

18 July 2022

Ms Anna Collyer  
Chair  
Australian Energy Market Commission  
Sydney South NSW 1235

By online submission

Dear Ms. Collyer,

Level 22  
530 Collins Street  
Melbourne VIC 3000

**Postal Address:**  
GPO Box 2008  
Melbourne VIC 3001

T 1300 858724  
F 03 9609 8080

### **Transmission Planning and Investment Review (EPR0087)**

The Australian Energy Market Operator (AEMO) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) Stage 2 draft report on its Transmission Planning and Investment Review (TPIR). The Review is an opportunity to evolve the regulatory framework that facilitates the delivery of timely transmission investments to support the energy transition and, in turn, the delivery of a net-zero emissions economy.

AEMO's experience in developing the 2022 Integrated System Plan (ISP) means we are well placed to provide firsthand insights to key areas of the existing framework. AEMO has a role within this regulatory framework, both in developing the ISP and in planning and procuring augmentations to the Victorian declared shared network. This submission provides views from the perspectives of both functions.

The 2022 ISP was the first ISP subject to the new framework from start to finish – including the ISP Rules and associated Australian Energy Regulator (AER) guidelines, and therefore we are now in a position to reflect on what has worked well, and what areas of the existing Rules require further improvement.

#### Stage 2 draft positions help to deliver some of the incremental change needed

Whilst the TPIR is broad in scope, Stage 2 aims to focus on change that can be achieved in the near term. The draft report focuses on four specific areas, all of which have been discussed extensively within the Market Bodies Advisory and Working Groups (MBAG and MBWG). AEMO has provided views on each of these areas through these mediums but would also like to articulate these through this submission.

AEMO is of the view that important incremental change will be achieved should the items in the draft report be implemented. These will need to be extended upon through improvements to the overall framework as part of stage 3. AEMO is supportive of the proposed improvements to the ISP Feedback Loop process and broadly supportive of changes to financeability outlined in the draft report. There are opportunities to strengthen the changes relating to social licence and the cost recovery for planning activities means some further amendments that could be useful will not be achieved based on the draft positions. AEMO questions whether the existing cost recovery mechanism are appropriate to build and maintain social licence, and whether the existing cost pass-through arrangements remain suitable and effective mechanisms to manage

material uncertainty over cost recovery for planning activities. Refer to Attachment 1 for further details.

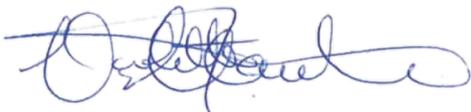
Stage 3 aims to facilitate the longer-term reform required to implement the Integrated System Plan (ISP)

In our submission to Stage 1 of the TPIR, we noted that significant transmission investment will be needed to accommodate the scale of new large-scale variable renewable energy expected by 2040 and beyond. Since then, we have published the 2022 ISP, which identifies five actionable transmission projects within the Optimal Development Path (ODP). It is essential that the regulatory framework that facilitates the delivery of these projects is fit-for-purpose.

In recent communications and communique Energy Ministers have emphasised the importance of a sensible, considered reform agenda for the medium to longer term, to position the sector to be more resilient and able to navigate future global or domestic challenges to ensure a secure energy sector that will underpin a modern and low carbon economy, including hydrogen, and the need to streamline the transmission framework to support the sectors transformation and transition. The scope for these changes is aligned with Stage 3 of the TPIR, which focusses on long-term reforms required to enable the transformation of the electricity system to support a net-zero emissions economy. We look forward to working with the AEMC and industry on this.

Should you wish to discuss any of the matters raised in this submission, please contact Kevin Ly, AEMO Group Manager – Reform Development & Insights ([kevin.ly@aemo.com.au](mailto:kevin.ly@aemo.com.au)).

Yours sincerely,



Violette Mouchaileh  
Executive General Manager – Reform Delivery

## ATTACHMENT 1:

### AEMOS' VIEWS AND INSIGHTS ON THE SPECIFIC DRAFT POSITIONS IN THE STAGE 2 DRAFT REPORT

This section discusses AEMO's views and insights related to the specific draft positions from the Stage 2 Draft Report. It is structured in the same way as the draft report and provides views on the draft positions for each topic sequentially.

