that relate to regulated network service providers. An Intending TNSP is not a regulated network service provider. Specifically, the NEL defines a regulated network service provider as a regulated transmission system operator or a regulated distribution system operator. The NEL further defines a regulated transmission system operator as:
 - an owner, controller or operator of a transmission system—
 - (a) who is a Registered participant; and
 - (b) whose revenue from, or prices that are charged for, the provision of electricity network services are regulated under a transmission determination.

Evidently, an Intending TNSP does not satisfy the second of these conditions and, therefore, it is questionable whether the revenue and pricing principles can be applied to the proposed Rule change.

⁴ National Electricity Law, Section 7A(2).

Taking a broader perspective, however, MLPL notes that the proposed Rule would apply the standard Chapter 6A process to Intending TNSPs. As Chapter 6A has been developed to accord with the revenue and pricing principles, it follows that the proposed Rule change is also consistent with the revenue and pricing principles.

- Section 7A(6) of the NEL states that ‘regard should be had to the economic costs and risks of the potential for under and over investment by a regulated network service provider in, as the case requires, a distribution system or transmission system with which the operator provides direct control network services.’ While this revenue and pricing principle is also drafted with reference to *existing* network service providers rather than a prospective service provider, the principle captures the central rationale for the proposed Rule change which is to avoid the economic costs of under-investment. Accordingly, MLPL regards this revenue and pricing principle as supporting the proposed Rule change.
- As noted in the previous section, Section 7A(2) of the NEL is also relevant to the proposed clarifying provision regarding the inclusion of prudent and efficient expenditure in the opening regulatory asset base for an Intending TNSP. In particular, prudent and efficient expenditure that has been incurred prior to the commencement of the first regulatory period should be included in the opening regulatory asset base. If prudent and efficient expenditure is not recognised in the opening regulatory asset base, new TNSPs will be denied the opportunity to recover their efficient costs, contrary to Section 7A(2) of the NEL.

5. Costs, benefits and expected impacts of the proposed Rule change

A Rule change request must provide an explanation of the expected benefits and costs of the proposed change and the potential impacts of the change on those likely to be affected.⁵ In relation to the benefits of the proposed Rule change, we note that:

- It facilitates timely and efficient investment decision-making by Intending TNSPs by allowing the AER to make a revenue determination in advance of constructing transmission assets;
- The potential net benefit from Project Marinus was identified as approximately \$4.6 billion in AEMO’s draft 2022 ISP and, therefore, establishing an appropriate revenue setting process for an Intending TNSP, such as MLPL, is likely to deliver substantial benefits to consumers; and
- The proposed Rule applies the existing Chapter 6A revenue determination process to Intending TNSPs, which is a well-accepted process that is understood by stakeholders and consumers.

In relation to the costs of the Rule change, we note that:

- The AER will be required to consider an application made by an Intending TNSP and to assess whether the proposed timetable for the revenue determination process is reasonable in the circumstances. The cost of this assessment to the AER is likely to be modest.

⁵ National Electricity (South Australia) Regulations under the National Electricity (South Australia) Act 1996, section 8.

- The AER will be required to undertake revenue determinations in circumstances where there is no guarantee that the Intending TNSP will provide prescribed transmission services. Similarly, stakeholders and consumers will be engaged in a consultation exercise that may ultimately not deliver prescribed transmission services. Accordingly, there is a low to moderate risk that the revenue determination and the associated stakeholder consultation will prove to be unnecessary.

In our view, these costs are modest when compared against the potential benefit to consumers of promoting efficient and timely investment in a major infrastructure project, such as Project Marinus. Furthermore, we note that AEMO's draft 2022 Integrated System Plan identified both stages of Project Marinus as actionable. The costs of completing a revenue determination process is likely to be a very small percentage of the total project costs and benefits, and therefore is warranted.

