

18 August 2022

Ms Anna Collyer
Chair
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Electronic Submission – EPR0087

Options Paper – Transmission Planning and Investment - Contestability

Dear Ms Collyer,

Energy Networks Australia (ENA) welcomes the opportunity to provide a submission to the Australian Energy Market Commission's (AEMC's) Options Paper for its Transmission Planning and Investment Review – Contestability.

ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia. This response is on behalf of ENA transmission members.

Transmission is an essential enabler in the move to a lower emissions economy. Timely and efficient investment in appropriate transmission projects will facilitate access to renewable energy, increase competition in the wholesale energy market and lower costs to consumers.

ENA welcomes the initiation of the AEMC's contestability workstream and considers the expanded scope to be important for evaluating whether or not a contestability model can deliver benefits that are in the long-term interests of consumers.

ENA supports the focus of this workstream on the 'next wave' of ISP projects, so not to raise uncertainty in relation to projects currently progressing under the actionable ISP framework.

ENA suggests the AEMC focus its high-level assessment in Part 1 of the contestability workstream on arrangements that are the most likely to be accepted as a long-term, nationally consistent model across all NEM jurisdictions, including those jurisdictions that are currently progressing major transmission projects through alternative arrangements. This will ensure that any new arrangements introduced have the greatest prospect of providing benefits across the National Electricity Market (NEM), rather than being adopted by only a few jurisdictions. The recently announced National Energy Transformation Partnership may provide a new impetus to seeking nationally consistent arrangements.

It is also important that any changes that are made to the current arrangements are evidence-based and ensure that the total system costs across the asset life cycle are minimised, in the long term interest of consumers.

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Transmission planning and investment activities

- » In relation to the key stages, activities and functions over the planning and investment life cycle, the Options Paper does not highlight the material differences in the duration and cost of each stage.
- » The AEMC's characterisation also does not provide clear visibility on the multiple stages where some activities (in particular those associated with gaining social licence) are relevant. It is not the case that once the 'engagement' phase is complete that projects proceed in a linear fashion without the need for further on-going support from affected communities and landowners.
- » The AEMC does not include in its list of activities the arrangements that apply at the end of any contestable contract (in particular whether and how the assets are refurbished and/or if they become the responsibility of the Primary TNSP, including how the value may be rolled into the regulatory asset base). It is important that the AEMC take a 'whole-of-life' view of asset investment when assessing contestability models.
- » Finally, the AEMC's characterisation focuses on the life cycle for a single project in isolation, when in practice these activities and functions may occur across several concurrent major projects. As a result, the AEMC's characterisation does not capture critical ongoing background activities and non-linear progress across concurrent projects.
- » As such, ENA is concerned that the AEMC's characterisation of the transmission planning and investment life cycle may make it difficult to identify the most appropriate strawperson model, since it:
 - may incorrectly weight the benefits of introducing contestability for stages that are materially less costly than others (eg, operation & maintenance vs construction);
 - does not adequately recognise where activities may occur across multiple stages, and therefore where the models may introduce split responsibility for these activities;
 - does not indicate what happens to the assets at the end of the contract, which will impact costs and risks in operating and maintaining the assets several decades into the future; and
 - de-emphasises the time and cost savings from having a single entity undertaking the same activities across multiple transmission projects.

Importance of adequately characterising the counterfactual

- » In order to come to a realistic view on the advantages and disadvantages of introducing a contestable model into the National Electricity Rules (NER), it is important to adequately characterise the current arrangements (i.e. the counterfactual), including considering:
 - The current use of bespoke jurisdictional models, rather than the NER, to deliver major investments to facilitate the renewable energy transition.
 - The external factors currently impacting the cost and timeliness of major transmission projects, such as cost escalation, supply chain and labour bottlenecks, environmental approvals and landholder concerns around development, and challenges of establishing social licence - none of which will be addressed by contestability or by changing the party responsible.
- » It is also important to adequately recognise the pro-competitive aspects of the current NER arrangements (which form part of the counterfactual):

- The contestable procurement process for design, construction and debt financing for major projects in the counterfactual already captures most of the ‘low-hanging’ cost benefits of contestability, as these activities form the largest component of costs.
- As part of the assessment of efficient costs in a Contingent Project Application (CPA), the AER’s procurement principles require Primary TNSPs to maximise competition and contestability, such that competitive tendering is in practice required under the counterfactual.
- In practice, Primary TNSPs are not set up to deliver infrastructure projects on their own and must rely on contractors. Due to their size, Primary TNSPs are likely to be able to procure services at lower costs (which are then passed through to consumers) compared to an alternative with multiple, smaller tenderers that may have less individual bargaining power over contractors.
- Recent RIT-Ts for major projects have identified non-network options as part of the preferred solution. Further, tenders for major transmission projects also include competition for innovations in optimal project design. The counterfactual therefore already realises many of the potential innovation benefits flagged for contestability models.
- » ENA notes the AEMC’s intent to refine the counterfactual to reflect the outcomes of stage 3 of its transmission review, and encourages the AEMC to do that in the Contestability Draft Report if possible.

Model two should be the focus for the AEMC’s high level assessment

- » Model one is unlikely to generate material net benefits to consumers compared to the counterfactual and ENA suggests it should not proceed to the AEMC’s high-level assessment. It primarily involves shifting the responsibility for activities at the construction and financing stages, both of which are already contestably procured.
 - Model one also introduces a mismatch of risks and incentives between the tenderer and the Primary TNSP, since the tenderer builds, owns and finances the assets but the Primary TNSP is required to operate and maintain the assets over the long term. Such a mismatch between initial capex and ongoing opex is unlikely to generate efficient outcomes for consumers.
 - If the AEMC decides to consider model one further, then ENA suggests this issue is addressed by the Primary TNSP’s O&M costs being classified as a negotiated service (similar to the current DNA provisions).
- » Models two and three are similar to each other, with the primary difference being the introduction of a jurisdictional body in model two that undertakes many of AEMO’s responsibilities in model three.
- » Overall, ENA considers that the potential benefits of an independent jurisdictional body in addressing social licence issues and facilitating environmental and planning approvals in a manner suitable for that jurisdiction, and the likely greater focus of such a body on timely investment, makes model two superior to model three:
 - Retaining a body separate from AEMO as part of the planning function is also likely to more effectively place ‘checks and balances’ on the outcomes of the central ISP planning function.
 - Notwithstanding our view that model two should be taken forward to the next stage of the AEMC’s assessment, the ENA notes that the NSW model that forms the basis for model two

remains untested. It is also not clear whether involvement of a jurisdictional body will in practice assist with gaining the ongoing social licence necessary to deliver and maintain major transmission infrastructure over its lifetime.

- » In theory, model four could generate greater benefits for consumers through introducing contestability and the potential for innovation at an earlier stage of the planning process. However, the model is likely to face many issues in practice since it would be the biggest change to the current arrangements (including the ISP and RIT-T framework) and would require all jurisdictions to sign-on.

