



Australian Energy Market Commission

DRAFT RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (ESTABLISHING REVENUE DETERMINATIONS FOR INTENDING TNSPS) RULE

Marinus Link Pty Ltd

4 AUGUST 2022

INQUIRIES

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ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

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SUMMARY

- 1 The Australian Energy Market Commission (AEMC or Commission) has made a more preferable draft rule that clarifies that the Australian Energy Regulator (AER) has the ability to establish a revenue determination for an Intending Transmission Network Service Provider (TNSP) in response to a rule change request submitted by Marinus Link Pty Ltd (MLPL). Under the draft rule, an Intending TNSP is defined as a registered participant who intends to provide prescribed transmission services, which includes a person registered as an Intending Participant intending to construct a new regulated transmission project and any existing Market Network Service Provider (MNSP) that intends to re-classify its network services as prescribed transmission services to become a TNSP.
- 2 The draft rule benefits consumers by supporting timely and efficient investment in electricity transmission infrastructure to enable the transition of the National Electricity Market (NEM).
- 3 On 3 March 2022, MLPL submitted a rule change request that sought to address the following issues that it claimed were a barrier to enabling MLPL's final investment decision for Project Marinus.
 - While a TNSP that has completed a RIT-T process for an actionable Integrated System Plan (ISP) project can submit a contingent project application (CPA), the CPA does not apply for Intending TNSPs who do not have a revenue determination.
 - To obtain a revenue determination under the current National Electricity Rules (NER), a participant must be registered as a TNSP (not be an Intending TNSP) and already provide prescribed transmission services. MLPL considered that the AER does not have the power to make a revenue determination for an Intending TNSP that is not yet providing prescribed transmission services.
- 4 To address these issues, MLPL proposed to amend Chapter 6A of the NER to allow the AER to establish a revenue determination for an Intending TNSP. In response to the consultation paper, stakeholders generally supported MLPL's rule change request, but raised some issues with it.
- 5 Our draft rule aligns with the general intent of MLPL's proposal as it clarifies that a revenue determination can be established for an Intending TNSP. Our draft rule is a more preferable rule as it:
 - does not broadly apply all of Chapter 6A to Intending TNSPs as proposed by MLPL because the issue being addressed in this rule change request is to establish a revenue determination for an Intending TNSP while Chapter 6A contains provisions dealing with the broader economic framework,
 - makes other amendments to Chapter 6A to address gaps in the current framework to clarify how a revenue determination can be established for an Intending TNSP.
- 6 The Commission considers that under the current Rules, the AER has the ability to make revenue determinations for Intending TNSPs. While the AER has this ability, there are regulatory gaps in making revenue determinations for Intending TNSPs that need to be clarified. Our more preferable draft rule addresses these regulatory gaps by:

- enabling an Intending TNSP to request that the AER commence a revenue determination process by submitting a revenue proposal to the AER
- requiring the AER to determine whether or not to commence a revenue determination process, and setting out the criteria that the AER may apply in making this assessment, and that the AER must make this decision as soon as practicable
- requires the AER to notify the Intending TNSP of its decision on whether or not to commence the revenue determination process
- provides that if the AER decides to commence a revenue determination process for an Intending TNSP, then after making this decision the AER must publish an issues paper within 40 business days
- providing the AER with discretion to make and publish a Framework and approach (F & A) paper for an Intending TNSP if it is necessary or desirable to do so, and if so, flexibility regarding the matters that the AER considers appropriate to set out in the F & A paper; and
- clarifying arrangements for incorporating contingent projects into the first revenue determination for an Intending TNSP.

7 We propose that the draft rule be implemented on 3 November 2022, one week after the publication of our final determination for this rule change.

8 Our draft rule contributes to the National Electricity Objective (NEO) as outlined below.

- **Concept of efficiency** - it clarifies that a revenue determination can be established for Intending TNSPs. This provides regulatory certainty, reducing the risk of delays to investment decisions on major transmission projects. It also promotes efficient investment in transmission services and the efficient delivery of electricity services.
- **Timing and uncertainty** - it clarifies regulatory timeframes and arrangements related to the revenue determination process for Intending TNSPs. It provides the AER with discretion in relation to making and publishing a F & A paper. It also enables the first revenue determination and a contingent project application to occur concurrently through the same regulatory processes for an Intending TNSP, allowing these processes to be completed in a more timely and efficient manner.
- **Risk allocation** - it allocates risk to those parties that are best placed to manage it and balances risks between Intending TNSPs and the AER.
 - It reduces investment risk by clarifying that revenue determinations can be established for Intending TNSPs.
 - For an Intending TNSP seeking a revenue determination, it requires that the Intending TNSP submits a revenue proposal to the AER, which involves a reasonable commitment of resources on behalf of the Intending TNSP. This reduces the risk of speculative requests for a revenue determination that must be assessed by the AER.
- **Cost and complexity** - while it places an administrative burden on the AER to assess applications for revenue determinations from Intending TNSPs, it reduces the risk of high administrative costs on the AER from numerous parties applying to the AER for revenue determinations for speculative projects.

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We invite submissions on this draft determination and draft rule by **15 September 2022**.

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1 WE HAVE MADE A MORE PREFERABLE DRAFT RULE

Our draft determination is to make a more preferable draft rule in response to the rule change request submitted by MLPL about establishing revenue determinations for Intending TNSPs. We are seeking feedback on this draft rule.

This section explains:

- that our draft rule addresses gaps in the current framework to clarify that the AER can make a revenue determination for Intending TNSPs
- why we have made a more preferable rule that addresses the issue raised in MLPL's proposal
- stakeholder feedback, which considered that the AER should be allowed to make revenue determinations for Intending TNSPs
- that the draft rule supports timely and efficient investment in electricity transmission infrastructure.

Background information on this rule change is outlined in Appendix A.

1.1 The draft rule addresses gaps in the current framework to clarify that the AER can make revenue determinations for Intending TNSPs

MLPL suggested that a revenue determination is a key input into its investment decision in relation to Project Marinus. MLPL suggested that a key issue with the current NER is that the AER cannot commence a revenue determination process until the project is complete and MLPL is providing prescribed transmission services.¹

The Commission considers that the AER currently has the ability to make revenue determinations for Intending TNSPs that are not yet providing prescribed transmission services, however, there are gaps in the regulatory framework that require clarification. Our draft rule addresses these gaps, to improve regulatory certainty for Intending TNSPs. For more detail, refer to chapter 3 of this draft determination.

1.2 We have made a more preferable rule that addresses the issue raised in MLPL's proposal

MLPL proposed to broadly amend Chapter 6A of the NER to clarify that the AER is allowed to make revenue determinations for Intending TNSPs. This included, but was not limited to, the following proposed amendments:

- Placing a duty on the AER to make transmission determinations for Intending TNSPs²
- Clarifying that Chapter 6A applies to Intending TNSPs.³

1 MLPL rule change request, cover letter, p. 1.

2 MLPL proposed clause 6A.2.1

3 MLPL proposed clauses 6A.1.1(a) and 6A.1.7(a)

- Applying Chapter 6A to Intending TNSPs, such that revenue is set for Intending TNSPs in the same way as per existing TNSPs⁴
- Allowing the AER to make revenue determinations one or more years before the relevant transmission assets have been constructed and the Intending TNSP is providing prescribed transmission services⁵

More detail on MLPL's proposed rule is set out in Appendix A.

