3 November 2022

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

Electronic Submission – EPR0087

Stage 3 draft report – Transmission Planning and Investment

Dear Ms Collyer,

Energy Networks Australia (ENA) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC's) Stage 3 draft report for its Transmission Planning and Investment Review (TPIR).

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

ENA recognises that transmission networks have a key role to play in enabling the transition of the economy to a net zero emissions future. It is important that the regulatory framework for planning and investment is fit for purpose to deliver timely investment in major transmission projects, whilst also ensuring that consumers are confident that the right projects are being invested in, at the right time and at an efficient cost.

Stage 3 of the TPIR provides a valuable opportunity to consider whether reforms to the current framework could deliver benefits to consumers, particularly over the longer term. ENA appreciates the clarification that the conclusions from the Stage 3 review will form the basis for the scheduled 2025 review of the ISP arrangements, enabling these two review processes to complement each other. ENA notes the recent announcement by Energy Ministers which indicates a review to 'supercharge' the 2024 ISP, and the prospect of future integration of system planning across the gas and electricity sectors. ENA anticipates that the AEMC will consider how these developments fit together to deliver timely investments in the right transmission projects.

In response to the Stage 3 draft report, ENA:

- encourages the AEMC to take a 'big picture' view that considers how **activities in the economic assessment process can impact subsequent project stages and improve overall delivery timeframes** by promoting stakeholder engagement and improved social licence;
- agrees that **the appropriate counterfactual is one that reflects the actionable ISP framework rather than experience to date**, which is expected to better support projects in moving through jurisdictional planning and approvals processes in parallel with the economic assessment process, and in securing social licence, relative to previous arrangements
- considers that **strawperson 1 is the only option that warrants further investigation**, but also notes that the workability of the model and the scope for material time savings are likely to be project specific and so recommends this model should be considered **on an opt-in basis for specific**

projects, rather than replacing the current arrangements. Strawperson 1 could be enhanced by consideration of whether an option is able to be delivered within the required timeframe (and is therefore a 'credible option') drawing on TNSPs' detailed knowledge of the local circumstances for each project;

- does **not consider that strawpersons 2 and 3 are workable in practice, since they split accountability for end-to-end project delivery across different parties.** These models are unlikely to improve investment timeliness as they do not address community acceptance and engagement. Recent experience in Victoria has highlighted some of the practical difficulties with such a split in accountability;
- notes that **consumers always benefit from concessional financing that facilitates timely delivery of transmission investments,** including where it improves TNSPs' project financeability. The AEMC's aim should be to **improve transparency for consumers around the treatment of concessional finance**, rather than introducing a substantive role for the AER. Any substantive role for the AER creates additional risk and uncertainty around the treatment of that finance, undermining investor confidence and leading to investment delays, which is directly counter to the objectives of providing the finance;
- agrees that the TNSP is best placed to disclose the existence of a financing arrangement. Given the confidential nature of these negotiations, if the financing arrangements are not sufficiently clear as to the financier's intentions, then **the TNSP should have the first right to consult with the financier to obtain a more detailed statement of intentions**;
- **does not support including a new financial incentive on delivery timing, which is likely to be a poorly targeted solution that will not benefit consumers**. ENA is concerned that the incentive could create perverse outcomes regarding project costs, risks and quality of engagement, since it would place undue focus on achieving a specific delivery date for a specific project;
- **supports a clarifying rule allowing an ex-post review of ISP project capex only**. The rule should enable the scope of the ex post review to be explicitly limited ex ante as part of the AER's determination at the start of the regulatory period of a Contingent Project Application (CPA), to be effective in reducing uncertainty for investors ahead of making an investment decision; and
- **does not support the mandating of additional CPA stages**, either in the Rules or at the AER's discretion, and notes that flexibility for the TNSP to agree additional CPA stages with the AER is already a feature of the current framework.

Each of the above points is expanded on in the attachment.

Consistent, stable policy and regulatory frameworks are critical to support timely and efficient investment in long-lived transmission assets. In finalising its recommendations, ENA continues to encourage the AEMC to focus on those changes most likely to be accepted as a long-term, nationally consistent model across all National Electricity Market (NEM) jurisdictions, including those currently progressing major transmission projects through alternative arrangements. This will ensure any new arrangements introduced have the greatest prospect of providing real and lasting benefits to consumers across the NEM, in line with the announcement by Energy Ministers of their commitment to designing a 'new framework for nationally significant transmission projects', including a fit-for-purpose regulatory process in the NEM. It is also important that the AEMC considers the interrelationships between issues being explored across different stages of the TPIR.