Proposed assessment criteria

- » ENA broadly agrees with the six assessment criteria identified by the AEMC, noting that:
 - the efficiency criterion should clearly encompass long-term, dynamic efficiency; and
 - the decarbonisation criterion could be subsumed into the efficiency criterion, given jurisdictional governments are now working to fast-track amendments that integrate emissions into the National Energy Objective.
- » The weights assigned to each criterion should be considered carefully, rather than defaulting to applying equal weight to each. ENA suggests the efficiency criterion should be given a greater weighting as it encompasses several important sub-criteria such as: cost; innovation; risk allocation; incentives; materiality of benefits; and wholesale market outcomes.
- » When assessing models against the efficiency criterion:
 - The AEMC should consider the extent to which different models provide greater cost certainty for consumers than the counterfactual and the trade-off between any greater certainty and the level of costs incurred (reflecting the risk the tenderer is taking on).
 - The Options Paper appears to implicitly assume contestable models will result in costs below regulated outcomes. ENA notes this may not be the case and is an empirical question.
 - The focus should be on whether each model generates cost savings across the life cycles of multiple transmission projects, instead of on the design, construction and finance stages for an isolated project. This is especially important for models which introduce additional roles and interfaces, and the costs and risks of introducing these additional bodies should be included in the assessment.
- » When assessing models against the flexibility criterion, the AEMC should consider the benefits of models which accommodate an early decision regarding project contestability, in terms of:
 - providing certainty for Primary TNSPs and potential tenderers, which is likely to increase market participation over the long run; and
 - generating cost savings to consumers from less duplication of early stage activities for a project that ends up not being progressed under the contestable model.
- » In relation to accountability, the AEMC should consider whether models with split accountability for stakeholder engagement risk undermining the long-term focus and success of such engagement, and whether each model provides accountability for ensuring efficient cost outcomes and delivering benefits to consumers:
 - This includes: the efficiency of costs incurred by jurisdictional bodies (such as acquiring land or easements); confirmation that the project should still proceed where the outcome of the

- competitive tender ends up higher than assumed in the ISP or RIT-T; and the approach taken to project cost overruns.
- Clear demonstration of the delivery of benefits to consumers, through the accountability built into the model, would increase the evidence-base for jurisdictions in deciding to opt back in to the NER.
 - » As part of considering the implementation criterion, the AEMC should consider whether the models assign risks appropriately to the parties that are best placed to manage them. In particular, under current arrangements the Primary TNSP is the single point of accountability for shared network service outcomes, and the consequences of any weakening or dilution of these responsibilities need to be clearly considered.

Identifying when projects should be contestable

- » ENA broadly agrees with the suggested criteria for when projects could be identified as contestable, including that such projects should be new, of high value and separable. ENA envisages that these criteria are likely to result in a focus on ISP projects, noting that the majority of large non-ISP projects are likely to be a Reliability Corrective Action for which the Primary TNSP is required to invest.
- » The requirement for the project to be ‘separable’ should also recognise the potential for the separability of a project to change in the future as the network evolves.
- » When choosing among the decision-making approaches, the focus should be on ensuring the approach provides clarity and promotes early decisions on contestability for major projects.
 - This will improve confidence for both Primary TNSPs and potential tenderers as to how early stage activities will relate to eventual project delivery, and avoid cost duplication.
 - ENA therefore supports using a prescriptive or hybrid approach that allows decision-makers to exercise discretion but with clear regard to specified factors to provide transparency and accountability to stakeholders.
- » ENA also considers that once a decision has been made to opt for a contestable approach, then the contestable process should be followed through to completion for that project, unless the outcome of that process leads the decision-maker to re-evaluate the need for the project.
 - Having a model in which a Primary TNSP is expected to ‘step back in’ and undertake the project under the regulated framework if the tender outcome is considered ‘too high’ places considerable uncertainty on all parties participating in the tender and would delay investment.

ENA looks forward to engaging with the AEMC on this important component of the Transmission Planning and Investment Review. Should you have any queries on this response please feel free to contact Verity Watson, vwatson@energynetworks.com.au.

Yours sincerely,



Dominic Adams

GM Networks

Transmission planning and investment - contestability

Response to AEMC's Options Paper

18 August 2022

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Key messages

- » ENA supports the AEMC's initiation of the contestability workstream and considers the expanded scope to be important for evaluating whether or not a contestability model can deliver increased benefits that are in the long-term interests of consumers relative to current arrangements.
- » ENA suggests the AEMC extends its analysis of the stages of the transmission planning and investment life cycle to:
 - provide a 'whole of asset life' view of services, cost and risk, including how transmission assets will be treated at the end of the contestable contract;
 - highlight the material differences in duration and cost of each stage (and therefore the potential for the introduction of contestability at each stage to provide benefits);
 - provide clear visibility on activities (such as community engagement to gain social licence) that take place over multiple stages; and
 - recognise the potential for non-linear progression of each stage across concurrent transmission projects.
- » The four strawperson models provide an adequate representation of the broad spectrum of options that the AEMC should consider, although should be fleshed out in more detail in relation to end-of-contract issues, to facilitate a robust assessment.
- » It is important to characterise current arrangements (i.e. the counterfactual) correctly, including the extent that it already involves competitive tension to drive innovation and reduce costs. This includes considering:
 - current use of bespoke jurisdictional models to deliver major investments to facilitate the renewable energy transition;
 - the changes to the NER arrangements that may come out of stage 3 of the AEMC's transmission investment and planning review;
 - pro-competitive aspects of current NER arrangements; and
 - external risks and factors currently impacting the cost and timeliness of transmission projects that will not be impacted by the contestability models.
- » ENA suggests strawperson model two be taken forward to the next stage of the AEMC's assessment. Overall, ENA considers that the potential benefits of having an independent jurisdictional body and its ability to address social licence issues and facilitate environmental and planning approvals in a manner suitable for that jurisdiction makes model two a superior option to model three.
- » ENA considers model one is unlikely to generate material net benefits for consumers and would introduce adverse incentives and risks around the ongoing O&M of assets by the Primary TNSP. Model four has the potential to provide greater innovation benefits through introducing contestability earlier, however it represents a substantial change to current arrangements and would require adoption by all NEM jurisdictions.
- » ENA broadly agrees with the six assessment criteria identified by the AEMC. The weights assigned to each criterion should be considered carefully, and ENA suggests the multiple aspects of the efficiency criterion should be given greatest weight. This submission includes areas for additional focus in relation to each criterion, including allocation of risks and accountabilities.
- » ENA broadly agrees with the criteria for considering which projects could be contestable, noting such projects should be new, large and separable. ENA expects that in practice the projects that meet these criteria will be ISP projects.