#### **TOPIC #1: THE REVENUE FRAMEWORK SHOULD HAVE SUFFICIENT FLEXIBILITY TO ADDRESS ANY FUTURE FINANCEABILITY CONCERNS**

*Draft position #1: A proportionate approach to provide greater flexibility is to give the AER the explicit ability to vary the depreciation profile for actionable ISP projects to address financeability challenges, where it considers this would better meet the National Electricity Objective (NEO).*

AEMO considers that financeability challenges could arise in the future under realistic future ISP development plans.

The 2022 ISP identifies 10,000 km of new transmission required in the ODP in order to efficiently connect ISP development opportunities to be built over the next 30 years. The materiality of this investment is unprecedented, and as a result has the potential to cause financeability challenges to Transmission Network Service Providers (TNSPs) when delivering these investments.

Given this, AEMO considers that the AER should have the tools to address issues that may arise in the future to ensure that necessary investments can be made that align with the ODP outlined in the ISP. While this is an improvement from the current arrangement, AEMO notes that flexibility on its own may not provide sufficient certainty of outcome such that investors are able to rely on a predictable outcome.

*Draft position #2: The AER would be required to develop a guideline setting out how the above arrangements will be applied. The guideline would include the matters that will be considered when assessing whether a variation from the usual approach to depreciation should be applied, the information that should be provided by the TNSP in support of its proposal and any other matters the AER considers appropriate.*

AEMO agrees that developing a guideline setting out the framework for when and how these arrangements are applied is the appropriate method for implementing this change. This will go some way to providing the clarity required for stakeholders and will help to ensure TNSPs have clarity on what would be required by the AER and what 'it considers this would better meet the NEO' means in practice.

## **TOPIC #2: THE REGULATORY FRAMEWORK SUPPORTS SOCIAL LICENCE ACTIVITIES AIMED AT BUILDING AND MAINTAINING COMMUNITY ACCEPTANCE**

*Draft position #3: TNSPs should continue to invest in social licence activities, recognising that securing social licence is vitally important in enabling the energy transformation. Ensuring the needs and perspectives of stakeholders, communities and landowners are appropriately factored into decision-making is necessary to ensure that investments build social licence. Existing work in this area by jurisdictional governments and the Australian Energy Infrastructure Commissioner in identifying key issues and promoting best practice actions remains critical to supporting the timely and efficient delivery of major transmission projects.*

AEMO agrees that securing 'social licence' (in the way defined in the draft report) is critical to ensure ODP investments are delivered in a timely and efficient manner.

As the report rightly points out, gaining social licence for investments involves a variety of stakeholders. Within the ISP framework, the Rules explicitly discuss the need for activities that seek to ensure community acceptance within the context of Renewable Energy Zone (REZ) Design Reports (RDRs)<sup>1</sup>. The jurisdictional planning body (JPB) is responsible for publishing the RDR, which includes ensuring preparatory activities are undertaken, route design, as well as consultation with stakeholders, including decisions on the extent, breath and scope of community and stakeholder engagement for those RDRs. In addition, the RDR requires the TNSP to estimate the costs of achieving social licence. AEMO's role is limited to triggering RDRs and defining REZ design parameters in the ISP that must be addressed in those RDRs. AEMO then takes the RDR outcomes into account as part of the next ISP to help inform decisions on cost, sizing and optimal timing of those REZs. In essence, RDRs are an interface between the ISP and jurisdictional requirements.

At a jurisdictional level, AEMO also notes work ongoing with jurisdictional governments and the Australian Infrastructure Commissioner in identifying issues and promoting best practice actions. This work is important in ensuring jurisdictions continue to develop their approaches to gaining community acceptance.

AEMO is of the view that jurisdictions are best placed to consider how to obtain social licence within their regions. Large transmission investments, such as REZs, are major infrastructure projects that can positively impact regional development, job creation and economic growth in regional communities. Obtaining their social licence should therefore be the responsibility of that jurisdictional government and JPB. AEMO should reflect the activities of the state governments into the ISP.

The report is right to point out the issue of land-owner compensation, land-planning restrictions are also an important issue when considering maintaining social licence. These elements can influence key decisions such as whether connection assets can be developed in a co-ordinated manner, and/or undergrounded. In areas where social licence is challenging, governments might consider providing greater guidance for the types of development required.