Finally, ENA notes that the Stage 3 draft report describes the evolving policy landscape on emissions abatement and the role of the electricity sector, and how this is incorporated in the current planning framework. ENA encourages the AEMC to outline in its final stage 3 report how the framework may need to evolve with respect to the treatment of emissions abatement, particularly in response to the change to the National Electricity Objective (NEO) to include environmental considerations. It is important to ensure the robustness of the longer-term reforms being considered under this review to future changes in emissions abatement.

ENA looks forward to continuing engagement 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,

Andrew Dillon

CEO

Ensuring the economic assessment process facilitates the timely delivery of major transmission projects to support the energy transition

Any changes should focus on improving stakeholder confidence that the right projects are being selected, to build support and facilitate timely delivery

ENA agrees that the evaluation of any changes to the economic assessment process should focus on how these changes are expected to impact both the timely delivery of major transmission projects as well as the rigour of the assessment and the resulting consumer confidence that the right projects are being pursued. ENA supports the AEMC's focus on changes to the economic assessment process for ISP projects only, given the focus of the TPIR on major projects.

ENA considers that the assessment of timeliness should focus on the end-to-end time savings for project delivery, particularly from the potential to streamline activities to minimise duplicated work and appropriately integrate community engagement into the economic assessment process. Despite expressing similar sentiments,[1] the AEMC's assessment of potential time savings appears to be focused on whether there is duplication in the economic assessment process itself and the potential for time savings in the economic assessment process alone. ENA encourages the AEMC to more actively recognise the interdependence between the planning and delivery stages, where the quality and robustness of analysis and engagement completed in the planning timeframes will have fundamental impact on project delivery and overall success. In line with earlier ENA submissions, improvements to community engagement and acceptance are likely to have more impact on timeliness than fundamental changes to the economic assessment process.

ENA also encourages the AEMC not to prioritise timeliness at the expense of necessary rigour. For example, the AEMC suggests that including fewer options in the ISP and RIT-T may facilitate the investigation of social licence issues. However, this may not improve timeliness if state environmental legislation requires a wider range of options to be considered, since the omitted options may need to be revisited during subsequent environmental assessments. In line with earlier ENA submissions, ENA considers that the balance should be weighted towards robustness.

The core issue that needs to be addressed is that the economic assessment process currently appears not to be providing stakeholders with sufficient confidence that the transmission planning decisions being made are the right decisions. This includes decisions such as the options considered, the choice of the preferred option, and technical design choices regarding constructing overhead or underground transmission lines.

The resulting lack of stakeholder acceptance from various groups such as community stakeholders, consumers, governments and planning authorities is a key driver of delays and cost increases over the project life cycle. Consequently, it may be counterproductive to eliminate activities at the economic assessment stage that could be viewed as involving overlapping consideration of the same issues, but

[1] AEMC Stage 3 Draft Report, p. 10

which also facilitate community engagement and build greater confidence in the robustness of the outcome, which in turn then reduces end-to-end project delays and costs.

For this reason, ENA encourages the AEMC to take a 'big picture' view that considers how activities in the economic assessment process impact subsequent project stages by promoting stakeholder acceptance and improving the social licensing process, instead of focusing only on the economic assessment activities in isolation.

Appropriate counterfactual

ENA agrees with the AEMC that past ISP projects proceeding under transitional arrangements do not reflect the current actionable ISP framework, and that the counterfactual for the AEMC's assessment of potential changes should include current processes and already proposed reforms.

ENA also agrees with the AEMC's observation that the actionable ISP framework may also better support projects in moving through jurisdictional planning and approvals processes in parallel with the economic assessment process, and in securing social licence, relative to previous arrangements.[2] That is, some of the concerns noted above with stakeholder engagement and acceptance during the planning process may be addressed to some extent through the changes that have already been put in place.

