

Australian Energy Market Commission

CONSULTATION PAPER

**NATIONAL ELECTRICITY AMENDMENT
(CONCESSIONAL FINANCE FOR
TRANSMISSION NETWORK SERVICE
PROVIDERS) RULE**

8 JUNE 2023

RULE

INQUIRIES

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Reference: ERC0349

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 Australia is undergoing a transformational shift to net zero. A key feature of this transformation is the replacement of centralised thermal generation with decentralised renewable generation.
- 2 There is broad consensus that transmission is a critical enabler for the transition to net zero, both in the National Electricity Market (NEM) and the economy more broadly. This transition will require an unprecedented level of investment in, and build of, transmission infrastructure to deliver power from renewable generation and energy storage to consumers, and to deliver infrastructure quickly.
- 3 The scale of transmission investment required, coupled with the speed of the energy transition, presents unique opportunities and challenges for the existing regulatory framework. This framework was developed and has evolved over a period of incremental growth of the grid where the framework was weighted to minimise the risk of overbuilding, rather than the current required pace of step-change growth set out in the Australian Energy Market Operator's (AEMO) Integrated System Plan (ISP).
- 4 The Honourable Chris Bowen MP, Commonwealth Minister for Climate Change and Energy (the Minister), submitted a rule change request on 11 April 2023 proposing that the National Electricity Rules (NER) be changed to include an approach to determining how the financial benefits that arise from concessional financing¹ of transmission infrastructure are shared between consumers and Transmission Network Service Providers (TNSPs). The rule change request notes that under the current rules concessional finance is not prohibited but, if it is provided, the benefits derived from the concession flow to TNSPs, not to consumers².
- 5 The Minister's rule change request is in the context of the Commonwealth Government's Rewiring the Nation Fund, which commits \$20 billion in concessional finance for the upgrade and expansion of Australia's electricity grids. This finance is intended to facilitate lower costs and delivery of critical transmission infrastructure.
- 6 The Commission is considering the request and this consultation paper is the first stage in the public consultation process.
- 7 We are also undertaking a related rule change to address the risk that financeability challenges could arise in relation to actionable ISP projects. The Commission intends to consider these two rule change requests in separate rule change processes. However, given they both relate to the financing of transmission projects in the ISP, we intend that the processes will run concurrently.
- 8 We are seeking your feedback on the rule change request, including how we propose to assess the request to determine whether it will promote the long-term interests of consumers.

1 Concessional finance may be provided to a TNSP in the form of below-market rate finance as well as finance over a longer term, higher gearing and additional debt capacity, or possibly other forms for the same level of risk to below market rate loans.

2 Under the current regulatory framework concessional financing will benefit TNSPs while consumer benefits, if intended, may not be realised other than through benefits associated with a project being built that otherwise would not be.

We seek your views on how the NER can share the benefits of concessional finance with consumers

9 We are considering how concessional financing provided by government funding bodies, such as the Clean Energy Finance Corporation (CEFC), to TNSPs should be treated in the NER when some benefits may be intended to be shared with consumers.

10 As the NER does not explicitly recognise the treatment of concessional finance, additional guidance may be required to clarify the treatment of benefits from concessional finance. This view was shared by stakeholders who provided submissions to our TPIR Stage 3 Draft Report. A summary of these submissions is provided in Appendix A.

11 The rule change request details an approach to how the NER can be amended to allow sharing of concessional finance benefits with consumers, including:

- Enabling the AER to allow an agreed benefit, determined through negotiation by the TNSP and government funding body (GFB), to be passed onto consumers.
- Requiring TNSPs to provide the necessary information to the AER including the value of the benefit that the TNSP and GFB have agreed should be passed onto consumers.

12 The rule change request also outlines how concessional finance benefits can be shared with consumers in the Victorian Declared Shared Network for transmission assets procured through both contestable and non-contestable processes.

We consider that there are six assessment criteria that are most relevant to this rule change request

13 Considering the NEO and the issues raised in the rule change request,³ the Commission proposes to assess the rule change request against six assessment criteria.

14 We seek feedback on our proposal to assess the request against:

- Principles of market efficiency
 - Risk allocation — does the proposal consider the impacts of different approaches to risk allocation on stakeholder behaviours and outcomes, specifically TNSPs and the regulator?
- Outcomes for consumers
 - Incentives — does the proposal detail an appropriate regulatory treatment to capture the consumer benefit of concessional finance in the regulatory framework?
- Principles of good regulatory practice
 - Simplicity and transparency — does the proposal provide a simple and transparent mechanism for notification and capturing of consumer benefits from concessional finance in the regulatory framework?
 - Consider broader direction of reform — does the proposal give regard to complementary reforms being considered, including the AEMC's recommended

3 Section 7 of the NEL.

reforms to transmission planning and investment and rule change request on providing flexibility in addressing TNSP financeability concerns?