Our draft rule addresses the issue raised in MLPL's proposal as it clarifies that a revenue determination can be established for an Intending TNSP. Our draft rule is a more preferable rule as it:

- does not broadly apply all of Chapter 6A to intending TNSPs as proposed by MLPL because this:
 - may have unintended consequences in relation to elements such as Transmission Ring fencing, and
 - would apply elements such as cost allocation, which are outside the scope of this rule change.
- makes other amendments to Chapter 6A to address gaps in the current framework to clarify that a revenue determination can be established for an Intending TNSP, as explained in Chapter 3 of this draft determination.

1.3 Stakeholders considered that the AER should be allowed to make revenue determinations for Intending TNSPs

Stakeholders supported amending Chapter 6A of the NER to clarify that revenue determinations can be established for Intending TNSPs.⁶ The AER supported provisions that would address uncertainty in the current regulatory framework⁷

Stakeholders sought clarity on parts of MLPL's proposal:

- the AER noted the need to balance increased certainty for investors against the risk of speculative projects.⁸
- the AER asked the AEMC to consider whether the rules provide flexibility to address different circumstances, for example where the determination of the opening RAB (only) may be sufficient for capital to be raised to finance an investment in prescribed transmission services.⁹
- Transgrid suggested that the rule should be limited to Intending TNSPs delivering major transmission projects, but it may not be appropriate to limit the rule to Intending TNSPs delivering actionable ISP projects¹⁰

4 MLPL proposed clause 6A.1.7(b).

5 MLPL proposed clause 6A.1.7(b)(3).

6 Submissions to the consultation paper: PIAC, p. 1; AEMO, p. 1; Transgrid, p. 2; Hydro Tasmania, p. 1.

7 AER, submission to the consultation paper, p.1.

8 Ibid, p. 2.

9 Ibid, p. 2.

10 Transgrid submission, p. 1.

Other stakeholder feedback is outlined in Chapter 3 and Appendix D.

1.4 The draft rule supports timely and efficient investment in electricity transmission infrastructure

Our more preferable draft rule clarifies that an Intending TNSP can request the AER to make a revenue determination, which improves regulatory certainty and supports timely and efficient investment in electricity transmission infrastructure.

There is broad consensus that an unprecedented level of transmission investment is required as the NEM transitions to net-zero. The current regulatory framework was developed to support incremental growth, not the current level of step-change growth set out in the Integrated System Plan (ISP). It is therefore important that the regulatory framework is sufficiently flexible to support the timely and efficient delivery of major transmission projects, while ensuring these investments support the long-term interests of consumers.

For the purposes of this rule change, the Commission consider major transmission projects to be of a significant size, scale and scope such that they are associated with greater uncertainty relative to business as usual investments. These can be ISP or non-ISP projects.

This draft rule is part of our broader program of work to ensure that the regulatory framework can support the timely and efficient delivery of major transmission investments. This broader work program includes the *Transmission planning and investment review*¹¹ and the *Material change in network infrastructure project costs rule change*.¹²

11 For more information, please visit the Reviews project page [here](#).

12 For more information, please visit the rule change project page [here](#).

2 THE DRAFT RULE CONTRIBUTES TO THE NATIONAL ELECTRICITY OBJECTIVE

This chapter sets how our more preferable draft rule contributes to the NEO.

2.1 Achieving the NEO and the revenue and pricing principles

Under the NEL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).¹³ This is the decision-making framework that the Commission must apply.

The NEO is:¹⁴

to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

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

The Commission may make a more preferable rule according to the NEL. For more detail, see Appendix C.3.

We have also considered the revenue and pricing principles¹⁵ which apply when making rules with respect to transmission system revenue and pricing.¹⁶

Our draft determination clarifies that a revenue determination can be established for Intending TNSPs, as explained in Chapter 3. This improves regulatory certainty and provides that Intending TNSPs will have a reasonable opportunity to recover at least the efficient costs incurred by providing direct control network services.¹⁷ Further, as discussed in section 2.2 below, we consider that our draft rule provides Intending TNSPs with effective incentives in order to promote economic efficiency with respect to direct control network services.¹⁸

2.2 How our draft rule better contributes to the NEO

2.2.1 Concept of efficiency

The draft rule clarifies that a revenue determination can be established for Intending TNSPs, which includes a person registered as an Intending Participant that is intending to construct a new regulated transmission project and any existing MNSP that intends to re-classify its network services as prescribed transmission service. The draft rule better meets the NEO than MLPL's proposal because the draft rule enables revenue determinations to be

13 Section 88 of the NEL.

14 Section 7 of the NEL.

15 Section 7A of the NEL.

16 Section 88B of the NEL.

17 Section 7A (2)(a) of the NEL.

18 Section 7A (3) of the NEL.

established for other registered participants (MNSPs), that were not included in MLPL's proposal.

This provides regulatory certainty, reducing the risk of delays to investment decisions on major transmission projects. This supports the NEO by promoting efficient investment in transmission services and the efficient delivery of electricity services.

2.2.2 **Timing and uncertainty**

The draft rule clarifies regulatory timeframes and arrangements related to the revenue determination process for Intending TNSPs, which improves regulatory certainty and supports timely investment and operational decision-making by Intending TNSPs.

The draft rule is likely to better contribute to the NEO as it provides the AER with discretion over whether to make and publish a F & A paper as part of the revenue determination process for an Intending TNSP. The AER is only required to publish a F & A paper if it considers that it is necessary or desirable to do so. If the AER does publish a F & A paper, it only needs to include matters that it considers appropriate.

For existing TNSPs, the F & A paper is the first step in the process to determine efficient prices for the supply of electricity transmission services by a TNSP for their upcoming regulatory control period. The F & A paper outlines the AER's proposed approach to a suite of matters in the forthcoming revenue determination,¹⁹ including for example the AER's proposed application of incentive schemes and allowances. For Intending TNSPs that intend to construct a major transmission project, the regulatory determination process is unlikely to be as complex. Consequently, it may not be necessary or desirable for the AER to produce a F & A paper, and if the AER does produce a F & A paper it may not be appropriate to include the full suite of matters that would be included for existing TNSPs. The Commission therefore considers that the AER should have the flexibility in respect of the making, publishing and content of an F & A paper for intending TNSPs.

The draft rule also enables the first revenue determination and a contingent project application to occur concurrently through the same regulatory and consultation processes for an Intending TNSP, allowing these processes to be completed in a more timely manner.

2.2.3 **Risk allocation**

The draft rule allocates risk to those parties that are best placed to manage it and balances risks between Intending TNSPs and the AER.

- It reduces investment risk by clarifying that revenue determinations can be established for Intending TNSPs.
- It requires an Intending TNSP to submit a revenue proposal to the AER, which involves a reasonable commitment of resources (time and cost) on behalf of the Intending TNSP. This reduces the risk of speculative requests for a revenue determination that must be assessed by the AER, as explained further below.