As such, consistent with its earlier submissions, ENA considers that the new actionable ISP arrangements should be given time to be applied in practice, and that there is a good prospect that they will achieve an appropriate balance between timeliness and rigour without the need for substantive changes.

Strawperson 1 is the only option that warrants further investigation

Of the three strawperson options set out by the AEMC, ENA considers that **Strawperson 1 – front loading of early works** is the only option that warrants further investigation.

Bringing early works forward into the RIT-T process would facilitate greater stakeholder engagement on social licence issues which, while it would extend the RIT-T timeframes, may either:

- reduce the time required for later environmental and community engagement activities; or
- manage the risk that duplicate work is required at a later stage to ensure the outcomes of later processes do not alter the economic assessment conclusion.

If Strawperson 1 is developed further, then further work will be needed to identify the type of early works activities that could appropriately be brought forward to the RIT-T stage to better enable consumers and communities to provide inputs into project decisions made as part of the economic assessment process. These activities are likely to be broader than economic modelling and may include the application of a suite of tools to understand how social and environmental impacts are being minimised and mitigated by each option.

[2] AEMC Stage 3 Draft Report, p. 34-35.

ENA notes the recommendations in the AEMC's Final Stage 2 TPIR report that the AER clarify the meaning of 'early works' and associated cost recovery arrangements, and provide additional guidance on the expectations on TNSPs regarding engagement and consultation with local communities and other stakeholders at key stages in the planning process (including the RIT-T).[3]

ENA notes the Final Stage 2 Report makes recommendations regarding further guidance on social licence and cost recovery. If strawperson 1 is progressed the nature of this guidance would be key to practical implementation. However, ENA also encourages the AEMC to provide additional details in its Final Stage 3 Report about the scope of early works that it envisions should be conducted at the RIT-T stage to maximise whole-of-life-cycle time savings. This is important because some of the early works examples set out in the AEMC's Draft Stage 3 Report are likely to be difficult to complete during the economic assessment process, such as obtaining binding bids from engineering procurement and construction providers.[4]

The focus of early works and community engagement during the RIT-T stage would more appropriately be on those matters that are relevant to the ability to practically deliver the project, including better understanding of legislative, social, environmental and cultural concerns. Such activities, considered at the RIT-T stage, may assist in being able to present a smaller number of options in the Project Assessment Draft Report (PADR), which are considered to be able to be delivered in practice within the required timeframes and therefore be 'credible options'. This approach would be consistent with the AEMC's recommendations in its Final Stage 2 Report that the AER provide guidance on how to interpret the 'can be implemented in sufficient time' limb of the current definition of 'credible option', and that early engagement with affected communities is likely to be a necessary part of identifying options that are credible.[5] ENA strongly supports this recommendation, which is in line with the objective of the proposal in our earlier submission to incorporate consideration of whether projects are deliverable.

ENA notes that the narrowing of credible options presented at the RIT-T stage based on engagement with communities and landholders is consistent with recommendations by the Australian Energy Infrastructure Commissioner (AEIC).[6] However, all views on whether options can be delivered in a timely manner should be backed by clear evidence and should be open to consultation and challenge as part of the ISP and RIT-T processes, in the same way that views on the technical and commercial feasibility of credible options are currently.

In addition, ENA considers that, outside the Victorian framework, there should be a strong presumption for AEMO to accept TNSP advice on project deliverability as part of ISP joint planning activities, since AEMO does not typically possess the local, planning and customer knowledge that TNSPs have regarding the feasibility of a project in their jurisdiction.

ENA considers that the end-to-end time savings for strawperson 1 are likely to be project specific, since they will be heavily dependent on the number of options that are being considered at the ISP and RIT-T

[3] AEMC Stage 2 Final Report, p.ii.
[4] AEMC Stage 3 Draft Report, p. 45.
[5] AEMC Stage 2 Final Report, p. 30.
[6] AEIC, 2021 Annual Report of the Australian Energy Infrastructure Commissioner, Commonwealth of Australia 2022, pp. 50. Referenced in the AEMC Final Stage 2 Report, p. 36

stages. ENA notes that the AEMC's anticipated six-month savings from the removal of an 'early works' RIT-T is unlikely to be realised in practice, as the option of applying a RIT-T to early works only has never been invoked in practice, and it is difficult to see this provision being used.[7]

ENA therefore suggests the AEMC considers an alternative specification of this strawperson which:

- retains the counterfactual as the default approach; and
- enables TNSPs to seek AER approval to recover the costs of early works that are brought forward to the RIT-T stage, where it is feasible and appropriate for a specific project.