- » ENA suggests that the framework for identifying projects suitable for contestability should provide clarity, transparency and promote early decisions on contestability for major projects to promote certainty and avoid cost duplication.
- » ENA considers that, once a decision has been made to opt for a contestable approach, the contestable process should be followed through to completion for that project, unless the outcome of that projects leads the decision-maker to re-evaluate the need for the project.

Overview

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

ENA welcomes the opportunity to provide this submission in response to the AEMC’s Options Paper on potential contestability models,¹ published as part of the AEMC’s broader review of transmission planning and investment. The Options Paper explains that the AEMC has expanded the scope for examining contestability as a potential alternative to the current delivery of major transmission projects as regulated investment by Transmission Network Service Providers (TNSPs).

ENA supports the initiation of the contestability workstream and considers the expanded scope to be important for evaluating whether a contestability model can in practice deliver increased benefits that are in the long-term interests of consumers relative to current arrangements. It is prudent to be considering this issue now, in light of the major transformation of the electricity market that is underway, for which transmission investment is a key enabler. However, ENA supports the focus of the AEMC’s workstream on the ‘next wave’ of Integrated System Plan (ISP) projects, so as to not raise uncertainty and potential delays in relation to the projects currently progressing under the actionable ISP framework, which are key to supporting the energy transition in the near term consistent with the priorities set out in the recent National Energy Transformation Partnership.²

ENA suggests that the AEMC focus its further high-level assessment in Part 1 of the AEMC’s contestability workstream on arrangements that are most likely to be accepted as a long-term, nationally consistent model across all NEM jurisdictions, including those jurisdictions that are currently progressing major transmission projects to facilitate the energy transition through alternative jurisdictional arrangements. This will ensure that any new arrangements introduced have the greatest prospect of providing benefits across the National Electricity Market (NEM), rather than being adopted by only a few jurisdictions. The National Energy Transformation Partnership may provide a new impetus to seeking nationally-consistent arrangements.

It will be important to evaluate contestability models against a complete consideration of the arrangements currently in place (i.e, the counterfactual), and in particular the material elements of the current arrangements that already foster innovation and involve contestable procurement.

¹ Australian Energy Market Commission, *Transmission planning and investment - contestability*, Options Paper, 7 July 2022.

² Energy Ministers, *National Energy Transformation Partnership*, August 2022, p.8.

The AEMC will also need to take into account the arrangements applying across the whole asset life cycle under contestable models, and therefore to adequately include as part of the model specification (even in the initial high level assessment stage) the proposed arrangements applying at the end of the contestable contract, which will be key to determining the incentives of all parties and the resulting risks and costs incurred under these models.

ENA's responses to the specific questions set out in the Options Paper are provided below. ENA would be pleased to discuss any of these issues with the AEMC in more detail where that would be helpful.

Question 1: Contestability strawperson models

ENA's responses to questions 1.1 to 1.4 are set out below. Question 1.5 (advantages and disadvantages of the different strawperson models) is addressed in the following section, following consideration of the assessment framework.

Question 1.1: Have we captured the key stages of the transmission planning and investment life cycle, and the key activities and functions involved within each stage, in a useful way and are these reflective of what happens in practice?

ENA considers that the AEMC has identified most of the key stages, activities and functions that form part of transmission planning and investment activities, particularly as they relate to the 'front end' of the investment life cycle.

However, ENA suggests that the AEMC extends its characterisation to include how the investment will be treated at the end of its contract life. This includes setting out for each model the expected arrangements at the end of the contestable contract, particularly in terms of whether and how the assets are refurbished under the contract and/or become the responsibility of the Primary TNSP (PTNSP), including how the value may be rolled into the regulatory asset base.

The circumstances under which an aged asset might become the responsibility of the PTNSP is a critical point to be resolved, since this will influence stakeholder incentives for operation and maintenance activities up to the transfer of responsibilities.

Taking such a 'whole of life' view of asset investment is important for assessing the four contestability models, since it has a key influence on the risks and incentives of both the contestable provider and the PTNSP in operating and maintaining the asset over its entire life, and therefore affects the costs and operational risks implied for consumers. For example, it is important to ensure that tenderers do not have an incentive to run down the quality of the asset before it is handed over to the PTNSP.

These factors should form part of the AEMC's high level assessment under this stage of the contestability workstream, as they may have a material impact on that assessment and therefore the decision as to whether or not to proceed to more detailed consideration of a particular contestability model in part two of the contestability workstream.

In addition, ENA suggests that the AEMC's characterisation of the transmission life cycle should also highlight and take into account the material differences in the durations and costs of each stage. For example, construction tends to be the most resource intensive and therefore expensive stage of developing the transmission investment, but this is not currently brought out clearly from the AEMC's

characterisations of the four strawperson models.³ Further, operation and maintenance activities typically last for a considerable period, which also is not depicted in the AEMC's current characterisation of the whole asset life cycle.

Extending the AEMC's characterisation as described above will facilitate a more relevant assessment of the advantages and disadvantages associated with each strawperson model, and the extent to which the various models may in practice deliver benefits that are in the long term interests of consumers.

ENA also suggests that the AEMC's characterisation of the transmission life cycle would benefit from providing clear visibility on activities that are relevant to multiple stages and activities. For example, activities such as community engagement to ensure social licence are ongoing and occur across multiple stages of each project, in contrast to the Options Paper's depiction of a single 'engage' stage in the transmission investment life cycle. In the absence of ongoing engagement and maintenance of social licence, there is a risk of landowner disputes and delays during the construction phase (impacting both the costs and timeliness of investment delivery), as well as post-investment to facilitate continued access and support for maintenance and refurbishment activities.

Both the AEMC and Farrierswier highlighted during the public forum that social licence considerations have increased in importance in relation to major new, greenfield transmission projects and now represent one of the key risks associated with the timely delivery of these projects. It is therefore critically important that the contestability models support engagement and community acceptance across the whole project life cycle. It would be helpful for the AEMC to set out the social licence touchpoints clearly in its comparison of the four strawperson models. This includes specifying the parties that are accountable for developing and maintaining social licence at each stage of the planning, investment and operating cycle.

ENA also recommends that the AEMC extend its characterisation of the transmission life cycle to be applicable to the delivery of multiple concurrent projects, as opposed to being applicable only to a single transmission project that is implemented in isolation. This is because, in practice, PTNSPs often conduct these activities concurrently across several major transmission projects. As a consequence, ENA suggests that the AEMC's assessment against the efficiency criterion should focus on whether each model generates cost savings across the life cycles of multiple transmission projects, instead of focusing on the design, construction and finance stages for an isolated project.

The AEMC's current characterisation of the transmission life cycle omits the ongoing activities that occur in the background, such as workforce planning (i.e: ensuring there are sufficient skilled workers available and optimising labour allocations across multiple projects) and ongoing long-term engagement with communities and key stakeholders. These background activities underpin timely delivery of transmission projects and are critical components to developing and delivering major transmission projects both individually and concurrently. The effective coordination of workforce and supply chain constraints across the whole energy system transition is rapidly becoming a critical issue, with the National Energy

³ See Box 2 of the Options Paper, which gives the impression that all stages are of equal importance in considering the merits of introducing contestability.