¹⁹ NER Rule 6A.10.1A

2.2.4 **Administrative cost and complexity**

While the draft rule places an administration burden on the AER to assess applications for revenue determinations from Intending TNSPs, it reduces the risk of high administrative costs on the AER from numerous parties applying to the AER for revenue determinations for speculative projects. It does so by:

- requiring that the Intending TNSP must submit a revenue proposal to the AER, which involves a reasonable commitment of resources on behalf of the Intending TNSP, and
- including criteria that the AER may apply in assessing whether or not to commence a revenue determination process for an Intending TNSP.

We consider that the draft rule better meets the NEO than MLPL's proposal as the draft rule sets a higher threshold that an Intending TNSP must meet in order to request a revenue determination and it therefore reduces the risk of speculative submissions.

The draft rule also enables the first revenue determination and a contingent project application to occur concurrently through the same regulatory and consultation processes for an Intending TNSP, reducing administrative costs on Intending TNSP, stakeholders and the AER.

As no transitional arrangements are required to implement the draft rule, the implementation costs to commence the rule are low.

3 HOW THE DRAFT RULE ADDRESSES GAPS TO CLARIFY THAT REVENUE DETERMINATIONS CAN BE ESTABLISHED FOR INTENDING TNSPS

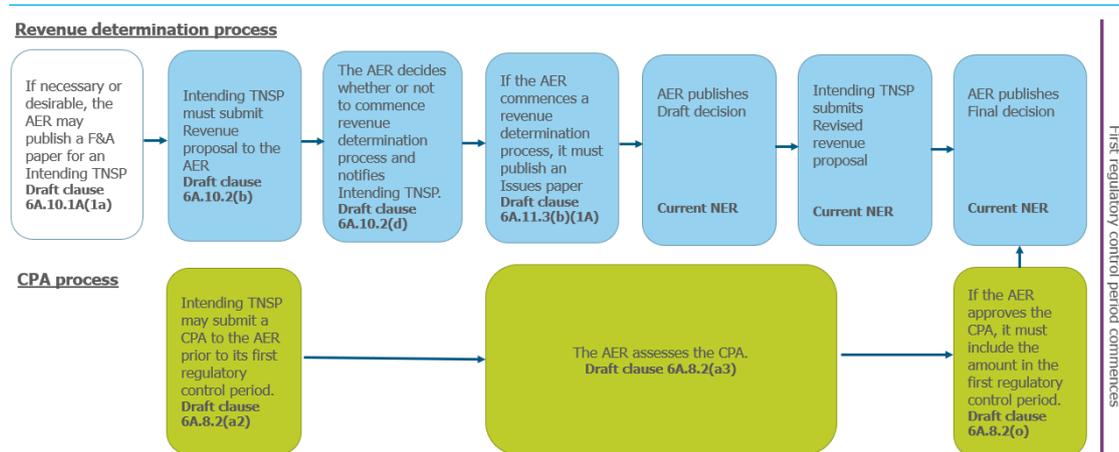
This section sets out our draft decisions and analysis, and stakeholder views, on the key issues considered in this rule change. This section explains the following:

- How the AER has the ability to make revenue determinations for Intending TNSPs under the current NER. While the AER has this ability, there are regulatory gaps in making revenue determinations for Intending TNSPs that need to be clarified.
- How an Intending TNSP is defined in our draft rule.
- How our draft rule addresses the regulatory gaps by:
 - enabling an Intending TNSP to request the AER to commence a revenue determination process by submitting a revenue proposal to the AER
 - requiring the AER to assess whether or not to commence a revenue determination process, setting out criteria that the AER may apply in making this assessment, and that the AER must make this decision as soon as practicable
 - noting that if the AER decides to commence a revenue determination process for an Intending TNSP, the AER is required to publish an issues paper within 40 business days after making this decision
 - providing the AER with discretion as to whether or not to make and publish a F & A paper for an Intending TNSP, and if it does so, flexibility regarding the matters that the AER considers appropriate to set out in the F & A paper; and
 - clarifying arrangements for incorporating contingent projects into the first revenue determination for an Intending TNSP.
- That we propose to implement the rule by 3 November 2022.

We note that our more preferable draft rule differs from the rule proposed by MLPL and stakeholders have not yet had the opportunity to provide submissions on our draft rule. Stakeholder views are included in this chapter 3 where they relate to specific elements of the current arrangements or the draft rule.

Figure 1 below shows the regulatory steps involved in a revenue determination process for an Intending TNSP under Chapter 6A of the NER, including the gaps addressed in this draft rule.

Figure 3.1: Steps involved in seeking a revenue determination and CPA for Intending TNSPs in the draft rule



Source: AEMC

3.1 The AER currently has the ability to make revenue determinations for Intending TNSPs, however regulatory gaps need to be clarified

3.1.1 Our draft determination

The Commission considers that the AER has the ability to make revenue determinations for Intending TNSPs under the current regulatory framework in Chapter 6A of the NER, however there are regulatory gaps that create uncertainty. The Commission’s draft rule addresses these regulatory gaps to clarify the process for revenue determinations to be established for Intending TNSPs.

3.1.2 Stakeholder views

Stakeholders supported clarifying in the NER that the AER has the ability to make revenue determinations for Intending TNSPs:²⁰

- MLPL and the AER considered that the AER cannot commence a revenue determination process until the project is completed and MLPL is providing prescribed transmission services.²¹
- AEMO, Transgrid and PIAC supported addresses gaps in the NER by including explicit provisions to confirm that the AER is empowered to make revenue determinations for Intending TNSPs.²²

²⁰ Hydro Tasmania submission, p. 1.

²¹ MLPL rule change request, p. 1 and AER submission, p.1.

²² Submissions: AEMO, p. 1; Transgrid, p. 1; PIAC, p. 1.

3.1.3

Our analysis

The Commission considers that the existing NER enables the AER to make a revenue determination for an Intending TNSP as detailed below.

- **Chapter 6A of the NER** is primarily concerned with revenue and price regulation in respect of the provision of prescribed transmission services. While Chapter 6A does not currently refer to Intending TNSPs, it has currently been drafted to accommodate both:
 - existing TNSPs that are already providing prescribed transmission services and therefore have a current revenue determination, and
 - TNSPs that will be the subject of a revenue determination for the first time. For example, Schedule 6A.2 provides for the establishment of an opening regulatory asset base for a transmission system for the first regulatory control period. Nonetheless, we note there are regulatory gaps that should be addressed to provide clarity, as outlined in Section 3.3.
- **Rule 2.7(d) of the NER** - *As a Registered Participant, an Intending Participant may exercise such rights and is bound by such obligations under the NER as are specified by AEMO (on the basis of whether the Intending Participant intends to become a Customer, Generator, Network Service Provider (NSP) or Special Participant) and approved by the AEMC.*
- **AEMO's Schedule of Rights & Obligations of Intending Participants - NEM:** This schedule of rights and obligations of Intending Participants is made under rule 2.7(d) of the NER. This schedule includes that, under Chapters 6 and 6A, the "Rights and obligations applicable to a Network Service Provider in respect of services proposed to be provided by means of the Intending Participant's distribution system or transmission system".²³

While the current NER provides the AER with the ability to make a revenue determination for an Intending TNSP, the current NER does not impose a 'duty' on the AER to make a revenue determination for an Intending TNSP, as it does for TNSPs.²⁴ Our draft rule does not impose a duty on the AER to make revenue determinations for Intending TNSPs as this may impose a high administrative burden on the AER if a large number of Intending TNSPs sought a revenue determination. This is because a duty would require that the AER makes a revenue determination for all Intending TNSPs that seek a revenue determination, without providing the AER with discretion to decide whether or not to commence a revenue determination process (see section 3.3 for information on how the AER makes this decision in the draft rule)

Instead, our draft rule addresses gaps in the regulatory framework to provide clarity around the process to make revenue determinations for Intending TNSPs, as explained in section 3.2 below.