- Decarbonisation — noting the proposal does not directly influence the assessment of a project’s economic case, is the proposal consistent with the timely decarbonisation of the energy market?

Submissions are due by 14 July 2023 with other engagement opportunities to follow

- 15 Written submissions responding to this consultation paper must be lodged with Commission by 14 July 2023 via the Commission’s website, www.aemc.gov.au.
- 16 There may be other opportunities for you to engage with us, such as round-table discussions or industry briefing sessions.
- 17 See the section of this paper about “How to engage with us” for further instructions and contact details for the project leader.
- 18 There will be also be an opportunity for you to provide feedback on the Commission’s draft determination.

Full list of consultation questions

QUESTION 1: THE REGULATORY TREATMENT OF CONCESSIONAL FINANCE

Do you agree that the Rules need to recognise concessional finance to share benefits with consumers?

QUESTION 2: RESPONSIBILITY TO INFORM THE AER ABOUT THE EXISTENCE OF A CONCESSIONAL FINANCING ARRANGEMENT

Do you agree that the TNSP should notify the AER about the existence of a concessional finance arrangement?

QUESTION 3: WHAT TYPES OF INFORMATION ABOUT THE CONCESSIONAL FINANCE ARRANGEMENT SHOULD BE PROVIDED TO THE AER AND BY WHOM

Do you agree with the types of information that should be provided to the AER, as detailed in the rule change request, and that the TNSP be required to provide the information?

QUESTION 4: HOW THE AER CONFIRMS THE INTENT OF THE CONCESSIONAL FINANCE AND THE METHOD(S) THROUGH WHICH THE AER CAN TREAT THE CONCESSIONAL FINANCE BENEFITS

1. Do you agree that the AER should confirm the amount to be treated as a benefit to consumers and/or TNSPs with the TNSP and the GFB?
2. Do you agree that this amount should be treated as either a capital contribution and deducted from the RAB or as a MAR adjustment? Do you prefer one method over another? Why?
3. Do you see any issues with treating some or all of the benefits as either a capital contribution or as a revenue adjustment?
4. Do you agree the AER should be required to seek submissions from the government funding body:
 - to ensure benefits are passed on to customers and/or TNSPs as intended, and
 - to determine whether they intended that some or all of the benefit of the concessional finance be treated as a capital contribution or a MAR adjustment, if required?

If not, how should the AER confirm intent and treatment of consumer benefits?

QUESTION 5: PROPOSED SOLUTION

1. Do you think the proposed solution is the most appropriate way to share benefits of concessional finance with consumers, or is there another more effective solution that could be implemented (including non-rules based solutions)?
2. Do you think the proposed solution:
 - a. is targeted, fit for purpose and proportionate to the issues it is intended to address?
 - b. considers the broader direction of reforms in transmission infrastructure?
 - c. provides for simplicity and transparency in regulatory arrangements?

QUESTION 6: COSTS AND BENEFITS OF THE PROPOSED SOLUTION

What do you think the direct and indirect costs and benefits of the proposed solution are likely to be? Are the costs likely to be proportionate to the problem they are intended to address?

QUESTION 7: IMPLEMENTATION CONSIDERATIONS

1. Do you have any suggestions regarding the commencement timeframe?
2. Are there additional measures that should be considered that would support the effective implementation of the desired solution?

QUESTION 8: COMPLIANCE AND ENFORCEMENT

Do you have any feedback on the compliance and enforcement role proposed for the AER?

QUESTION 9: ARE THERE ALTERNATIVES SOLUTIONS THAT WOULD BE PREFERABLE?

Can you share any alternative solutions that you think would be preferable and more aligned with the long-term interests of consumers?

QUESTION 10: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework?

How to make a submission

We encourage you to make a submission

Stakeholders can help shape the solutions by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and, in so doing, contributes to well-informed, high quality rule changes.

We have included consultation questions in this paper, however, you are welcome to provide feedback on any additional matters that may assist the Commission in making its decision.

How to make a written submission

Due date: Written submissions responding to this consultation paper must be lodged with Commission by 14 July 2023.

How to make a submission: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference

code ERC0349.⁴

You may, but are not required to, use the stakeholder submission form published with this consultation paper.