Transformation Partnership referring to the need to address such enabler requirements as an initial priority theme.⁴

Finally, ENA also proposes modifying the AEMC's characterisation of the transmission life cycle to capture the non-linear progression of each stage across transmission projects, which tends to occur in practice. Project stages may not progress consecutively for several reasons, such as resource or project bottlenecks that often necessitate project stoppages or may require earlier stages to be revisited. This non-linear feature of the delivery of transmission projects means that PTNSPs often achieve cost savings by running several concurrent projects simultaneously. This cost efficiency needs to be weighed up against the efficiencies expected from adopting a contestable model.

In summary, ENA recommends that the AEMC's characterisation of the transmission life cycle be extended as discussed above to facilitate a more realistic evaluation of the four strawperson models by:

- » providing a 'whole of asset life' view of services, cost and risk that includes consideration of how transmission assets are treated at the end of the contract, and therefore the costs and risks involved into the future;
- » weighting the benefits of introducing contestability for stages that are materially less resource intensive or costly (such as ongoing operation and maintenance), below that for areas which are more material (such as construction), in identifying the overall potential benefit;
- » recognising where activities occur across multiple stages, and therefore where the models may introduce split responsibility for these activities and the impact that may have on the need for coordination and/or the effectiveness of the activity; and
- » taking into account the time and cost savings from having a single entity undertaking the same activities that undergo non-linear progression across multiple concurrent transmission projects.

Figure 1 sets out a ENA's suggestion of how the characterisations of the four strawperson models may change if the above factors are considered. These modified characterisations:

- » illustrate the different magnitude of costs associated with each stage;
- » include a final stage where the assets are refurbished under the contract and/or become the responsibility of the PTNSP;
- » show that stakeholder engagement is ongoing until the end of the whole project life cycle (And therefore where engagement responsibilities become split under some models); and
- » set out the start and end of the contestable contract (as green and red dots respectively) for the counterfactual and the four strawperson models – noting that this depiction is only intended to be illustrative as this aspect of the models has not been covered in the AEMC's current characterisation.

Figure 1: Modified characterisations of strawperson models

⁴ Energy Ministers, *National Energy Transformation partnership*, August 2022, p 8.

Counterfactual | Current arrangements under NEL and NER (excluding VIC)



Strawperson 1 | Contestability for construction and ownership



Strawperson 2 | Contestability for the delivery of solutions identified through the ISP or RIT-T process plus a jurisdictional body having increased responsibility for planning, engagement and preparatory activities



Strawperson 3 | Contestability for the delivery of solutions identified through the ISP or RIT-T process plus AEMO declared network functions



Strawperson 4 | Competition for the development and delivery of solutions to meet a need identified in the ISP process



Question 1.2: Do these four strawperson models of contestability represent the broad spectrum of options that the Commission should consider? Do you consider that each of these strawperson models is likely to be workable in the NEM? Are there any additional models that the AEMC should consider, including a hybrid of some of these strawperson models?

ENA considers that the four strawperson models provide an adequate representation of the broad spectrum of options that the AEMC should consider, although in considering specific options there is scope to further refine and expand the model to be evaluated.

Strawperson models one, two and three are more likely to be workable in the NEM since they are based on regulatory precedent from Australian jurisdictions. This contrasts with strawperson model four, which is drawn from regulatory models adopted in the United States and United Kingdom, and which is untested in Australia.

However, ENA notes that experience suggests adopting a new model of contestability will likely involve a long process, even if it is based on Australian precedent. For example, the contestability model that is

being adopted in NSW for the delivery of Renewable Energy Zones (REZs) remains under development two years after the model was first mooted, and is yet to be tested in practice.

ENA also encourages the AEMC to expand its descriptions of the strawperson models with more detailed specifications in order to facilitate a more thorough assessment of the advantages and disadvantages of the models subject to the high-level assessment. This includes addressing issues such as:

- » whether the model includes a ‘reserve bidder’ or ‘provider of last resort’ mechanism similar to that used in some US and UK models, where the PTNSP or another party is required to ensure that the project is delivered if the successful bidder is unable to deliver the project on a timely basis or if the appointed transmission owner is not performing⁵ - noting that ENA would have concerns around the cost and risk impacts of such a mechanism;
- » the expected arrangements for end-of-contract issues under each model, particularly in terms of whether and how the assets are refurbished under the contract and/or rolled into the PTNSP’s regulatory asset base; and
- » how strawperson model one would address the risks associated with split responsibilities for the construction and long-term operation and maintenance of assets – with ENA’s suggestion being for operation and maintenance to be treated as a negotiated service under this model if it were to be considered further (see response to question 1.4).

Question 1.3: Which strawperson model(s) do you consider is most likely to deliver net benefits to consumers and should proceed through to the AEMC’s high-level assessment? Which feature(s) of this model is particularly attractive to you and why? Is there a feature(s) of this model that is problematic to you and why?

Establishing the counterfactual

Before considering which contestability model may deliver benefits to consumers, it is important that the current arrangements (i.e. the counterfactual) is correctly characterised, including the extent to which the counterfactual already draws on competitive tension to drive innovation and reduce costs. This will enable the AEMC and stakeholders to identify more clearly the advantages and disadvantages of introducing a contestable model into the NER, and the extent to which these models are likely in practice to deliver additional benefits for consumers.

This includes considering:

- » the current use of jurisdictional models, rather than the NER, to deliver major investments to facilitate the renewable energy transition, as well as the changes that may come out of stage 3 of the AEMC’s transmission planning and investment review;
- » the pro-competitive aspects of the current NER arrangements; and
- » external risks and factors currently impacting the cost and timeliness of major transmission projects.

⁵ KPMG, *Contestability in transmission - International and domestic examples*, Main report, July 2022, p 34.

The counterfactual should reflect current jurisdictional arrangements and the direction of Stage 3 of the AEMC's transmission review

ENA does not agree that the counterfactual should be construed as one in which the NER applies to major transmission projects in all jurisdictions except Victoria.

ENA recommends that the counterfactual recognises the current use of jurisdictional models, rather than the NER, to deliver major investments. When assessing the advantages that alternative NER models may deliver *in practice*, the AEMC should consider the pipeline of future ISP projects and the extent to which jurisdictional models rather than the NER may be used to deliver these projects.