²³ AEMO, *Schedule of Rights and Obligations of Intending Participants*, Version 5.0, 10 February 2022.

²⁴ Clause 6A.2.1 of the NER

3.2 Our draft rule defines 'Intending TNSP' in the NER

Our draft rule defines an 'Intending TNSP' as a Registered Participant who intends to provide prescribed transmission services.²⁵ This means that Intending TNSP includes both:

- a person registered as an Intending Participant that intends to provide prescribed transmission services, and
- an existing MNSP that intends to re-classify its network services as prescribed transmission services.

This definition enables a broader group of relevant participants to be defined as an Intending TNSP than that proposed by the rule change request. This, together with other amendments in the draft rule, enables Intending TNSPs to seek a revenue determination, which better supports the NEO by promoting efficient investment in transmission services and the efficient delivery of electricity services.

An Intending TNSP would subsequently be registered as a TNSP, instead of an Intending Participant, once it has been registered by AEMO as a NSP under clause 2.5.1 of the NER and is providing prescribed transmission services.

3.3 Our draft rule addresses gaps to clarify the revenue determination process for Intending TNSPs

3.3.1 Our draft determination

Our draft determination addresses the following regulatory gaps to clarify the process for making a revenue determination for an Intending TNSP:

- it enables an Intending TNSP to request that the AER to commence the revenue determination process by submitting a revenue proposal to the AER²⁶
- it requires the AER to assess whether or not to commence a revenue determination process, sets out criteria that the AER may apply in making this assessment and that the AER must make this decision as soon as practicable²⁷
- requires that if the AER decides to commence a revenue determination process for an Intending TNSP, then the AER must publish an issues paper within 40 business days of making this decision²⁸
- provides the AER with discretion to make and publish a F & A paper for an Intending TNSP, and if it does, provides flexibility regarding the matters that the AER considers appropriate to set out in the F & A paper.²⁹

Our draft rule also corrects a minor cross referencing error in the definition of contingent project in Chapter 10 of the NER.

These amendments contribute to the NEO by:

²⁵ Draft rule, definition of Intending TNSP in Chapter 10 of the NER.

²⁶ Draft rule, clause 6A.10.2(a)-(b)

²⁷ Draft rule, clause 6A.10.2(c)

²⁸ Draft rule, clause 6A.11.3(b)(1A)

²⁹ Draft rule, clause 6A.10.1A(a1)

- **Timing and uncertainty** - clarifying regulatory timeframes and arrangements reduces uncertainty related to the revenue determination process for Intending TNSPs.
- **Concept of efficiency** - clarifying regulatory timeframes for Intending TNSPs to provide their revenue proposals supports efficient provision of electricity services and efficient investment in transmission services.
- **Costs and complexity** - providing discretion to the AER to assess whether or not to commence a revenue determination process for an Intending TNSP reduces the risk of speculative projects and associated administrative costs on the AER.

3.3.2

Stakeholder views and our analysis on the commencement of a revenue determination process for an Intending TNSP

Intending TNSP request to commence a revenue determination process

We note that Chapter 6A of the NER does not outline how to commence a revenue determination process for an Intending TNSP that is not providing prescribed transmission services. To address this gap, our draft rule allows an Intending TNSP to request that the AER commence the process of making a revenue determination by submitting a Revenue Proposal relating to the prescribed transmission services that are to be provided by a proposed transmission system that is to be owned, controlled or operated by that Intending TNSP.³⁰

The AER determines whether to commence a revenue determination process

The draft rule requires that the AER, upon receiving a request from an Intending TNSP to commence a revenue determination process, must decide whether or not to commence a revenue determination process.³¹

Stakeholders noted the risk that the AER may be required to undertake revenue determinations based on speculative submissions for transmission determinations by Intending TNSPs, that ultimately do not proceed.³² MLPL considered that this risk was minimised by applying the standard Chapter 6A process, as per MLPL's proposed rule. The AER considered that the rule change should balance increased certainty against the risk of speculative projects and should only apply to investments that generate net benefits such that Intending TNSPs should be subject to the Regulatory Investment Test for transmission (RIT-T) process.³³

We consider that the regulatory framework should be flexible to enable the timely delivery of actionable ISP projects and other major transmission projects that are central to the NEM transition. To address the risk of speculative projects, the draft rule sets out that the AER may have regard to any matters it considers appropriate in deciding whether or not to commence a revenue determination process, such as the following.

³⁰ Draft rule, clause 6A.10.2(a)-(b)

³¹ Draft rule, clause 6A.10.2(c).

³² Submissions to the consultation paper: MLPL, p. 2; Hydro Tasmania, p. 2; AER, p. 2.

³³ AER, submission to the consultation paper, p. 2.

- Whether the Intending TNSP intends to deliver an actionable ISP project or a project that is not an actionable ISP project but has been subject to the RIT-T process. A project is less likely to be speculative if it has passed the RIT-T, given the level of investment required to pass the RIT-T. Major transmission projects would likely be contingent projects which need to pass the RIT-T as the cost of these projects would likely exceed the RIT-T thresholds; and
- The likelihood of the Intending TNSP delivering that project.

We note that the above criteria:

- apply to Intending TNSPs that intend to build a major transmission project, as the AER may need to consider the likelihood of the Intending TNSP delivering the project,
- would not apply to MNSPs that intend to re-classify its network services as prescribed transmission services to become a TNSP, as the MSNP has already delivered the project and has existing transmission assets.

We consider that the timing for regulatory processes should balance providing the AER with a reasonable amount of time and providing Intending TNSPs with a reasonable level of clarity. Therefore, our draft rule requires the following in relation to Intending TNSPs.

- That the AER must decide whether or not to commence a revenue determination process as soon as practicable.³⁴
- That if the AER decides to commence a revenue determination process, then the AER must publish an issues paper within 40 business days of making this decision.³⁵ This is consistent with the timeframe within which the AER must publish an Issues paper after receiving a revenue proposal for an existing TNSP under clause 6A.11.3(b)(1).