Such an 'opt-in' approach on a project-specific basis may also provide the best prospect of this model being adopted in practice in jurisdictions which are currently pursuing major projects under their own arrangements.

Strawpersons 2 and 3 should not be considered further

ENA does not recommend the other strawperson options are considered further in this review, as it is unlikely that either would prove workable in practice and would not deliver material time savings in delivering investments in major projects.

Strawpersons 2 and 3 both split accountability for end-to-end project delivery between AEMO and the TNSP, with the consequence that neither model is likely to materially improve community engagement and acceptance.

ENA considers that splitting accountability in this manner is problematic because:

- stakeholders typically want to engage with one key decision maker over the course of the project's planning and delivery, and may be left with different expectations by each party, thus impacting overall trust in the project;
- AEMO is a national planning body and generally is more remote from local issues than TNSPs. Expanding AEMO's role, whilst reducing the role of the on-the-ground TNSP, would be likely to exacerbate social licence issues, with a detrimental impact on the overall timeliness of project delivery;
- it weakens the incentives in the existing framework, in that AEMO as a not-for-profit national planning body:
  - is more remote from local issues and may not have as strong an incentive to address social licence issues thoroughly since it will not be accountable for subsequent project delivery;
  - does not have the same capability or financial capacity as a TNSP or jurisdictional planning body. For example, AEMO cannot underwrite early works or implement benefit sharing and compensation arrangements for projects with increased delivery risks; and

[7] The application of the RIT-T to an 'early works' stage only is covered in: AER, *Cost benefit analysis guidelines: Guidelines to make the Integrated System Plan actionable,* August 2020, p 69-70. ENA notes the AER's guidance that a staged CPA approach can be applied with 'early works' covered under CPA1, even where the project itself has not been staged under the RIT-T. See AER, *Guidance Note Regulation of actionable ISP projects*, March 2021, p. 25.

- it is not sensible to expect meaningful engagement on individual projects to be conducted as part of the ISP, which focuses instead on the higher-level task of setting a national optimal development path.

ENA is sceptical that joint planning arrangements could be strengthened sufficiently to overcome the above challenges. As a consequence, strawpersons 2 and 3 are unlikely to improve investment timeliness and could be considered as taking a 'step-back' on consideration of these crucial issues.

Each of these two models also has further, specific disadvantages.

Under **Strawperson 2** (where AEMO is responsible for assessing net benefits through the ISP while the RIT-T focuses on minimising costs) ENA considers it would be difficult for AEMO to estimate the net benefits of each project at the ISP stage with sufficient rigour. This is because:

- TNSPs have detailed, localised knowledge that makes them best placed to evaluate the net benefits for each option, including where more granular modelling is required. This includes on matters such as the impact on communities, transmission sub-systems and asset condition or replacement considerations; and
- TNSPs are also likely to be best placed to evaluate non-network options. If the RIT-T were to only consider option costs, then adding in non-network components at the RIT-T stage (which is likely to be where most engagement with non-network proponents occurs in practice) would only add to costs, with any off-setting benefits not being accounted for. [8]

Strawperson 3 (where an annual ISP provides a centralised analysis of costs and benefits and there is no RIT-T) would also be subject to the same practical issues in relation to the assessment of benefits. In addition, this model would:

- change existing joint planning dynamics, since TNSPs would be subordinate to AEMO in the planning process, resulting in less rigorous testing of the planning outcomes across all entities;
- reduce accountability by requiring TNSPs to bear delivery risks for project decisions made by AEMO:
  - for example, if AEMO chooses a preferred option through a region with high social and environmental constraints, the TNSP may have limited flexibility to alter the route without triggering a material change in circumstances (MCC) event; and
- add materially to National Transmission Planner (NTP) costs, since the ISP would be published annually without offsetting benefits, and there would also be higher costs incurred for TNSPs providing input into the ISP process.