In particular, ENA notes the recent fragmentation of the NEM framework for planning and delivering major transmission projects. Specifically:

- » New South Wales has enacted the *Electricity Infrastructure Investment Act*, which enables the development of transmission associated with REZs and Priority Transmission Projects (such as the Sydney Ring project, which was previously an ISP project) to proceed through an alternative NSW regulatory framework that can include contestable procurement;⁶
- » Victoria has proposed to modify its existing contestability framework by establishing VicGrid and giving it a wider role in building community support for REZs;⁷ and
- » Queensland is establishing three Queensland REZs (QREZ), and supports a bespoke model for QREZ development in which funding of shared REZ assets is managed by a designated planning body that negotiates charges with individual proponents, instead of continuing with the existing regulatory framework that it considers to be sub-optimal for coordinated REZ development.⁸

ENA observes that many of the above changes either introduce additional contestability to the transmission planning and investment framework in each jurisdiction or ameliorate some of the issues being considered in stage three of the AEMC's transmission review.⁹

Thus, ENA cautions that the incremental benefit of switching away from the counterfactual in favour of adopting an alternative NER contestability model is likely to be smaller than anticipated, since the counterfactual already includes an expansion of contestability within the jurisdictional models. Further, many of the future ISP projects in AEMO's optimal development path (ODP) are located in New South Wales and Queensland,¹⁰ and so may in the counterfactual proceed through these jurisdictional arrangements outside of the NEM framework.

⁶ AEMO, *2022 Integrated System Plan*, June 2022, p 13.

⁷ Department of Environment, Land, Water and Planning, *Victorian Transmission Investment Framework*, Summary for communities, July 2022, p 19.

⁸ Queensland Government, *Consultation on the model for QREZ design and access | Delivering Queensland Renewable Energy Zones*, Technical discussion paper, November 2021, pp 9, 17, 21.

⁹ This includes the concerns about there being no obligation on PTNSPs to progress with an actionable ISP project.

¹⁰ The ODP includes: QNI Connect; the New England REZ Extension in NSW: Central to Southern Queensland; Darling Downs REZ Expansion; Gladstone Grid Reinforcement; Far North Queensland REZ Expansion; and Facilitating Power to Central Queensland. Aside from the above projects, the ODP further includes two projects in South Australia and one project in Victoria. See: AEMO, *2022 Integrated System Plan*, June 2022, p 13.

ENA notes that the AEMC intends to refine the counterfactual to incorporate the outcomes of stage 3 of the transmission review.¹¹ ENA encourages the AEMC to reflect its stage 3 draft recommendations in the contestability draft report if possible, since this would allow for a more relevant evaluation of the advantages and disadvantages of each strawperson model.

In particular, the AEMC has flagged that it is exploring the potential for a power to direct or an incentive mechanism to address concerns that PTNSPs currently have no obligation to invest. If such a mechanism is introduced in the counterfactual, it will directly address the risk that major transmission projects are not delivered. This removes the corresponding ‘advantage’ that the AEMC identifies in its Options Paper for contestable models compared to a counterfactual that does not include this provision, meaning that the four strawperson models will not generate material additional benefits under the ‘timeliness’ and ‘decarbonisation’ criteria.¹² Further, ENA notes that the AEMC has not substantiated the extent to which there is a real risk in practice of PTNSPs not investing in transmission investments, particularly where financeability concerns are addressed within the current framework.

Existing pro-competitive characteristics of the counterfactual

ENA encourages the AEMC to fully recognise the pro-competitive aspects of the counterfactual.

The Options Paper identifies that PTNSPs currently undertake a contestable procurement process for design, construction and debt financing,¹³ although the ‘tender’ step is not explicitly reflected in the diagrams included in the Options Paper for the counterfactual. The Options Paper also notes that the scope for further efficiency benefits in these areas is unclear.¹⁴ Since these activities form the largest component of costs, it is likely that the counterfactual already captures most of the ‘low-hanging’ cost benefits of contestability.

However, the AEMC also comments that there is no requirement on PTNSPs to undertake contestable procurement and no regulatory oversight of the procurement process.¹⁵ ENA observes that in practice competitive tendering is effectively required under the counterfactual.

In particular, the AER assigns considerable weight to the competitiveness of the procurement process adopted by PTNSPs when assessing efficient costs in a Contingent Project Application (CPA). The AER’s procurement principles for actionable ISP projects require PTNSPs to:¹⁶

- » maximise competition and contestability to the greatest extent possible, having regard to project circumstances and parameters such as timing and safety requirements; and

¹¹ Options Paper, p 10.

¹² The Options Paper’s assessment of the ‘timeliness’ and ‘decarbonisation’ criteria refers to the advantage of avoiding delivery delays by addressing ‘the exclusive right but no obligation’ issue. Strawperson models one to three do not generate any additional benefits under these two criteria compared to the counterfactual, while strawperson four additionally refers to the potential for identifying innovative solutions that can be delivered more quickly than all other options. See: Options Paper, Tables B.1, C.1, D.1 and E.1.

¹³ Options Paper, p 14.

¹⁴ Options Paper, pp 51, 62, 72, 87.

¹⁵ Options Paper, p 14.

¹⁶ AER, *Regulation of actionable ISP projects*, Guidance Note, March 2021, p 11.

- » ensure accountability that is commensurate with appropriate levels of authority and responsibility.

PTNSPs have put in substantial effort to increase the transparency of their procurement processes for major projects. For example, Transgrid invited stakeholders to observe the tender evaluation process as part of its CPA for EnergyConnect. These stakeholders include the AER, AEMO and consumer groups.¹⁷

Further, in practice PTNSPs are not set up to deliver infrastructure projects of material scale on their own and must rely on contractors. Due to their size, PTNSPs are likely to be able to procure services at lower costs (which are then passed through to consumers) compared to an alternative with multiple tenderers that may have less individual bargaining power over contractors.

In addition, the current NER counterfactual also incorporates competitive elements designed to drive innovation. Recent RIT-T applications have identified non-network options as part of the preferred solution,¹⁸ while tenders for major transmission projects often include competition for innovation in optimal project design as part of the competitive tender process.¹⁹

ENA therefore considers that the counterfactual already realises many of the benefits flagged for the four contestability models, and that it is important to fully recognise these features of the counterfactual to identify where contestable models may deliver benefits over and above the counterfactual.

External factors impacting the cost and timeliness of delivery of major transmission projects

Finally, ENA suggests that the AEMC take into account as part of its assessment that the cost and timeliness of delivering major transmission projects are also critically determined by external factors that will not be impacted by the introduction of contestability (and so will be present in both the counterfactual and the model cases). These external factors include:

- » cost escalation and supply chain bottlenecks, as well as workforce shortages, which are being driven by the increased volume of infrastructure investment across Australia generally as well as overseas, and are expected to remain acute;
- » obtaining the necessary environmental approvals, particularly in the case of greenfield investments; and
- » landholder and community concerns around development and challenges of establishing social licence, which could be exacerbated by changing the party responsible for that engagement or splitting responsibility for engagement across multiple parties.

Strawperson two should proceed through to the AEMC's high level assessment

ENA considers that strawperson model two is most likely to deliver net benefits to consumers and should proceed through to the AEMC's high level assessment.