Tips for making submissions are available on our website.⁵

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).⁶

Other opportunities for engagement

There may be other opportunities for you to engage with the project team prior to, and following, your formal submission. Our [stakeholder guide to the rule change process](#) sets out the process stages for the rule change, and describes the AEMC's "stakeholder engagement toolkit".⁷

For more information, you can contact us

Please contact the project leader with questions or feedback at any stage.

Project leader: Chirine Dada
Email: chirine.dada@aemc.gov.au
Telephone: 02 8296 7800

4 If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission.

5 See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/our-work-3>

6 Further information is available here: <https://www.aemc.gov.au/contact-us/lodge-submission>

7 AEMC, *The rule change process, A guide for stakeholders*, 20 June 2017.

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1 THE CONTEXT FOR THIS RULE CHANGE REQUEST

The rule change request is one of the priority actions that was agreed to by Energy Ministers on 28 October 2022.

The rule change request is seeking to facilitate the intent of the Commonwealth's 'Rewiring the Nation' Fund which commits \$20 billion in concessional finance for the upgrade and expansion of Australia's electricity grids. Announcements relating to the Rewiring the Nation Fund have been made for [Marinus Link](#), [VNI West \(via Kerang\)](#), [REZs and offshore wind development](#) and [Transmission and REZ projects in NSW](#). This finance is intended to facilitate lower costs and reduce bill impacts to consumers arising from significant infrastructure investment. It is also intended to facilitate new transmission infrastructure that will enable greater inter-regional electricity flows and increase the availability of lower-cost renewable generation and storage.

1.1 The Commonwealth Minister has proposed the rules be changed to share benefits of concessional finance with consumers

The rule change request notes that the NER does not explicitly recognise the treatment of concessional finance.

Under the National Electricity Law (NEL) the AER must apply a rate of return to network businesses in accordance with its Rate of Return Instrument (RORI). The AER set an allowed return on debt which is part of the rate of return formula. Under the current framework if a TNSP secures finance below the AER's allowed return on debt it retains the additional savings. As such, the benefits of concessional finance will flow to the TNSP under the current framework.

A change to the rules is required to enable funds such as Rewiring the Nation to be applied for the benefit of consumers when intended. It would also clarify the intended purpose of the concessional finance arrangement (between the TNSP and GFB) and provide clarity on the treatment of concessional financing to improve investor confidence and facilitate the timely delivery of transmission infrastructure.

The rule change request is seeking to only apply to TNSPs.

1.2 We have engaged with stakeholders on this issue previously

As part of the Stage 3 draft report of the Transmission Planning and Investment Review (TPIR) we identified that additional guidance is needed to clarify how the benefits from concessional finance are treated in the National Electricity Rules (NER).⁸

Stakeholders in their submissions to the TPIR Stage 3 report generally recognised and agreed that the objective of the concessional finance is to support the timely delivery of major

⁸ Australian Energy Market Commission, *Transmission Planning and Investment Review Stage 3 draft report*, Sydney, 21 September 2022, p. IV.

projects and to benefit consumers. They were widely supportive of the need to develop additional guidance on the treatment of benefits from concessional finance in the NER.⁹

Some stakeholders agreed that the TNSP is best placed to provide the necessary information to the AER to enable the treatment of benefits from the concessional finance, whilst others suggested that the AER should be empowered to seek the required information from either party to the agreement.

We held a virtual public forum on concessional finance as part of the Stage 3 Draft Report¹⁰ and consulted with stakeholder groups following receipt of their submissions. We will continue to consult with stakeholders on these issues as part of this rule change request. Stakeholder submissions received in response to TPIR Stage 3 Draft Report will be considered and are not required to be resubmitted.

The Commission has also recently considered the treatment of concessional financing in the context of the National Gas Rules (NGR) as part of the *Review into extending the regulatory frameworks to hydrogen and renewable gases*. The final report recommended that the NGR be amended to provide the regulator with discretion to treat concessional finance in the same manner as user capital contributions and government grants, where appropriate. In practice, the regulator would treat concessional finance as a capital contribution by deducting an amount from the capital base when determining scheme pipeline revenue and prices.

The Commission notes the similarities in the policy considerations for the treatment of concessional finance benefits in the NGR and NER. However, while the policy intent is similar, this rule change request proposes that the consumer benefits of concessional finance be realised through a capital reduction or a revenue reduction and that the AER be notified of the adjustment mechanism that has been agreed to by the GFB and TNSP.

1.3 We have started the rule change process

This paper is the first stage of our consultation process.

A standard rule change request includes the following formal stages:

- a proponent submits a rule change request
- the Commission commences the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a draft determination and draft rule (if relevant)
- stakeholders lodge submissions on the draft determination and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

⁹ Submissions available [here](#). A summary of submissions is provided at appendix A.