The proposed Rule change will not have any impact on the National Electricity Market or market participants, as it is entirely procedural in nature. Apart from those Intending Participants seeking a transmission determination, the only other parties affected by the Rule change will be the AER, consumers and stakeholders in their respective roles in making revenue determinations for Intending TNSPs. As noted above, we do not expect the costs to be material compared to the important benefit of providing a timely revenue determination that facilitates efficient transmission network investment.

Attachment 1 - Proposed Rule change and description– [Drafting changes to the existing Rules are underlined in the left hand column]

Chapter 6A provisions	Reason for new or amended clause
6A. Economic Regulation of Transmission Services	
Part A Introduction	
6A.1 Introduction to Chapter 6A	
6A.1.1 Economic regulation of transmission services generally	
<p>(a) Part B of this Chapter 6A states the general obligation of the <i>AER</i> to make <i>transmission determinations</i> for <i>Transmission Network Service Providers</i> and <i>Intending Transmission Network Service Providers</i> in respect of:</p> <p>(1) <i>prescribed transmission services</i>; and</p> <p>(2) [Deleted]</p> <p><u>where an <i>Intending Transmission Network Service Provider</i> is an <i>Intending Participant</i> registered under Chapter 2.</u></p> <p>Note</p> <p>Access and <i>connection to negotiated transmission services</i> is governed by Chapter 5 of the <i>Rules</i>.</p>	<p>These amendments allow for the AER to make a revenue determination for an Intending TNSP for its first regulatory period, and provides a description of an Intending TNSP for this purpose.</p>

Chapter 6A provisions	Reason for new or amended clause
(b) Part C of this Chapter 6A regulates the revenues that may be earned by <i>Transmission Network Service Providers</i> from the provision by them of <i>transmission services</i> that are the subject of <i>transmission determinations</i> .	
(c) [Deleted]	
(d) Part E of this Chapter 6A sets out the procedure and approach for the making of a <i>transmission determination</i> by the <i>AER</i> .	
(e) Part F of this Chapter 6A contains provisions regarding the disclosure, use and protection of information.	
(f) Part G of this Chapter 6A contains provisions regarding cost allocation.	
(g) Part H of this Chapter 6A contains provisions regarding the <i>transmission consultation procedures</i> .	
(h) Part I of this Chapter 6A contains provisions regarding <i>Transmission Ring-Fencing Guidelines</i> .	
(i) Part J of this Chapter 6A regulates the prices that may be charged by <i>Transmission Network Service Providers</i> for the provision of <i>prescribed transmission services</i> and establishes principles to be applied by providers in setting prices that allow those providers to earn the whole of the <i>aggregate annual revenue requirement</i> .	
(j) [Deleted]	

Chapter 6A provisions	Reason for new or amended clause
<p>(k) Other transmission services provided by <i>Transmission Network Service Providers (non-regulated transmission services)</i> are not subject to regulation under this Chapter 6A.</p>	
<p>(l) Services provided by <i>dual function assets</i> are not subject to regulation under this Chapter 6A except to the extent provided in Part N of Chapter 6.</p>	
<p>(m) Part L sets out the requirements to prepare <i>annual benchmarking reports</i>.</p>	
<p>6A.1.2 [Deleted]</p>	
<p>6A.1.3 [Deleted]</p>	
<p>6A.1.4 National regulatory arrangements</p>	
<p>(a) The <i>AER</i> is, in accordance with this Chapter 6A, responsible for the economic regulation of <i>prescribed transmission services</i> provided by <i>Transmission Network Service Providers</i> by means of, or in connection with, <i>transmission systems</i> that form part of the <i>national grid</i>.</p>	