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[8] The VNI West RIT-T provides a practical example. The PADR considered two options, reflecting the ISP candidate option both with and without an additional Virtual Transmission Line (VTL) component. Had the PADR focused on minimising costs only, then zero value would have been assigned to the benefits generated by the battery and only the additional cost of this option would have been considered. Although in this case the overall net benefit was lower where the VTL option was included, in other cases this may not be the case. See https://aemo.com.au/initiatives/major-programs/victoria-to-new-south-wales-interconnector-west-regulatory-investment-test-for-transmission/reports-and-project-updates

Approach to the regulatory treatment of concessional finance in the NER

ENA agrees that the current National Electricity Rules (NER) do not currently set out clearly how concessional finance is to be treated. Instead, financing arrangements, and how the concessional finance is treated, are a matter for negotiation between the TNSP and financier. ENA acknowledges that financiers and consumers may benefit from greater transparency, particularly as concessional financing is likely to become more prominent under the Rewiring the Nation (RTN) initiative.

The benefits of concessional finance should not be categorised as flowing to either consumers or the TNSP. Consumers always benefit from concessional financing that facilitates timely delivery of transmission investments which provide net market benefits, including in circumstances where it improves the TNSP's project financeability. Nevertheless, ENA agrees that financiers' intent may be to deliver customer bill impacts as well as facilitating timely delivery.

Overall, ENA considers that the AEMC's aim should be to improve transparency for consumers around the treatment of concessional finance, rather than introducing a substantive role for the AER that could conflict with the negotiated outcome between the TNSP and the financing party. With this in mind, it may be beneficial for the AEMC to consult with the Clean Energy Finance Corporation (CEFC) as the key financing body for the RTN funding, to obtain its perspectives on this issue.

If the AEMC introduces rules on the treatment of concessional financing, then ENA suggests that these rules should be prescriptive, whereby the AER must:

- focus on the financing contract, with no discretion to deviate from the intentions of the financier where these intentions are clear;
- accept the terms of the financing contract as to how the financing is to be treated in the post-tax revenue model, such as through an immediate capital contribution or adjustment to the TNSP's Maximum Allowed Revenue, with clear guidelines for cases where the contract is silent on this issue; and
- maintain commercial confidentiality of the arrangement unless both the TNSP and financier agree to dispense with confidentiality.

Further, it is essential that concessional financing is only viewed as 'concessional' where it is explicitly stated and contracted on that basis. In all other cases, the current arrangements in the NER should apply.

It is in the interests of consumers for TNSPs to have confidence in the investment process, as this underpins TNSPs' confidence to invest in major projects. Providing discretion for the AER in the treatment of concessional finance would introduce uncertainty for both TNSPs and the financing party. If the AER were to treat concessional finance in a manner that deviated from the arrangements negotiated and agreed between the TNSP and the financier, this could seriously damage investor confidence and negate the objective of providing such finance, which is to facilitate the timely investment necessary to support the energy transition.

ENA agrees that the TNSP is best placed to disclose the existence of a financing arrangement. By extension, if the financing arrangements are not sufficiently clear about the financier's intentions, then the TNSP should have the first right to consult with the financier to obtain a more detailed statement of intentions. The AER should liaise with the financier only if the TNSP declines to exercise its right to do so.

Finally, ENA encourages the AEMC to set out further details about how the arrangements would apply under the Victorian joint planning framework. This issue is particularly relevant following the RTN funding commitment for VNI West.

Introducing a timely delivery incentive (TDI)

ENA does not support the inclusion of a new financial incentive on delivery timing, which is likely to be a poorly targeted solution that will not benefit consumers. ENA does not consider that a new incentive mechanism would be a proportionate and effective response to the concerns raised by the AEMC.

In particular, ENA does not expect that the TDI would be effective in addressing the problem the AEMC perceives of TNSPs having the exclusive right but no obligation to invest. The AEMC states that the TDI could influence the timeliness of the TNSP's decision to invest, where it applies to the project commissioning date, as TNSPs would need to plan and make final investment decisions early enough to meet those dates.[9] However imposing an additional financial penalty if an investment decision is delayed risks exacerbating any concerns TNSPs may have around making that decision, and so may have the perverse impact of *disincentivising* an investment decision. This disincentive would be compounded where the benchmark delivery date did not take into account the latest information on the feasible delivery timeframe and was instead 'hard wired' to reflect dates included in the ISP.