3.3.3

Our analysis on the requirement for flexibility on a framework and approach paper for an Intending TNSP

For existing TNSPs, the F & A paper is the first step in the process to determine efficient prices for the supply of electricity transmission services by a TNSP for their upcoming regulatory control period. It facilitates early consultation with consumers and assists TNSPs in preparing their revenue proposals. The F&A paper sets out the AER's proposed approach to the economic regulation of a TNSP's revenues for its upcoming regulatory control period, including the AER's proposed application of the following incentive schemes and allowances:³⁶

- service target performance incentive scheme
- efficiency benefit sharing scheme
- capital expenditure sharing scheme
- small-scale incentive scheme
- demand management innovation allowance mechanism
- expenditure forecast assessment guidelines

³⁴ Draft rule, clause 6A.10.2(c)

³⁵ Draft rule, clause 6A.11.3(b)(1A)

³⁶ NER clause 6A.10.1A(b)

- whether depreciation will be based on forecast or actual capital expenditure (capex) in updating the regulatory asset base (RAB).

We consider that the AER should have discretion regarding whether or not to make and publish a F & A paper for an Intending TNSP.³⁷ For example, where an Intending TNSP is proposing to construct a major transmission project which may not be completed for a number of years after the F & A paper, it may not be appropriate for the AER to set out its proposed approach in relation to one or more incentive schemes under current clause 6A.10.1A(b).

The draft rule is likely to better contribute to the NEO as it provides the AER with discretion:

- to make and publish a F & A paper that applies in respect of a revenue determination for an Intending TNSP if the AER considers that it is necessary or desirable to do so³⁸; and
- to set out the AER's proposed approach (together with its reasons for the proposed approach), in the forthcoming revenue determination, to any of the matters set out in clause 6A.10.1A(b) as the AER considers appropriate.³⁹

This matter was not raised in MLPL's rule change request or our consultation paper. There were no stakeholder submissions on this.

3.3.4 **Our analysis on the timing for an Intending TNSP to submit a revenue proposal and pricing methodology**

We note that the current arrangements are unclear as Chapter 6A does not outline the timing for an Intending TNSP to submit its revenue proposal and pricing methodology to the AER. Currently, Chapter 6A only specifies timeframes that apply to TNSPs that have an existing revenue determination.

If an Intending TNSP intends to construct a major transmission project it may be difficult to know when this project is likely to be completed. In this case it may not be appropriate to specify a timeframe, prior to the start of the regulatory control period, when the Intending TNSP must provide its revenue proposal to the AER. Therefore, it is up to an Intending TNSP to request that the AER commence the process for making a revenue determination at the appropriate time.

3.3.5 **Our analysis of the elements of Chapter 6A that should apply to Intending TNSPs**

As explained in section 1.2, we do not propose to broadly apply all of Chapter 6A to Intending TNSPs. Instead, we propose to apply specific elements of Chapter 6A for Intending TNSPs that are relevant to establishing a revenue determination.

If the AER decides to commence the process to make a revenue determination for an Intending TNSP, then the draft rule applies the following parts of Chapter 6A (including the relevant definitions and provisions referred to in those Parts) to an Intending TNSP, as if a

37 Draft rule, clause 6A.10.1A(a1)

38 Draft rule, clause 6A.10.1A(a1)

39 Draft rule, clause 6A.10.1A(a2).

reference to a TNSP is a reference to that Intending TNSP in respect of its first revenue determination:⁴⁰

- **Part C - Regulation of revenue - Prescribed Transmission Services:** this relates to elements such as allowed revenue from prescribed transmission services, revenue determinations, the Post Tax Revenue Model and the Building blocks approach.
- **Part E - Procedure - Revenue determinations and pricing methodologies:** this relates to matters such as the submission of a revenue proposal, the AER's draft decision and consultation, submission of a revised revenue proposal, and the AER's final determination.
- **Part F - Information disclosure:** this relates to matters such as information to be provided by TNSPs to the AER and the AER's Information guidelines.
- **All relevant definitions and provisions referred to in Parts C, E and F of Chapter 6A** apply in relation to an Intending TNSP. This captures, for example, references to Schedule 6A.1 and Schedule 6A.2.

3.4

Our draft rule clarifies arrangements for incorporating contingent projects into the first revenue determination for an Intending TNSP.

3.4.1

Our draft determination

MLPL considered that it is unclear how the opening RAB is to be established for Intending TNSPs under current schedule 6A.2.1(d)(2), for example in relation to expenditure incurred by the Intending TNSP prior to the commencement of its first regulatory control period. We consider that current schedule 6A.2.1(d) is clear on how the opening RAB is to be established for an Intending TNSP and does not need to be clarified.

We have amended aspects of Chapter 6A relating to contingent projects as outlined below.

- Our draft rule provides that, if the AER decides to commence the process of making a revenue determination for an Intending TNSP then Part C of Chapter 6A applies, as if a reference to a TNSP is a reference to an Intending TNSP in respect of its first revenue determination.⁴¹ Contingent projects are covered under Part C of Chapter 6A, so this allows contingent projects to apply to Intending TNSPs.
- Currently the Contingent Project Application (CPA) framework only applies to existing TNSPs that have an existing revenue determination; it is not available to Intending TNSPs as they do not have a revenue determination. Our draft rule enables the CPA framework to apply to Intending TNSPs by allowing an Intending TNSP to apply to the AER to include a contingent project in its first revenue determination. If the AER determines that a trigger event has occurred, the AER must include the amounts of expenditure determined by the AER under clause 6A.8.2(e)(1) the revenue determination for that Intending TNSP.⁴² This reduces investment uncertainty and supports efficient investment in transmission assets.

⁴⁰ Draft rule, clause 6A.10.2(e)

⁴¹ Draft rule, clause 6A.10.2(e).

⁴² Draft rule, clauses 6.8.2(a2) and 6.8.2(o).

- Our draft rule provides flexibility by allowing the CPA process to occur:
 - concurrently with the regulatory and consultation processes associated with the AER making a revenue determination for an Intending TNSP's first regulatory control period⁴³, or
 - through a separate process, after the first revenue determination has been established for an Intending TNSP.

These amendments support the NEO by:

- **Timing, costs and uncertainty** - allowing the first revenue determination (i.e. to determine the opening RAB) and a contingent project application to occur concurrently through the same regulatory and consultation processes for an Intending TNSP reduces regulatory and administrative burden and supports timely investment decision-making.
- **Concept of efficiency** - supports efficient provision of electricity services and efficient investment in transmission services.

3.4.2

Current arrangements

Establishing the opening value of the RAB

Under the current NER, the opening RAB for an Intending TNSP is established under schedule 6A.2.1(d). For Intending TNSPs, the opening value of the RAB at the beginning of the first regulatory year of the first regulatory control period is the prudent and efficient value of the assets used by the TNSP to provide prescribed transmission services (but only to the extent that they are used to provide such services), as determined by the AER.⁴⁴ In determining this value, the AER must have regard to the matters referred to in clause S6A.2.2.⁴⁵

Adjusting the RAB

The RAB for the second and subsequent years of the first regulatory control period is adjusted year to year using the roll forward model by the AER under schedule 6A.2.4.⁴⁶

The RAB for the first year of subsequent regulatory control periods is determined by accounting for various factors, including capex related to contingent projects, under clause S6A.2.1(f).