Chapter 6A provisions	Reason for new or amended clause
<p>(b) Subject to any contrary determination by the AER, those parts of a <i>transmission network</i> operating at nominal <i>voltages</i> between 66kV and 220kV that:</p> <p>(1) do not operate in parallel to; and</p> <p>(2) do not provide support to,</p> <p>the higher <i>voltage transmission network</i> may be deemed by the relevant <i>Transmission Network Service Provider</i> to be subject to the regulatory arrangements for <i>distribution service</i> pricing set out in Chapter 6.</p>	
6A.1.5 Application of Chapter 6A to Market Network Service Providers	
<p>(a) Notwithstanding anything contained in this Chapter 6A:</p> <p>(1) Parts B, C, and J do not regulate the revenues that may be earned by <i>Market Network Service Providers</i> from, or the prices that may be charged by <i>Market Network Service Providers</i> for, the provision by them of <i>market network services</i>; and</p> <p>(2) Part E does not apply to <i>Market Network Service Providers</i>.</p>	
<p>(b) [Deleted]</p>	
<p>(c) [Deleted]</p>	

Chapter 6A provisions	Reason for new or amended clause
(d) Rule 5.5 does not apply to disputes relating to the terms and conditions of access for <i>network services</i> referred to under this clause 6A.1.5.	
6A.1.6 Application of Chapter 6A to AEMO and declared transmission system operators	
(a) This Chapter 6A applies to <i>AEMO</i> in respect of the provision of <i>shared transmission services</i> by means of, or in connection with, a <i>declared shared network</i> subject to the exclusions, qualifications and modifications set out in Schedule 6A.4.	
(b) This Chapter 6A does not apply to <i>AEMO</i> as provider of <i>electricity network services</i> in any other capacity.	
(c) This Chapter 6A applies to <i>declared transmission system operators</i> subject to the exclusions, qualifications and modifications set out in Schedule 6A.4 that expressly apply to them.	
<u>6A.1.7 Application of Chapter 6A to Intending Transmission Network Service Providers</u>	
(a) <u>This Chapter 6A applies to <i>Intending Transmission Network Service Providers</i>.</u>	Provides confirmation that Chapter 6A applies to an Intending TNSP.
(b) <u>In applying Chapter 6A to an <i>Intending Transmission Network Service Provider</i>:</u>	The following sets out specific matters to ensure that Chapter 6A in its standard form will apply to intending TNSPs.

Chapter 6A provisions	Reason for new or amended clause
<p>(1) <u>references to <i>Transmission Network Service Provider</i> will be read as references to <i>Intending Transmission Network Service Provider</i>;</u></p>	<p>Ensures that Chapter 6A matters applying to TNSPs will also apply to Intending TNSPs.</p>
<p>(2) <u>references to <i>Transmission Network Service Provider</i> or <i>Network Service Provider</i> in the AER's published guidelines, methodologies, models, schemes, tests or values under Chapter 6A will be read as references to <i>Intending Transmission Network Service Provider</i>; and</u></p>	<p>Ensures that AER guidelines, schemes, models and other matters that apply to TNSPs or NSPs under Chapter 6A will also apply to Intending TNSPs.</p>
<p>(3) <u>in making a revenue determination for an <i>Intending Transmission Network Service Provider</i>, the <i>Intending Transmission Network Service Provider</i> will be treated as if it will provide <i>prescribed transmission services</i> at the commencement of the relevant <i>regulatory control period</i>.</u></p>	<p>By their nature, Intending TNSPs are unlikely to be providing prescribed transmission services at the commencement of the regulatory period, as the relevant assets may not be commissioned at that time. However, it is important that a revenue determination can be made by the AER, despite the fact that services may not be provided at that time. This clause ensures that the AER is able to make a determination as if the Intending TNSP is providing prescribed transmission services from the commencement of the period.</p>
<p>Note</p> <p><u>Clause 6A.1.7(b)(3) allows for the AER to make a <i>revenue determination one or more years prior to the <i>Intending Transmission Network Service Provider</i> providing <i>prescribed transmission services</i>, as the <i>revenue determination</i> may be required before the relevant transmission assets are constructed.</i></u></p>	<p>See above explanation. This note is intended to ensure that the rationale for the provisions is understood by the AER and stakeholders.</p>