---

<sup>1</sup> NER 5.24.1

*Draft position #4: Existing cost recovery mechanisms are appropriate and allow TNSPs to recover efficient costs associated with key activities to build and maintain social licence. The Commission seeks stakeholder views on whether any social licence activities are not captured by the cost recovery arrangements.*

The state legislations already allow both negotiated and compulsory land acquisition depending on the circumstances. For example, the Just Terms Act in New South Wales states that TNSPs can acquire land “by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991”. Section 55 of the Act requires market value, special value, severance, disturbance, relocation, loss of land value the following matters to be taken into account when using compulsory acquisition. Section 38 of the Just Terms Act requires consideration of the same matters when using negotiated acquisition, but it importantly doesn’t impose an obligation that the purchase prices should be equivalent to the compulsory acquisition cost (i.e. there is freedom to negotiate).

For the reasons outlined above, AEMO believes it is the NEM regulatory framework that is providing TNSPs with an incentive to acquire land at least cost, and often using compulsory acquisition rather than through negotiation.

We are of the view that it will often be prudent to negotiate land acquisition above market rates so that social licence is maintained, and believe a pass-through should be considered for land acquisition. AEMO supports revisions to the framework that can improve incentives to acquire land through negotiation rather than using compulsory acquisition.

As mentioned above, the RDR requires the TNSP to estimate the costs of achieving social licence. This cost is then used as an input in the next ISP, and would then be used within the remainder of the existing economic assessment process (e.g. RIT-T, CPA). This should allow community benefit sharing models similar to those used by wind farms. It would be helpful if the AEMC could clarify whether community benefit sharing can be funded under the existing National Electricity Rules (NER) and RIT-T.

*Draft position #5: Existing regulatory obligations for TNSPs to build and maintain social licence are largely appropriate. The Commission seeks stakeholder views on whether the NER provides the right balance of flexibility and prescription in relation to stakeholder engagement, and whether there are any barriers to stakeholder engagement taking place earlier in the RIT-T process.*

AEMO is of the view that the current stakeholder engagement requirements in the NER are fit-for-purpose, and give the necessary flexibility for TNSPs to tailor the nature of stakeholder engagement to the needs of the project. Greater prescription within the Rules may have the effect of restricting the ability of TNSPs to be able to provide the tailored engagement with stakeholders in order to gain community acceptance.

That said, while early stakeholder engagement can and should be undertaken where it will build social licence and save costs in the longer term, the cost of this, and timing of recovery, also needs to be recognised within the regulatory framework and encourage rather than discourage TNSPs undertaking these activities.

### TOPIC #3: COST RECOVERY OF PLANNING ACTIVITIES

Draft position #6: Make changes to distinguish between planning activities for actionable ISP projects based on whether they relate to the selection or delivery of a preferred option to meet an identified need. This will be given effect through amending the definition of 'preparatory activities' in the NER to further clarify that their purpose is to inform the selection of a preferred option, and removing the term 'early works' from AER and AEMO documentation and replacing it with consistent language that characterises activities as either preparatory or not, based on their purpose. That is, whether an activity relates to the selection of a preferred option (in which case it is a preparatory activity) or delivery of a preferred option (in which case it is not a preparatory activity). The above changes will clarify that costs to select a preferred option are recovered through the regulatory allowance, while expenditure to deliver a preferred option is to be recovered through the CPA process.

AEMO broadly agrees with the proposal to distinguish between preparatory activities and 'planning activities' (formerly early works) based on the purpose of the expenditure. In theory, this change has the potential to provide clarity to stakeholders on the appropriate method of cost recovery for specific activities, depending on whether these relate to the selection or the delivery of the solution. In practice, however, it is often difficult to distinguish between the two.

For example, the current definitions of preparatory activities include activities to design and investigate the costs and benefits of projects including "detailed engineering design, route selection and easement assessment work". Clearly this work could be used both to identify and deliver the proposed solution. This is important because our priority is to ensure that ISP projects are delivered to their optimal timing as outlined in the ISP, which of course is partly based on costs to deliver the project.