¹⁷ Transgrid, *Stakeholder engagement overview paper | Contingent Project Application for Project EnergyConnect*, 30 September 2020, p 12.

¹⁸ For example the recent Transgrid RIT-Ts for Bathurst, Orange and Parkes and North West Slopes have both incorporated BESS as part of the preferred options..

¹⁹ See for example, Transgrid, *Capex Forecasting Methodology for QNI Minor Upgrade Project*, Contingent Project Application for QNI Minor Upgrade Project, 17 January 2020, p 6.

ENA notes that strawperson models two and three are broadly similar, with the primary difference being that model two introduces a jurisdictional body that takes over many of the responsibilities that AEMO would carry out under model three.

In comparing models two and three, ENA considers that the potential benefits of having an independent jurisdictional body to address social licence issues and facilitate environmental and planning approvals in a manner suitable for that jurisdiction makes model two a superior option. ENA notes that social licence considerations have increased in importance compared to the time when the Victorian arrangements (which are the basis for model three) were first put in place. Model three, where responsibility for addressing social licence issues is assigned to a national body such as AEMO, is likely to be less able to tailor its approach to each jurisdiction.

Furthermore, as discussed in the Overview above, ENA suggests that the AEMC's high level assessment in Part 1 of the contestability workstream should focus on arrangements that are most likely to be accepted as a long-term, nationally consistent model across all NEM jurisdictions. Model three is currently included in the NER but has not been adopted by other jurisdictions aside from Victoria, which suggests that other jurisdictions do not consider it to be an attractive long-term option.

In addition, retaining an independent, taxpayer-funded jurisdictional body separate from AEMO as part of the planning function may place more effective 'checks and balances' on the outcomes of the central ISP planning function. This contrasts with model three, in which AEMO as an industry-funded entity maintains oversight of both the ISP and RIT-T.

However, notwithstanding our view that model two should be taken forward to the next stage of the AEMC's assessment, ENA notes that the NSW model that forms the basis for model two remains untested, and that findings from relatively small REZs may not apply to larger national or state-wide transmission projects. ENA also notes that the NSW jurisdictional architecture is fairly large, which may require new and potentially significant jurisdictional costs to be incurred if strawperson model two is implemented.

It is also not clear whether involvement of a jurisdictional body in the early planning and procurement stages will assist with gaining the ongoing social licence necessary to deliver and maintain major transmission infrastructure in practice, compared to the counterfactual in which the PTNSP has this role and accountability throughout the project life cycle.

ENA agrees with the AEMC's finding that one common disadvantage across all four strawperson models is that they result in split accountability for several stages of the transmission life cycle or for different parts of the network.²⁰ In particular, there may be benefits to assigning continuing accountability to a single PTNSP for social licence throughout the planning, investment and operational life cycle, since landowners are more likely to prefer engaging with a single party.

This view is consistent with the findings of the Australian Energy Infrastructure Commissioner (AEIC), which observes that major transmission projects require 'clearly visible leadership and ownership' so that agreed project outcomes can be achieved and to ensure ongoing clarity about the problems the project aims to solve. The AEIC also states that skills related to community and landholder engagement will likely

²⁰ Options Paper, Tables B.1, C.1, D.1 and E.1.

have a steep learning curve, and that sufficient time and funding should be allocated to developing effective working relationships with landholders.

The AEIC's observations suggest that social license and stakeholder engagement objectives may be best achieved by assigning accountability to a single PTNSP, which can develop engagement skills and working relationships with landholders across several concurrent major projects over a long period of time. This contrasts with the four strawperson models that require landowners to engage with multiple and changing parties over the full lifecycle of the assets, or with tenderers that may not have sufficient community engagement experience.

Further, PTNSPs have a strong incentive to manage stakeholder engagement well, as being the party who will be seen as 'on the hook' by consumers and other stakeholders for any issues arising with the ongoing operation of the asset.

Question 1.4: Is there a strawperson model that you consider is unlikely to be workable in the NEM or unlikely to deliver net benefits to consumers and therefore should not proceed to the AEMC's high-level assessment? Which feature(s) of this model is particularly problematic to you and why?

Model one is unlikely to provide material net benefits to consumers

ENA considers that strawperson one is unlikely to generate material net benefits for consumers and suggests that it should not be considered as part of the AEMC's subsequent high-level assessment.

Strawperson one primarily involves shifting the activities associated with the construction and financing stages of the investment away from the PTNSP onto the successful tenderer. Both stages are already contestably procured in the NER counterfactual, which makes it unlikely that a tenderer will be able to complete them at a lower cost compared to a PTNSP that possesses greater bargaining power as a monopsony.

In addition, ENA is concerned that strawperson one introduces a mismatch of risks and incentives between the tenderer and the PTNSP. This mismatch arises because the tenderer builds, owns and finances the transmission assets, but the PTNSP is responsible for operating and maintaining the assets, meaning that the tenderer has an incentive to reduce its own costs at the expense of the ongoing costs incurred by the PTNSP. Such a mismatch in the incentives of the party that incurs the initial capex versus the party that incurs ongoing operation and maintenance costs is unlikely to generate efficient overall outcomes for consumers.

This issue was recognised as part of the development of the Dedicated Network Asset (DNA) arrangements, where the AEMC concluded that the PTNSP's operation and maintenance function for DNA assets should be treated as a negotiated service.²¹

²¹ AEMC, *National electricity amendment (connection to dedicated connection assets) rule 2021*, 8 July 2021, p 35.

If the AEMC decides to advance strawperson one to its subsequent high-level assessment, then ENA suggests that this mismatch of incentives be addressed by treating the operation and maintenance of the asset as a negotiated service,²² in line with the DNA provisions.

Strawperson four may provide net benefits to consumers but it likely to be difficult to implement

In theory, strawperson four may generate greater competition because it introduces contestability and the potential for innovation at an earlier stage of the planning process.

However, the model is likely to face many issues in practice since it would be the biggest change to the current arrangements under the NER. In particular, strawperson four requires a complete change to the role of the Integrated System Plan (ISP).

ENA thus considers that strawperson model four is likely to be the most difficult to incorporate into the NEM, since it represents the biggest change to the current arrangements (including the ISP and RIT-T framework). It would need to apply in all NEM jurisdictions in order to maintain an integrated approach to planning. This may be difficult, given the recent trend towards a fragmentation of the NEM framework.

In addition, strawperson four may result in slower development of new infrastructure overall, as it centralises a lot of activities under one party (AEMO) and would require coordination across a wide range of proponents for different solutions.

Question 2: Assessment framework

ENA's responses to questions 2.1 and 2.2 are set out below. Question 1.5 is also addressed in this section.

Question 2.1: Are the assessment criteria appropriate for guiding the Commission's consideration of the strawperson models of contestability? Are there any other relevant criteria that have not already been captured?

ENA broadly agrees with the six assessment criteria identified by the AEMC. However, ENA suggests that the efficiency criterion can be improved by rewording it to clarify that the criterion encompasses long-term, dynamic efficiency in addition to productive and allocative efficiency.