Chapter 6A provisions	Reason for new or amended clause
<u>6A.1.8 Application for a Revenue Determination</u>	
(a) <u>This clause applies to an <i>Intending Transmission Network Service Provider</i> seeking a <i>revenue determination</i> under Chapter 6A.</u>	This clause explains that 6A.1.8 applies to Intending TNSPs that are seeking a revenue determination.
(b) <u>An <i>Intending Transmission Network Service Provider</i> may lodge an application to the AER to commence the revenue determination process under Chapter 6A.</u>	This clause enables an Intending TNSP to lodge an application to the AER to commence a revenue determination process. There is no requirement for an Intending TNSP to lodge an application.
(c) <u>The applicant must include the following information:</u>	This clause sets out the matters that must be addressed by the Intending TNSP in its application to the AER.
(1) <u>evidence that it is registered as an <i>Intending Participant</i> that intends to carry out the activities of a <i>Transmission Network Service Provider</i>;</u>	The Intending TNSP must be registered with AEMO as an Intending Participant.
(2) <u>the proposed <i>regulatory control period</i>, its commencement date and duration;</u>	The application must set out the proposed regulatory period.
(3) <u>the proposed timetable for the revenue determination process consistent with the requirements of Part E of Chapter 6A; and</u>	The application must set out a proposed timetable for matters associated with a revenue determination process and must accord with the relevant requirements of Chapter 6A in this regard. This clause therefore ensures that the timetable reflects a standard Chapter 6A process.

Chapter 6A provisions	Reason for new or amended clause
<p>(4) <u>an explanation as to why the proposals in (b) and (c) are reasonable, having regard to the timeframes required to construct any new transmission assets and when the entity expects to commence providing prescribed transmission services.</u></p>	<p>The application must provide sufficient information to enable the AER to assess the Intending Participant's likelihood of providing prescribed transmission services during the proposed regulatory control period, and which justifies the commencement of a revenue determination process under Chapter 6A.</p>
<p>(d) <u>The AER must approve and publish the proposed timetable specified in clause 6A.1.8(c)(2), if the AER is satisfied that:</u></p>	<p>Provides for the following matters to be considered by the AER in making a decision on the Intending Participant's application for a revenue determination process to be undertaken.</p>
<p>(1) <u>the applicant is registered as an <i>Intending Participant</i> that intends to carry out the activities of a <i>Transmission Network Service Provider</i>;</u></p>	<p>The Intending TNSP must be registered with AEMO as an Intending Participant.</p>
<p>(2) <u>the applicant is expected to provide prescribed transmission services during the proposed regulatory control period;</u></p>	<p>The AER must assess whether it considers that the Intending Participant is expected to provide prescribed transmission services during the proposed regulatory period.</p>
<p>(3) <u>the proposed timetable is consistent with Part E of Chapter 6A; and</u></p>	<p>The AER must assess whether the Intending Participant's proposed timetable is in accordance with relevant Chapter 6A timeframes for a revenue determination process.</p>

Chapter 6A provisions	Reason for new or amended clause
(4) <u>the proposed timetable is reasonable.</u>	The AER must also assess whether the proposed timetable is reasonable. For example, it may consider the timing of the Intending TNSP's decision making in relation to project commencement and asset construction.
(e) <u>If the AER is not satisfied in relation to one or more of the matters in 6A.1.8(d), the AER must write to the applicant:</u>	The following matters set out matters that the AER must address if it considers the application does not meet relevant requirements.
(1) <u>proposing an alternative timetable that the AER considers to be reasonable; or</u>	The AER must propose an alternative timetable if it considers that the proposed timetable is not reasonable under the circumstances.
(2) <u>rejecting the application.</u> <u>The AER must explain the reasons for its decision and provide the applicant with an opportunity to lodge a new application or accept the AER's decision.</u>	The AER may reject the application for a revenue determination process to be undertaken for the Intending TNSP, and if so, it must explain the reasons for its rejection. If it does reject the application, the AER must provide the Intending TNSP with an opportunity to lodge a new application or accept the AER decision.
(f) <u>If the AER does not make a decision within 20 business days of receiving the application, the AER is taken to have accepted the proposed timetable as reasonable.</u>	This clause provides for an application taken to be accepted by the AER, if it does not make a decision within 20 business days. This ensures that there is a maximum timeframe in place for consideration of the application.