Capex is one factor that drives changes to the RAB over time. Chapter 6A accommodates three different frameworks for capex:

⁴³ Draft rule, clause 6.8.2(o)

⁴⁴ Clause S6A.2.1(d)

⁴⁵ For example, clause S6A.2.2(1) requires that in determining the prudence and efficiency of capital expenditure under schedule 6A.2.1(d), the AER must have regard to the need to provide a reasonable opportunity for the TNSP to recover the efficient costs of complying with all applicable regulatory obligations or requirements associated with the provision of prescribed transmission services.

⁴⁶ Clause S6A.2.4(a) of the NER.

- **Forecast capex** - forecast capex is rolled into the RAB year on year during the regulatory control period with the RAB then adjusted for actual capex when determining the opening RAB for the next regulatory control period.⁴⁷
- **Contingent projects proposed by the TNSP** - a proposed contingent project is subject to a trigger event and must have capex exceeding either \$30 million or 5% of the value of the maximum allowed revenue (MAR) for the relevant TNSP for the first year of the relevant regulatory control period.⁴⁸
- **Contingent projects that are actionable ISP projects** - this is subject to a trigger event under clause 5.16A.5.⁴⁹ This is applicable for Intending TNSPs that intend to construct actionable ISP projects. It is relevant to MLPL that intends to construct Project Marinus, which is an actionable ISP project.

Amending the RAB through a Contingent project application (CPA)

A TNSP may submit a CPA to the AER during a regulatory control period for the AER to amend the TNSP's revenue determination that applies to that regulatory control period.⁵⁰ A revenue determination can be amended to reflect the capital and operating expenditure that the AER considers reasonable to undertake a contingent project.⁵¹ Any amendments to a TNSP's revenue determination through the CPA framework take effect from the regulatory year following the CPA decision.⁵²

Under the AER's CPA guideline:⁵³

"When the AER makes its next revenue determination for the TNSP, it will adjust the regulatory asset base to include the capital expenditure required for the contingent project. If actual expenditure is not available, the AER will increase the regulatory asset base by the amount of estimated capital expenditure it has approved."

Currently contingent projects are identified within a regulatory control period. This means that the CPA framework only applies to TNSPs that have a revenue determination and does not apply to Intending TNSPs that do not have a revenue determination.

3.4.3

MLPL's proposed changes relating to the RAB

MLPL noted that clause S6A.2.1(d) sets out the current arrangements that would apply to the establishment of the opening RAB for an Intending TNSP, such as MLPL. MLPL considered that current schedule 6A.2.1(d)(2) was unclear as it refers to the value of assets 'used' by the TNSP, but only to the extent that they are used to provide prescribed transmission services. MLPL considered that a new clarifying clause was required to confirm that expenditure incurred prior to the commencement of the first regulatory control period should be included

47 Clause 6A.6.7 of the NER

48 Clause 6.8.1(b)(2)(iii).

49 Clause 6.8.2(a)(2).

50 Clause 6A.8.2 of the NER.

51 Clause 6A.8.2(e) of the NER.

52 Clause 6A.8.2(l) of the NER.

53 AER, *Process guideline for contingent project applications under the National Electricity Rules*, September 2007, p. 13.

in the opening RAB, provided that it is prudent and efficient. MLPL noted that if no assets were being used by the Intending TNSP at the commencement of the regulatory period the expenditure already incurred could be excluded from the opening RAB, even if that expenditure was prudent and efficient.⁵⁴

MLPL considered that schedule 6A.2.1(d)(2) was not consistent with good regulatory practice or the revenue and pricing principles in the NEL, which require that a regulated NSP should be provided with a reasonable opportunity to recover its efficient costs.⁵⁵

To address this, MLPL proposed to add the following new schedule 6A.2.1(d)(4) to Chapter 6A of the NER.⁵⁶

“For the avoidance of doubt, in applying clause (d)(2) to an Intending TNSP, the value of the regulatory asset base at the beginning of the first regulatory year of the first regulatory control period must include the prudent and efficient expenditure incurred or will be incurred prior to the commencement of the regulatory control period. In determining this value, the AER must have regard to the matters referred to in clause S6A.2.2.

3.4.4

Stakeholder views

Stakeholder views in relation to the RAB part of MLPL’s proposal are outlined below:

- AEMO noted the issue raised by MLPL in schedule 6A.2, including the implicit assumption that the relevant TNSP has already undertaken the investment, and supported the establishment of a RAB for Intending TNSPs.⁵⁷
- The AER noted that construction costs may be considered as a determinant of the opening RAB value. However, there are risks of overspend and underspend compared to forecasts during the construction phase, there should be scope to address risk-sharing between TNSPs and customers.⁵⁸
- PIAC were concerned about MLPL’s proposal, noting that the inclusion of early works in the RAB should be subject to a requirement that they are assessed as prudent and efficient. If the project does not go ahead, the costs should not be recovered from consumers.⁵⁹

3.4.5

Our analysis

We considered the issue raised by MLPL, MLPL’s proposed solution and the issues raised by stakeholders. Our analysis is set out below.

54 MLPL rule change request, p. 3.

55 MLPL rule change request, p. 3.

56 MLPL rule change request, p. 18.

57 AEMO submission, p. 1.

58 AER submission, p. 2.

59 PIAC submission, p.1

We note the issues raised by MLPL in relation to clause S6A.2.1(d), however, we consider that the current clause S6A.2.1 is clear and it is not necessary to include MLPL's proposed new schedule 6A.2.1(d)(2) in the NER, for the reasons outlined below.

- The current schedule 6A.2.1(d) is clear that the opening value of the RAB is based on the prudent and efficient value of the assets used by the TNSP to provide prescribed transmission services.
- Where the Intending TNSP is constructing a major transmission project, we expect that the AER, in assessing the opening value of the RAB, would assess the prudence and efficiency of expenditure incurred by the Intending TNSP in the period of time prior to when the Intending TNSP starts providing prescribed transmission services (i.e. early works costs). In relation to Actionable ISP projects, the AER provides guidance around how the AER will approach the regulatory assessment of actionable ISP projects under the economic regulatory framework set out in the NER, including the assessment of forecast expenditure and cases where the AER would exclude capex from the RAB.⁶⁰
- We consider that in the case of Intending TNSPs that intends to construct an actionable ISP project:
 - The AER would determine the opening RAB and contingent project capex by taking into account the prudent and efficient value of assets to be used to provide prescribed transmission services, the prudent and efficient costs incurred by the Intending TNSP prior to it providing prescribed transmission services, the previous cost estimate for the project in the RIT-T, and the AER's Guidance around CPAs.⁶¹
 - The Intending TNSP would not be able to recover any costs through transmission charges to customers until it starts providing prescribed transmission services. That is, the costs of major transmission projects delivered by Intending TNSPs will not be reflected in consumer bills until the project is delivered and the Intending TNSP is providing prescribed transmission services.
- We consider that the draft rule, which does not amend clause S6A.2.1(d)(2), is consistent with the revenue and pricing principles in the NEL, as it provides a regulated NSP with a reasonable opportunity to recover its efficient costs.

3.5 We propose to implement the rule on 3 November 2022

We do not consider that any transitional amendments are required to implement the draft rule. Therefore, we propose that the final rule (if made as the draft rule) would commence on 3 November 2022, one week after the scheduled publication of the final determination for this rule change process.