TNSPs' previous concerns around proceeding with major projects have stemmed from the financeability of such investments. These concerns are now being positively addressed through the AEMC's stage 2 recommendation to allow flexibility in depreciation profiles and through the availability of concessional finance under RTN. Further, there are non-financial reasons that favour TNSPs proceeding with a project investment decision, including the risk of reputational damage and/or direction from governments if they do not proceed. As noted earlier, TNSPs recognise the fundamental role that transmission plays in the transition to net zero and are committed to investing in the major projects required to enable the transition.

The AEMC has also positioned the TDI as incentivising timely delivery once the investment decision has been made, noting that the TDI could be a response to 'manage delays in the [..] delivery of a project.'[10] However, TNSPs already have financial incentives to complete a project in a timely manner, without the need to introduce a TDI, since earlier completion allows the TNSP to commence recovery of its costs.[11] Furthermore, ENA is not aware of stakeholders having raised concerns about a TNSP having insufficient incentive to complete a project in a timely manner after it has made an investment decision to proceed with the project. The AEMC also has not provided any evidence of such stakeholder concerns.

ENA considers that the development of a TDI is unlikely to benefit consumers because:

- many of the risks to timely delivery lie outside of the TNSP's control, such as adverse weather, delays to obtaining environmental and government approvals and supply chain issues arising from

[9] AEMC, Stage 3 Draft Report, p. 90.
[10] AEMC Stage 3 Draft Report, p. 86.
[11] ie, recovery of depreciation on an 'as commissioned' basis.

external factors . If the financial penalties under a TDI are passed back through to contractors, who also cannot manage these risks fully, then that will increase the overall costs of the project to consumers;

- efficient delivery timing may change as circumstances change. For example, where the benefits of a project are related to the development of a REZ, it would be inefficient to commission the transmission line early if the development of the REZ is materially delayed. The AEMC recognises in its report the complications of a TDI where efficient delivery timing changes;[12]
- More generally, the proposed TDI treats each project in isolation without considering a TNSP's portfolio of projects. It is in consumers' long-term interests for TNSPs to focus their delivery efforts efficiently across all projects instead of focusing on fixed delivery dates for specific projects as the TDI would; and
- introducing a TDI risks promoting perverse incentives, such as:
  - cutting short community engagement and sacrificing community acceptance in order to move a project forward, thereby worsening social licence issues and reducing overall trust in the project; or
  - putting excessive focus on setting the appropriate target date, thus taking focus away from successful project delivery.

ENA encourages the AEMC to be cautious about making inferences about the benefits of a TDI based on Ofgem precedent, because Ofgem's TDI was implemented under a regulatory framework that differs materially from the NER and was only introduced in February 2021, which does not allow for sufficient time to assess the practical benefits of introducing such a scheme.

For the above reasons, ENA considers that the risks to consumers of introducing a TDI outweigh any potential benefits and recommends that the AEMC does not pursue this proposal further.

The AEMC's report contains a number of questions around the detailed design of a TDI mechanism. The complexity of some of the issues raised is further evidence of the risks with designing an effective scheme. For example, the AEMC recognises the challenges raised by changes to the delivery date in ensuring that incentives are consistent over time, and that efficient changes to delivery timeframes can be accommodated. It is also not clear how the 'benefits' and 'costs' to consumers of changes in delivery timeframes would be calculated in practice or with any degree of precision, in setting the TDI rewards or penalties. ENA notes the reference to benefits and costs potentially being based on the impact on wholesale energy prices from continuing transmission constraints.[13] As a consequence, the financial incentives on the TNSP may be misaligned with the impact on consumers

ENA has not responded to the detailed design questions posed by the AEMC as we consider that they are premature and that the case for introducing a TDI has not been made.

[12] AEMC Stage 3 Draft Report, p. 87-89.
[13] AEMC Stage 3 Draft Report, p. 85.

Managing increased cost risk and/or uncertainty for major projects

ENA agrees that it is important to manage the risks and uncertainties around costs during the energy transition. However managing the cost uncertainties and risks associated with the delivery of major projects is a broad issue that will not be fully addressed through changes to the regulatory framework alone.