Of crucial importance to this is the timing and nature of when (and how) TNSPs can recover their costs. If considerable expenditure takes place on detailed engineering design (as an example), the TNSP would require clarity on how this cost can be recovered (e.g. through TNSPs' opex allowances or through the CPA process). If, as a result of this change, less cost can be recovered faster than what is currently the case, then there is a risk that TNSPs are reluctant to undertake these activities in the optimal time. This would have the effect of reducing the likelihood that projects can be delivered according to their optimal timing, which, all else being equal, will increase costs for consumers.

Draft position #7: In addition, the Commission considers that the existing cost pass-through and project/CPA staging arrangements remain suitable and effective mechanisms to manage material uncertainty over cost recovery for planning activities.

Given the concerns mentioned above, AEMO believes that a specific cost pass-through should be given for costs that relate to both preparatory activities and planning activities. This will significantly increase the likelihood that projects identified in the ISP will undergo appropriate preparatory activities and planning activities in the optimal timing required.

To date, the costs for early works for many ISP projects have been recovered through government underwriting. The primary reason for this relates to the lack of willingness on the part of TNSPs to commit to the spending required at the appropriate time to ensure these

projects are delivered according to the optimal timing identified in the ISP without being given this commitment by governments. Clearly a framework that requires TNSPs to lobby governments for funding and underwriting is not fit for purpose.

As an example, in the event that costs are incurred for activities such as to obtain social licence, route selection and easement acquisition, but the project does not go ahead, it is not clear whether these costs would be recovered through opex (e.g. be classed as preparatory activities) or not at all, as there would be no CPA process. As a means to remove this risk, which will reduce the incentive for TNSPs to undertake sub-optimal expenditure on necessary preparatory activities, a cost pass-through for all costs associated with costs for preparatory activities or planning activities would ensure TNSPs have the clarity required to undertake an efficient level of expenditure.

#### **TOPIC #4: IMPROVING THE WORKABILITY OF THE FEEDBACK LOOP WILL ENABLE IT TO OPERATE AS A TIMELY AND EFFECTIVE CONSUMER SAFEGUARD**

*Draft position #8: Timing of the feedback loop assessment will be aligned with the publication of a draft or final ISP.*

The proposed recommendation, to align the ISP feedback loop assessment with either a draft or final ISP by introducing an exclusion window, strikes the appropriate balance between improving the workability of the feedback loop assessment whilst ensuring actionable ISP projects can be progressed in a timely manner.

The proposed exclusion window should be seen as an improvement in reducing the potential for misalignment between the RIT-T and ISP (as the chapter points out), but given the potential for misalignment still exists, AEMO believes this topic may be revisited through Stage 3 of the TPIR depending on other recommendations or be revisited through the 2025 ISP Review.

*Draft position #9: Amendments to the AER's CBA Guidelines will be required to provide the AEMO with the discretion to establish the timeframe for when the feedback loop assessment is to occur, which can be tailored to the circumstances of a particular investment. This guidance will establish a feedback loop and PACR exclusion window between the final IASR and draft ISP – the period where undertaking the feedback loop is least workable for AEMO. Alignment with a draft or final ISP will promote timely completion of the feedback loop, while ensuring it draws on the latest available information to operate as an effective consumer safeguard – facilitating timely and efficient investment*

The proposed method of implementing this recommendation, namely to amend the CBA Guidelines to provide AEMO with the discretion to determine when it is most appropriate to undertake an ISP feedback loop assessment, provides the appropriate discretion for AEMO to ensure it is an appropriate consumer safeguard and does not unduly delay the project through the regulatory process.

*Draft position #10: The NER be amended to allow the CPA process and feedback loop assessment to proceed concurrently to manage potential bunching of feedback loop assessments around the publication of a draft ISP.*

The proposal to allow the CPA process and feedback loop assessment to progress concurrently is an appropriate method of managing the potential risk for the bunching of feedback loop assessments. Whilst this will help to ensure the risk of delays in the regulatory process are reduced, the potential downside for this is that it is possible that stakeholders who engage in the CPA process value the assurance, given through the feedback loop assessment, that the preferred solution is still aligned with the ISP. Given this, an appropriate balance in the timing should be explored on a case by case basis, that is able to balance the need to deliver projects in a timely manner whilst ensuring stakeholders are given the maximum information on the project when providing input into the CPA process.