Chapter 6A provisions	Reason for new or amended clause
<p>(g) <u>If the AER accepts the proposed timetable, the AER must conduct the revenue determination in accordance with that timetable, including by making requests for submissions from the <i>Intending Transmission Network Service Provider</i> in accordance with clauses 6A.10.1B(b)(2) and 6A.10.1(a)(2).</u></p>	<p>This clause confirms that the standard Chapter 6A process for a revenue determination applies to the Intending TNSP after acceptance by the AER of the application. It also requires the AER to take steps, such as seek a Revenue Proposal at the appropriate time, consistent with the agreed timetable.</p>
<p>Part B Transmission Determinations Generally</p>	
<p>6A.2 Transmission Determinations</p>	
<p>6A.2.1 Duty of AER to make transmission determinations</p> <p>The AER must make <i>transmission determinations for Transmission Network Service Providers and Intending Transmission Network Service Providers</i> in accordance with this Chapter 6A in respect of:</p> <p>(1) <i>prescribed transmission services</i>; and</p> <p>(2) [Deleted]</p>	<p>This amendment confirms that the AER must make revenue determinations for Intending TNSPs.</p>

Chapter 6A provisions	Reason for new or amended clause
Schedule 6A.2 Regulatory Asset Base	
S6A.2.1 Establishment of opening regulatory asset base for a regulatory control period	
<u>(d) Other transmission systems</u>	
<p>(1) This paragraph (d) applies to a <i>transmission system</i> not referred to in paragraphs (c) or (e), when <i>prescribed transmission services</i> that are provided by means of, or in connection with, that system are to be regulated under a <i>revenue determination</i>.</p>	
<p>(2) The value of the regulatory asset base for that <i>transmission system</i> as at the beginning of the first <i>regulatory year</i> of the first <i>regulatory control period</i> for the relevant <i>Transmission Network Service Provider</i> is the prudent and efficient value of the assets that are used by the <i>Transmission Network Service Provider</i> to provide those <i>prescribed transmission services</i> (but only to the extent that they are used to provide such services), as determined by the <i>AER</i>. In determining this value, the <i>AER</i> must have regard to the matters referred to in clause S6A.2.2.</p>	

Chapter 6A provisions	Reason for new or amended clause
<p>(3) The value of the regulatory asset base for that <i>transmission system</i> as at the beginning of the first <i>regulatory year</i> of any subsequent <i>regulatory control period</i> must be determined by rolling forward the value of the regulatory asset base for that <i>transmission system</i> as at the beginning of the first <i>regulatory year</i> of the first <i>regulatory control period</i> in accordance with this schedule.</p>	
<p>(4) <u>For the avoidance of doubt, in applying clause (d)(2) to an <i>Intending Transmission Network Service Provider</i>, the value of the regulatory asset base at the beginning of the first <i>regulatory year</i> of the first <i>regulatory control period</i> must include the prudent and efficient expenditure incurred or will be incurred prior to the commencement of the <i>regulatory control period</i>. In determining this value, the <i>AER</i> must have regard to the matters referred to in clause S6A.2.2.</u></p>	<p>Enables an opening regulatory asset base to be established for the commencement of the Intending TNSP's first regulatory period, with the AER to make that determination after assessing the prudence and efficiency of expenditure incurred, or expected to be incurred, prior to the start of the first regulatory period.</p> <p>An Intending TNSP is likely to be undertaking expenditure prior to the commencement of the first regulatory period, so this clause provides for recognition of that expenditure so that it can be included in the opening regulatory asset base for the first regulatory period.</p>

Chapter 6A provisions	Reason for new or amended clause
10. Glossary	
<p><i>Intending Transmission Network Service Provider</i></p> <p><u><i>An Intending Transmission Network Service Provider is an Intending Participant registered under Chapter 2 that is intending to act as a Transmission Network Service Provider.</i></u></p>	<p>This provides a definition of Intending TNSP that is included in Chapter 6A as a result of the proposed Rule change.</p>

Attachment 2 – Question & Answer Briefing

Q1. Why is a Rule change required?