We seek stakeholder feedback on all aspects of the draft rule and this draft determination. We also seek feedback on the two questions outlined below.

⁶⁰ AER, *Guidance Note - Regulation of actionable ISP project*, March 2021.

⁶¹ For more information, refer to Appendix B.

QUESTION 1: CPA FRAMEWORK AND INTENDING TNSPS

The intent of our draft rule is to clarify that the CPA framework applies to Intending TNSPs that do not have a revenue determination. Are the draft changes proposed to clause 6A.8.2 suitable and do stakeholders consider that they adequately reflect this intent?

QUESTION 2: APPLICATION OF CHAPTER 6A IN THE DRAFT RULE

Our draft clause 6A.10.2(e) states that if the AER decides to commence a revenue determination for an Intending TNSP, then Part C, E and F of Chapter 6A and all relevant definitions and provisions referred to in those Parts apply in relation to that Intending TNSP. Is this approach to applying specific Parts of Chapter 6A appropriate? Are there any other parts of Chapter 6A that stakeholders consider should apply to an Intending TNSP in these circumstances?

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Capex	Capital expenditure
Commission	See AEMC
CPA	Contingent project application
ISP	Integrated system plan
F & A paper	Framework and approach paper
MCE	Ministerial Council on Energy
MLPL	Marinus Link Pty Ltd
MNSP	Market network service provider
MW	Mega-watt
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National electricity objective
NSP	Network service provider
Opex	Operating expenditure
RAB	Regulatory asset base
RIT-T	Regulatory investment test for transmission
TNSP	Transmission network service provider

A THE RULE MAKING PROCESS

This section sets out information on the following:

- MLPL's rule change request,
- the rule change process to date, and
- how to make a submission in response to this draft rule determination.

A.1 MLPL's rule change request

On 3 March 2022, MLPL submitted a rule change request to the AEMC that proposed to amend Chapter 6A of the NER to allow the AER to make a revenue determination for an Intending TNSP.

MLPL considers that having a revenue determination is a pre-requisite for making a final investment decision to proceed in delivering Project Marinus.⁶² MLPL considered that there is uncertainty over whether the AER can make a revenue determination for Project Marinus, and other transmission systems that may be proposed by other Intending TNSPs, under current Chapter 6A of the NER. MLPL considered that this may act as a barrier to efficient investment in transmission assets.

MLPL's proposed rule change solution, and the Commission's response to it, are outlined in Chapter 1 and 3 of this draft determination.

A.2 The rule change process to date

On 5 May 2022, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.⁶³ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 2 June 2022.

The Commission received 6 submissions in the first round of consultation. The issues raised by stakeholders are discussed and addressed in Chapter 3 and Appendix D.

A.3 How to make a submission

The Commission invites submissions on this draft rule determination and more preferable draft rule by **15 September 2022**.

Any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than **11 August 2022**.

Submissions and requests for a hearing should quote project number ERC0343 and may be lodged online at <https://www.aemc.gov.au/contact-us/lodge-submission>.

⁶² MLPL rule change request, cover letter, p.2.

⁶³ This notice was published under s.95 of the NEL.

B ADDITIONAL BACKGROUND INFORMATION

This section set out additional background information relating to:

- the Integrated system plan and Project Marinus, and
- contingent project applications.

B.1 The Integrated system plan and Project Marinus

The ISP is a whole-of-system plan to efficiently develop the power system to achieve power system needs, in the long-term interests of electricity consumers. The ISP reflects Australia's 2030 and 2050 emissions targets.⁶⁴

The ISP identified Project Marinus as an actionable project that is required to meet power system needs and is expected to deliver over \$4 billion in net market benefits.⁶⁵ Project Marinus will deliver two new high voltage direct current cables connecting Victoria and Tasmania, each with 750 MW of transfer capacity and associated alternating current transmission.⁶⁶

B.2 Contingent project applications

B.2.1 **A contingent project represents additional capex that is not included in a TNSP's ex-ante capex allowance**

Major transmission projects like ISP projects are typically examples of contingent projects.

A transmission revenue determination includes a TNSP's capital expenditure allowance for the regulatory period. However, a TNSP may be expected to deliver a contingent project during the regulatory period which represents significant additional capex⁶⁷ that is not included in the initial capex allowance.

The AER determines that a proposed contingent project is a contingent project if the AER is satisfied that:⁶⁸

- it is reasonably required to be undertaken in order to achieve any of the capital expenditure objectives
- the capital expenditure:
 - is not otherwise provided for (either in part or in whole) in the total of forecast capex for the relevant regulatory control period;
 - reasonably reflects the capital expenditure criteria; and

64 AEMO, *2022 Integrated System Plan*, June 2022, p. 21.

65 Ibid, p. 73.

66 Ibid, p. 72.

67 Under clause 6A.8.1(2)(iii), for capex to be considered a contingent project the capex must exceed the larger amount between \$30m and 5% of the value of the maximum allowed revenue of a TNSPs first year of the relevant regulatory control period.

68 Clause 6A.8.1(b)

- exceed either \$30 million or 5% of the value of the Maximum allowed revenue for the TNSP for the first year of the relevant regulatory control period whichever is the larger amount.

B.2.2

A TNSP must submit a CPA to amend its capex allowance to include the costs of a contingent project

A CPA includes a forecast of the capital and incremental operating expenditure for the purpose of undertaking the contingent project.⁶⁹ A CPA must be submitted to the AER for approval. A CPA may only be submitted if the relevant trigger event has occurred.⁷⁰ For actionable ISP projects, the RIT-T must be completed and the feedback loop must be passed (amongst other things).⁷¹

Once the trigger event has occurred and a CPA has been submitted, the AER will assess the proposed forecast capex against the capex criteria and approve the CPA based on whether it is satisfied of a number of factors including that the expenditure is prudent and efficient.⁷² Once the CPA is approved, the AER will amend a TNSP's revenue determination to the extent necessary to:

- accommodate the amount of capital expenditure and incremental operating expenditure the AER considers is reasonably required to undertake the contingent project
- reflect the effect of any resultant increase in forecast capital expenditure and operating expenditure on the maximum allowed revenue and the X-factor for each regulatory year in the remainder of the regulatory control period.⁷³

A CPA process is a consumer safeguard to ensure that consumers are paying no more than the efficient costs of a contingent project.⁷⁴

69 Clause 6A.8.2(b)(3) of the NER.

70 Clause 6A.8.2(a) of the NER.

71 Clause 5.16A.5 of the NER.

72 Clause 6A.8.2 (f) and (g) of the NER.

73 Clause 6A.8.2(h) of the NER.

74 For more information on the CPA process see: AER, *Process guideline for contingent project applications under the National Electricity Rules*, September 2007 and AER, *Guidance note: Regulation of actionable ISP projects*, March 2021.

C LEGAL REQUIREMENTS UNDER THE NEL

This appendix sets out the relevant legal requirements under the NEL for the AEMC to make this draft rule determination.

C.1 Draft rule determination

In accordance with s.99 of the NEL the Commission has made this draft rule determination in relation to the rule proposed by MLPL.

The Commission's reasons for making this draft rule determination are set out in Chapter 1 and 3.