TNSPs are working hard to increase cost certainty and to lower the costs and risks borne by consumers, through a number of means including:

- using innovative project designs to reduce equipment requirements and line length; and
- better management of procurement and supply chain risks.

Notwithstanding, ENA considers that there are some changes that can be made to the regulatory framework at the margin that may better address issues around cost uncertainty.

The ENA supports the AEMC's suggestion to include a clarifying rule allowing an ex-post review limited to the capex for an ISP project(s) only, that is separate to the broader ex-post review provisions. Narrowing the focus of an ex post review to a specific ISP project will assist with managing the cost uncertainty created by these large-scale projects, and the potential impact that it could have on the regulatory treatment of the TNSP's other capital expenditure. This clarifying rule also promotes timeliness by providing greater certainty for TNSPs and their investors in arriving at an investment decision.

To be effective, it is important that the clarifying rule enables the scope of the ex post review to be limited ex ante as part of the AER's determination at the start of the regulatory period, or as part of a contingent project determination. This will reduce uncertainty for the TNSP around the treatment of any cost over-runs during the regulatory period, since it will provide clarity that the AER will not expand the scope of any ex post review after the ISP project(s) is completed, provided that the TNSP's other capex remains below the regulatory allowance.

The AEMC also flags the potential to allow additional staging of CPAs to manage uncertainty and promote project flexibility.

ENA supports the existing presumption of a two stage CPA process that allows early works to proceed ahead of cost recovery for the bulk of the project costs.

ENA does not support mandating additional CPA stages, either in the NER or at the AER's discretion, and agrees with the AEMC that this would move towards cost of service regulation[14] and undermine incentive based regulation under the NER. Additional CPA stages would add complexity and uncertainty to a project, since TNSPs generally expect to be committed to a project after it has passed the second stage, which would make additional stages superfluous.

ENA further notes that the AER's current guidance already permits more than two CPA stages where warranted by project-specific circumstances, but cautions against adopting too many CPA stages:

[14] AEMC Stage 3 Draft Report, p. 101.

There are also challenges associated with staging CPAs. Breaking the regulatory process up into too many stages could make it harder to assess the project as a whole, which could result in duplication and/or scope creep. It could also result in excessive regulatory involvement in approving incremental project costs, which could undermine the effectiveness of our ex-ante incentive based regulatory framework, and result in a large regulatory burden for all stakeholders. [15]

[..]

*[..] we **expect** the number of CPAs used for a given project to be limited, and CPAs should not be used to seek regulatory approval of detailed project delivery matters. We consider CPA staging would usually contain two CPAs, where the first stage is early works and the second stage is the remainder of the project. However, there may be circumstances where appropriate CPA staging could look different from this.*

*We **expect** the TNSP to consult us on its CPA staging intentions [..]. Where the TNSP proposes to submit more than two CPAs for an actionable ISP project, we will seek information on why this is appropriate and in the long term interests of consumers.*

ENA suggests that this status quo be retained, which already provides flexibility if required and subject to AER oversight and does not support mandating additional CPA stages.

Finally, ENA notes that the AEMC does not support ENA's earlier suggestion to enable a TNSP to propose nominated cost pass through events at the CPA stage and does not consider that events such as route changes would be appropriately treated as pass through events.

ENA notes that its proposal is not for additional defined cost pass through events to be hard-wired into the NER, but rather that flexibility be provided at the CPA stage for TNSPs to identify additional nominated pass through events as appropriate at that time, as already applies at the regulatory proposal stage for revenue determinations.

ENA agrees with the AEMC that cost pass through events should be limited to events outside of the TNSP's control, where the TNSP is not the party best placed to manage the risk. This is reflected in the criteria that the AER is required to have regard to under the NER in deciding to accept a nominated pass through event. Providing flexibility for TNSPs to propose nominated pass through events at the CPA stage for major projects would enable specific events that meet these criteria to be identified as appropriate, which would assist in managing cost uncertainty. The AER would retain the ability to decide whether or not the proposed pass through events met the criteria to be a nominated pass through event.

ENA encourages the AEMC to re-consider whether amending the NER to allow this flexibility may be appropriate.

[15] See AER, *Guidance Note Regulation of actionable ISP projects*, March 2021, p. 26
[16] See AER, *Guidance Note Regulation of actionable ISP projects*, March 2021, p. 28