A1. The current Rules do not allow the AER to make a revenue determination for an Intending TNSP, i.e. for an entity that AEMO has registered as intending to provide prescribed transmission services, but does not currently do so. Investors in a regulated transmission asset are unlikely to commit funding to a major transmission project, such as Project Marinus, in the absence of confidence in the regulated revenue stream and major financial drivers, such as the AER's capital expenditure allowance for the project.

Q2. Is MLPL asking for more revenue certainty or earlier revenue timing compared to other TNSPs?

A2. No. We are seeking a standard regulatory approach to apply to MLPL, with no special treatment of early recovery of revenue. The only difference in our Rule change is that a revenue determination may be made in advance of the Intending TNSP providing prescribed transmission services. The early making of a revenue determination will facilitate the investment decision (as investors will be able to make a decision in the knowledge of the AER's approach to issues such as the opening regulatory asset base and the capital expenditure allowance). However, the early publication of the revenue determination does not mean that MLPL will recover revenue any sooner than any other TNSP that is investing in a new project.

Q3. Is this Rule change another version of the TransGrid and ElectraNet Rule change relating to financeability of major transmission projects, which was rejected by the AEMC?

A3. No. As explained in our answer to Q2, this Rule change is not seeking any change to the existing revenue setting processes that apply to existing TNSPs.

Q4. You claim that the Rule change will apply the standard regulatory process, but you are proposing a change to the provisions relating to the regulatory asset base? How do you reconcile these two positions?

A4. In reviewing the existing Chapter 6A provisions, we found a possible interpretation issue relating to a clause in Schedule 6.2. As far as we are aware, this clause has never been applied by the AER in practice and therefore its interpretation has not been clarified. Our view is that the opening regulatory asset base for an Intending TNSP should include expenditure incurred prior to the commencement of the regulatory period, providing that the expenditure is considered by the AER to be prudent and efficient. We have therefore proposed an additional provision to clarify this issue. Our proposed clarification is entirely consistent with good regulatory practice and the revenue and pricing principles in the National Electricity Law. As such, we are not seeking any change to the standard regulatory process.

Q5. Why are you not seeking revenue recovery for this project as a contingent project?

A5. If approved by the AER, a contingent project application results in an amendment to an existing revenue determination. In the case of MLPL, there is no existing revenue determination in place that could be adjusted through a contingent project application. For that reason, it is not open to MLPL to lodge a contingent project application.

Q6. Are you seeking to bypass AEMO's 'feedback loop' that applies to contingent project applications?

A6. No. While the feedback loop only applies to contingent projects, we recognise the important role of this feedback loop in providing confidence to stakeholders that the proposed project and project costs remain consistent with AEMO's optimal development path. We therefore intend to engage with AEMO on the feedback loop, as part of our consultation process.

Q7. Are you planning to shorten the regulatory review process in order to achieve an early revenue determination?

A7. No. Our approach is to apply the standard revenue process and timetable specified in the Rules. We expect to engage fully with stakeholders on a range of topics, as part of this engagement process.

Q8. How does this Rule change relate to transmission cost allocation, which remains an outstanding issue for this project? Should the cost allocation for the project be resolved in advance of this Rule change being lodged?

A8. No. This Rule change proposal is independent of any potential changes to transmission cost allocation arrangements. Commencement and application of the revenue determination process for MLPL in order to achieve confidence in the total revenue stream, and how important matters such as capital expenditure and the regulatory asset base will be treated, is the subject of this Rule change and is a separate and independent matter to cost allocation.

The matter of transmission cost allocation (i.e. "who pays") for the project will be progressed separately to this process.