ENA also considers that the decarbonisation criterion can be subsumed into the efficiency criterion, since the advantages and disadvantages against this criterion identified by the AEMC in its Options Paper are largely similar across the four strawperson models.²³ ENA further notes that jurisdictional governments are fast-tracking amendments that integrate emissions into the National Energy Objective,²⁴ providing a further rationale for considering this criterion as part of the efficiency criterion.

²² The Options Paper states that the PTNSP will recover its costs under its standard AER revenue determination process, although a contingent project application or cost pass through application can also be used where appropriate. See: Options Paper, p 50.

²³ The Options Paper sets out an additional advantage for strawperson four, where innovative solutions may be delivered more quickly and thus increase the pace of decarbonisation. See: Options Paper, p 90.

²⁴ Energy Ministers, *National Energy Transformation partnership*, August 2022, p 7.

Question 2.2: How should the Commission approach the key trade-offs inherent in the different assessment criteria? How would you weight the different criteria against each other?

ENA considers that the weights assigned to each criterion should be considered carefully. In particular, the AEMC should be careful to ensure that it avoids defaulting to applying equal weight to each criterion.

ENA suggests that, in considering the appropriate weights and the trade-offs between criteria, the AEMC focuses on factors that contribute most to lowering prices for consumers in the long run while maintaining reliable supply, consistent with the national electricity objective (NEO). Consequently, ENA suggests that the efficiency criterion should be assigned a greater weighting as it encompasses several important sub-criteria as recognised by the AEMC in the Options Paper, namely: cost; innovation; risk allocation; incentives; materiality of benefits; and wholesale market outcomes.²⁵

Question 1.5: Appendices B-E set out the detailed descriptions of the strawperson models and the key advantages and disadvantages of each. Do you agree with the advantages and disadvantages as presented in those appendices, or are there points that you would add or remove?

ENA encourages the AEMC to refine its assessments further to take into account several important issues that should be considered when evaluating the four strawperson models.

ENA's suggestions for areas of additional focus in relation to each of the evaluation criteria are set out below.

Efficiency

As discussed above, the scope for additional efficiency benefits in relation to the design, construction and finance of transmission projects is unclear for functions that are already contestably procured by PTNSPs.

Further, as stated in the Options Paper, splitting responsibility for ensuring the reliable operation of the network across multiple parties is likely to increase the complexity of incentive arrangements, while having multiple parties assume responsibility for connections will make it more complex for parties seeking to contract with connecting generators and loads for the purpose of obtaining use of system service for the entire transmission network.²⁶

As highlighted above, construction tends to be the most resource intensive and expensive stage of the transmission life cycle. This cannot be observed from the AEMC's current characterisation of the transmission life cycle. If the scope of incremental efficiency benefits for this stage are unclear, then the overall claimed efficiency benefits of the four strawperson models similarly may be difficult to establish.

Thus, in assessing the models against the efficiency criterion, ENA encourages the AEMC to consider the extent to which different models provide greater cost certainty for consumers compared to the counterfactual. This has the potential to address what has been a key concern for consumer groups (as evidenced in the recent Material Change in Circumstance rule change proposal). However, this should

²⁵ Options Paper, p 23.

²⁶ Options Paper, pp 59, 85.

also include consideration of the extent to which an additional cost certainty comes at the expense of the level of costs, where the tenderer will need to price in the additional risk that it is taking on.

The Options Paper appears to implicitly assume that contestable models will result in costs below regulated outcomes.²⁷ ENA notes that this may not be the case and ultimately is an empirical matter that may differ across individual projects.

ENA considers it important that any contestability model should require decision-makers to commit to their decisions to progress a specific project on a contestable basis. That is, once a decision has been made to opt for a contestable approach, then the contestable process should be followed through to completion for that project. The decision-maker should not have subsequent discretion to reverse the decision if the tender price ends up being higher than anticipated, although the decision-maker may decide in that circumstance not to proceed with the project (i.e: the higher cost is a material change in circumstances which merits re-evaluation of whether the project will provide the expected benefits to consumers).

A model in which a PTNSP is expected to 'step back in' and undertake the project under the regulated framework if the tender outcome is considered 'too high' will reduce the incentive for decision-makers to make efficient decisions on project contestability (as they may feel that they always have access to the regulated pathway), and extend project delivery timeframes. It also risks contestability being seen as a 'one-way bet', rather than as a process that reveals what the competitive market considers to be the true cost of the project.

In addition, if the decision-maker has discretion to reverse its decisions regarding the contestability of individual projects, then this discretion will create considerable uncertainty for:

- » tenderers, who will have to expend resources responding to tenders that may not end up proceeding; and
- » PTNSPs, who will have a responsibility for undertaking projects for which they have not been involved in the earlier planning and development stages, and for a cost which is potentially less than that which other providers considered to be required.

Finally, consistent with the response to question 1.1 above, ENA suggests that the AEMC's assessment against the efficiency criterion should focus on whether each model generates cost savings across the life cycles of multiple transmission projects, instead of focusing on the design, construction and finance stages for an isolated project. This is especially important for models that introduce additional roles and interfaces, although this cannot be observed directly from the AEMC's current formulation of the transmission life cycle, which applies only to a single transmission project implemented in isolation.

²⁷ The Options Paper refers to contestability models reducing the risks that customers pay more than necessary, and refers to the risk of the winning bidder submitting a price that is higher than the regulated outcome in the absence of a sufficiently competitive field of bidders. Footnote 24 of the Options Paper also states that larger projects are likely to attract greater competition for ownership and financing with the potential to reduce the cost of capital, while appendices B to E state that the strawperson models could increase efficiency and reduce costs. See: Options Paper, pp 7, 29, 32, 51, 62, 71-72, 87.

Flexibility

ENA agrees with the AEMC's assessment that strawperson model four is the most flexible in accommodating uncertainty and that strawperson models one and two allow a decision-maker flexibility to determine at different stages which projects are suitable for competitive delivery.

However, ENA encourages the AEMC to consider the benefits of accommodating an early decision regarding project contestability instead of delaying the decision to later stages. Specifically, an early decision provides certainty for PTNSPs and potential tenderers, which is likely to increase market participation over the long run. It is also likely to generate cost savings to consumers from reducing duplication of early-stage activities for a project that ends up not being progressed under the contestable model.

Accountability and transparency

ENA agrees with the AEMC's assessment that all four strawperson models are more complex than the counterfactual because they introduce split accountability at different stages of the transmission life cycle.

Models with split accountability for stakeholder engagement risk undermining the long-term focus and success of such engagement. As set out in the response to question 1.1 above, activities relating to gaining and maintaining social licence and stakeholder engagement more broadly are relevant across multiple stages of the transmission life cycle. It is difficult to observe the potential for splitting accountability for stakeholder engagement under the AEMC's current characterisation of the transmission life cycle, where social licensing and stakeholder engagement activities are depicted as a single 'engage' stage.