A copy of the more preferable draft rule is attached to and published with this draft rule determination. Its key features are described in chapter 3.

C.2 Power to make the rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules. The more preferable draft rule falls within s. 34 of the NEL as it relates to the activities of persons (including Registered participants) participating in the national electricity market.

Further, the more preferable draft rule falls within the matters set out in Schedule 1 to the NEL as it relates to transmission system revenue and pricing because it clarifies the procedure for the making of a revenue determination by the AER for an Intending TNSP.

C.3 Making a more preferable rule

Under s.91A of the NEL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NEO.

In this instance, the Commission has made a more preferable rule. The reasons are set out in Chapter 3.

C.4 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the rule⁷⁵
- its powers to make a more preferable rule⁷⁶
- the rule change request⁷⁷

75 See appendix C.2.

76 See appendix C.3

77 See Appendix A.

- the Commission’s analysis as to the ways in which the proposed rule will or is likely to, contribute to the NEO⁷⁸
- the revenue and pricing principles.⁷⁹

There is no relevant MCE statement of policy principles for this rule change request.⁸⁰

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of Australian Energy Market Operator (AEMO)’s declared system functions.⁸¹ The more preferable draft rule is compatible with AEMO’s declared system functions because it does not change AEMO’s functions in any material respect.

C.5 Making electricity rules in the Northern Territory

Test for scope of “national electricity system” in the NEO

Under the NT Act, the Commission must regard the reference in the NEO to the “national electricity system” as a reference to whichever of the following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed rule:⁸²

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems⁸³
- (c) all of the electricity systems referred to above.

Test for differential rule

Under the NT Act, the Commission may make a differential rule if it is satisfied that, having regard to any relevant MCE statement of policy principles, a differential rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.⁸⁴ A differential rule is a rule that:

- varies in its term as between:
 - the national electricity systems, and
 - one or more, or all, of the local electricity systems, or
- does not have effect with respect to one or more of those systems

⁷⁸ See chapter 2.

⁷⁹ See section 2.1.

⁸⁰ Under s. 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC’s governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. In December 2013, it became known as the Council of Australian Government (COAG) Energy Council. In May 2020, the Energy National Cabinet Reform Committee and the Energy Ministers’ Meeting were established to replace the former COAG Energy Council.

⁸¹ Section 91(8) of the NEL.

⁸² Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

⁸³ These are specified Northern Territory systems, listed in schedule 2 of the NT Act.

⁸⁴ Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

A uniform rule is a rule that does not vary in its terms between the national electricity system and one or more, or all, of the local electricity systems, and has effect with respect to all of those systems.⁸⁵

As the rule relates to parts of the NER that currently do not apply in the Northern Territory, we have not assessed the rule against the additional elements required by the Northern Territory legislation.⁸⁶

C.6 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the Energy Ministers' Meeting that new or existing provisions of the NER be classified as civil penalty provisions.

The draft rule does not amend any clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers' Meeting that any of the proposed amendments made by the draft rule be classified as civil penalty provisions.

C.7 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the Energy Ministers' Meeting that new or existing provisions of the NER be classified as conduct provisions.

The draft rule does not amend any rules that are currently classified as conduct provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers' Meeting that any of the proposed amendments made by the draft rule be classified as conduct provisions.

⁸⁵ Clause 14 of Schedule 1 to the NT Act, inserting the definitions of "differential Rule" and "uniform Rule" into section 87 of the NEL as it applies in the Northern Territory.

⁸⁶ From 1 July 2016, the NER, as amended from time to time, apply in the NT, subject to derogations set out in regulations made under the NT legislation adopting the NEL. Under those regulations, only certain parts of the NER have been adopted in the NT. (See the AEMC website for the NER that applies in the NT.) National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

D SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in the first round of consultation on this rule change request and the AEMC’s response to each issue. If an issue raised in a submission has been discussed in the main body of this document, it has not been included in this table.

Table D.1: Summary of other issues raised in submissions

STAKEHOLDER	ISSUE	AEMC RESPONSE
MLPL pp. 4-5.	MLPL considered that a RAB bridging mechanism is not an appropriate alternative solution because it requires amendments to the NER that may cause unintended consequences.	We have decided to make a more preferable draft rule that does not apply the bridging mechanism suggested in our Consultation paper.
PIAC, p. 1.	PIAC considers that early works costs should be included in the cost and benefit assessment of the RIT-T rather than excluded as sunk costs.	We consider that the cost of early works, which a TNSP intends to recover through the CPA process, will be included in RIT-T cost-benefit assessments as RIT-T costs input into the CPA process.
Transgrid, p. 1	Transgrid suggests the AEMC consider the interaction of the NER with the arrangements established under the NSW Electricity Infrastructure Investment (EII) Act 2020 and any similar legislation in other NEM jurisdictions in deciding the breadth of the application of this rule.	As detailed in chapter 3, our draft rule defines Intending TNSP in a way that includes a registered participant that intends to deliver a major transmission project and an MNSP that intends to re-classify its network services as prescribed transmission services to become a TNSP. We consider that this is sufficiently broad to capture participants who register as Intending Participants, and who will seek a revenue determination and be subject to economic regulation under Chapter 6A of the

STAKEHOLDER	ISSUE	AEMC RESPONSE
		<p>NER.</p> <p>State legislation such as the EII Act may establish different arrangements for economic regulation of transmission projects and may modify or disapply particular aspects of the NEL or NER.</p>
AEMO, p. 1.	AEMO considers that a draft rule should not introduce any adverse effects for consumers.	We consider that our draft rule supports timely and efficient investment in transmission infrastructure. This will support the long-term reliability of the electricity system and efficient costs for consumers. The draft rule is not expected to introduce any adverse effects on consumers.
MLPL, rule change request, p. 3.	MLPL considered that the AER should be able to make a revenue determination one or more years prior to the Intending TNSP providing prescribed transmission services, as the revenue determination may be required before the relevant transmission assets are constructed.	Our draft rule clarifies that the AER can make a revenue determination prior to when an Intending TNSP starts providing prescribed transmission services. See Chapter 3 for more detail.
AER, p.1.	The AER considered that the timing of transmission charges should be flexible in the draft rule as charges shouldn't be levied until prescribed transmission services are provided to customers.	Our draft rule does not make any amendments in relation to the timing of transmission charges as we consider the current NER is clear that a TNSP cannot recover charges until it is providing prescribed transmission services. However we agree that the timing of transmission charges should be flexible, so that consumers are not

STAKEHOLDER	ISSUE	AEMC RESPONSE
		charged any costs relating to an Intending TNSP until the Intending TNSP starts providing prescribed transmission services (which may be a number of years after the making of a revenue determination).
AER, p.1	The AER considered that there may be circumstances where the determination of the opening RAB value may be sufficient for capital to be raised to finance an investment in prescribed transmission services.	Our draft rule enables an Intending TNSP to submit a CPA prior to the making of a revenue determination, so the CPA can be assessed concurrently with the determination of the opening RAB. This efficient regulatory process supports timely investment decision-making.

Note: For more information on the cost recovery process for planning activities please see the Transmission planning and investment review: stage 2 draft report available [here](#).