ENA considers that splitting responsibility for engagement across multiple parties may risk undermining the process of gaining social licence if landowners and community members are required to liaise with different parties across different transmission projects and at different times for different stages of the same project.

ENA notes that the proposed expansion of VicGrid's role in engagement and sharing benefit is underpinned by similar reasoning. Specifically, VicGrid's expanded role is intended to 'provide communities with continuity between the development of the Optimal REZ Pathway and the delivery of the individual projects, in addition to allowing project proponents to maximise leverage of VicGrid's existing information and insights into impacted communities'.²⁸ However, ENA also notes that engagement with communities does not finish with the completion of a contestable tender, and is needed through the construction and then operational phases for the investment.

ENA also encourages the AEMC to consider whether each model provides accountability for ensuring efficient cost outcomes and delivering benefits to consumers. This includes considering how each model:

- » evaluates the efficiency of costs incurred by jurisdictional bodies and/or AEMO (and passed through to consumers), such as acquiring land or easements;

²⁸ Department of Environment, Land, Water and Planning, *Victorian Transmission Investment Framework | Preliminary design*, Consultation paper, July 2022, p 64.

- » confirms that the project should still proceed where the outcome of the competitive tender ends up higher than assumed in the ISP or RIT-T; and
- » addresses project cost overruns.

ENA understands that the contestable models are alternatives to the current NER arrangements, which have an active role for the AER. However, consumers can be expected to still be assured that the investments being progressed remain the 'right' ones and are delivering benefits and value for money.

ENA considers that a clear demonstration of the delivery of benefits to consumers, through having clear accountability and transparency built into the model, would increase the evidence-base for jurisdictions in deciding to opt back into the NER.

Implementation

ENA agrees with the AEMC's assessment that strawpersons one, two and four:

- » are more complex to implement since they require changes to the NER and NEL;
- » require new jurisdictional bodies to be established and funded (ie, strawpersons one and two);
- » require changes to jurisdictional licensing arrangements; and
- » increase costs for new functions and coordination.

ENA also agrees that strawperson three is likely to be the quickest to implement among the options, as it is already reflected in the NEL and the NER and is in operation in Victoria, although it still requires changes to jurisdictional licensing arrangements and would require increased funding for AEMO.

ENA further considers that, as part of considering the implementation criterion, the AEMC should consider whether the models assign risks appropriately to the parties that are best placed to manage them. In particular, under current arrangements the PTNSP is the single point of accountability for shared network service outcomes, and the consequences of any weakening or dilution of these responsibilities need to be clearly considered.

Consistent with the response to question 1.1 above, ENA also encourages the AEMC to take a 'whole of life' view of asset investments, which includes assessing how the asset will be treated at the end of the contract and the associated complexities.

Timeliness

ENA agrees with the AEMC that one advantage of strawpersons one, two and three is that they maintain the current integrated approach to planning under the ISP, while strawperson four can potentially identify innovative solutions to be delivered more quickly than all other options. ENA also agrees that contestable procurement across all four strawpersons is time consuming and will increase coordination issues.

As discussed in the response to question 1.3 above, introducing a power to direct or an incentive mechanism to the counterfactual would directly address concerns that major transmission projects are not delivered, in turn removing the corresponding 'advantage' that the AEMC identifies for contestable models compared to a counterfactual that does not include these provisions.

ENA also considers that there is limited empirical evidence about whether introducing contestability will result in more timely delivery of transmission projects. In particular, KPMG cites Farrierswier's finding

that transmission investments under the current Victorian contestability arrangements can take ‘materially longer’ compared to the regulated monopoly model.²⁹

KPMG noted that the overseas jurisdictions it looked at do not demonstrate that contestability leads to project completion delays. However, KPMG also states that any procurement approach will risk project delays and/or cost overruns, and that the probability of such delays or cost overruns depends on the party responsible for the project, as well as the level of governance and incentives on the party.³⁰

KPMG also identifies a selection of transmission solicitation projects in the US where the process from identification to board approval lasted between 113 to 1,498 days.³¹ This may suggest that introducing contestability results in timeframes that are highly variable across projects.

Overall, ENA considers that the AEMC should be cautious about assuming that contestability avoids delivery delays, which ultimately is an empirical question.

Question 3: Identifying projects suitable for contestable delivery

Question 3.1: What criteria or principles should be used to identify the subset of major transmission projects likely to be suitable to competitive delivery?

The Options Paper sets out various criteria that other jurisdictions have used to identify contestable projects as part of a prescriptive approach. ENA broadly agrees with these criteria, namely, that contestable projects are ones:³²

- » that can be easily scoped for tendering and are likely to attract significant market interest to support sufficient depth of competition;
- » where the potential value to consumers from competition is likely to significantly outweigh the costs of running a competitive tender;
- » that are new, separable, and high value;
- » that are likely to deliver timely investment through competition; and
- » that have suitable asset locations.

ENA envisages that these criteria are likely to result in a focus on ISP projects, noting that the majority of large non-ISP projects are likely to be a Reliability Corrective Action for which the PTNSP is required to invest.

ENA also suggests that the requirement for the project to be ‘separable’ should recognise the potential for the separability of a project to change in the future as the network evolves. ENA also suggests that an

²⁹ KPMG, *Contestability in transmission - International and domestic examples*, Main report, July 2022, p 16.

³⁰ KPMG, *Contestability in transmission - International and domestic examples*, Main report, July 2022, p ix.

³¹ KPMG, *Contestability in transmission - International and domestic examples*, Main report, July 2022, p 17.

³² See: Options Paper, p 31 box 3.

alternative term (such as 'identifiable') be used in preference to 'separable', which has a different meaning in other NER contexts.

Question 3.2: Which approach to decision-making regarding identifying projects suitable to competitive delivery and whether to proceed with a competitive procurement process for a specific project, is preferred and why (eg, prescriptive versus discretionary approach)?

ENA suggests that, when choosing among the decision-making approaches, the AEMC should focus on ensuring that the approach provides clarity and promotes early decisions on contestability for major projects.

As discussed in the response to question 1.5, ENA considers this will improve confidence for both PTNSPs and potential tenderers as to how early-stage activities will relate to eventual project delivery and avoid cost duplication.

ENA therefore supports using a prescriptive or hybrid approach that allows decision-makers to exercise discretion but with clear regard to specified factors to provide transparency and accountability to stakeholders.

In addition, once a decision has been made to opt for a contestable approach, then the contestable process should be followed through to completion for that project (unless the decision-maker decides there is a need to re-evaluate proceeding with the project). This is because a model in which a PTNSP is expected to 'step back in' and undertake the project under the regulated framework if the tender outcome is considered 'too high' places considerable uncertainty on all parties participating in the tender and would delay investment (see response to question 1.5).