¹⁰ A public forum was held on 4 October 2022 on the TPIR Stage 3 Draft Report (Longer-term reforms) including how concessional financing provided by governments and agencies such as the Clean Energy Finance Corporation (CEFC) should be treated for regulatory purposes when some of the benefits may be intended to flow to consumers.

We will undertake this rule change request as a standard rule change and consistent with the timeframe of a standard rule change process the key dates for this process are outlined in the figure below.

Figure 1.1: ERC0349 Concessional Finance for TNSP's - Key Dates

Timeline for rule change



Source: AEMC

Information on how to provide your submission and other opportunities for engagement is set out at the front of this document in the Summary.

You can find more information on the rule change process in [The Rule change process – a guide for stakeholders](#).¹¹

We seek stakeholder feedback on how we propose to assess the request and how the Rules should be amended to share benefits of concessional finance with consumers.

1.4

We are undertaking a related rule change on providing flexibility to address TNSP financeability challenges

The Commission has received a rule change request from the Minister that seeks to address the risk that financeability challenges could arise in relation to actionable ISP projects.¹² To address the risk faced by TNSPs, it proposes to:

- introduce greater flexibility in the revenue-setting framework in the National Electricity Rules (NER) to vary the depreciation profile of assets that form part of an actionable ISP project
- allow TNSPs to recover depreciation of biodiversity offset costs on an as incurred basis
- clarify the treatment of depreciation for asset classes, including biodiversity offsets.

This rule change project may have regard to the availability and provision of concessional finance for transmission projects.

¹¹ AEMC, *The rule change process: a guide for stakeholders*, June 2017, available here: <https://www.aemc.gov.au/sites/default/files/2018-09/A-guide-to-the-rule-change-process-200617.PDF>

¹² Further information is available at: <https://www.aemc.gov.au/rule-changes/accommodating-financeability-regulatory-framework>.

The Commission intends to consider these two rule change requests in separate rule change processes. However, given they both relate to the financing of transmission projects in the ISP, the processes will run concurrently. Information on how to provide your submission and other opportunities for engagement on this related rule change is set out in the consultation paper available on the rule change page [here](#).

2 THE PROBLEM RAISED IN THE RULE CHANGE REQUEST

This chapter seeks stakeholder feedback on the problem identified in the rule change request – whether it is or will soon become a problem and if so, the scale and impact of the problem.

2.1 The Rules need to recognise concessional finance to enable benefits to be shared with consumers

The NER currently does not explicitly recognise the treatment of concessional finance. Financing sourced through concessional means is not differentiated from other forms of debt. Under the current rules, the benefit of any concessional finance would be retained by a TNSP. The rule change request proposes instead that the rules explicitly recognise concessional finance, the intent of which will allow some or all of the benefit of concessional financing arrangements to be passed through to consumers.

The current framework does not facilitate sharing some or all of the benefits of concessional financing with consumers. While the current framework would ensure that consumers benefit from the delivery of specific assets, where the financier providing concessional finance intends for the finance to reduce the prices paid by consumers for the delivery of specific projects, the framework is unable to facilitate this. This presents an issue in the current context of the NEM and associated build-out of transmission infrastructure.

The Commonwealth Government has committed to providing low-cost finance through the Rewiring the Nation Policy which has the specific intention of reducing the bill impact of the associated significant transmission infrastructure investment. In order to be able to achieve this, the rules would need to be amended so that some or all of the benefits of concessional finance can be shared with consumers.

The Commission has previously consulted on this issue through its *Transmission Planning and Investment Review*. Stakeholder responses to this review widely supported the AEMC developing guidance on the treatments of the benefits of concessional finance. More detail on these stakeholder submissions is available in appendix A.

QUESTION 1: THE REGULATORY TREATMENT OF CONCESSIONAL FINANCE

Do you agree that the Rules need to recognise concessional finance to share benefits with consumers?

3 THE PROPOSED SOLUTION AND IMPLEMENTATION

The rule change request that has been submitted would allow the AER to treat contributions from non-users (such as a government funding body) and the benefit that a TNSP would receive from concessional finance, as either a capital contribution or an adjustment to the maximum allowed revenue (MAR adjustment). In order to facilitate this the rule change request also proposes information provisions to allow the AER to obtain the necessary information in order to make such a determination.

3.1 Proposal to facilitate the sharing of concessional finance benefits between TNSPs and consumers

The rule change request proposes an enduring change to the NER, in order to facilitate the sharing of concessional finance benefits between TNSPs and consumers.

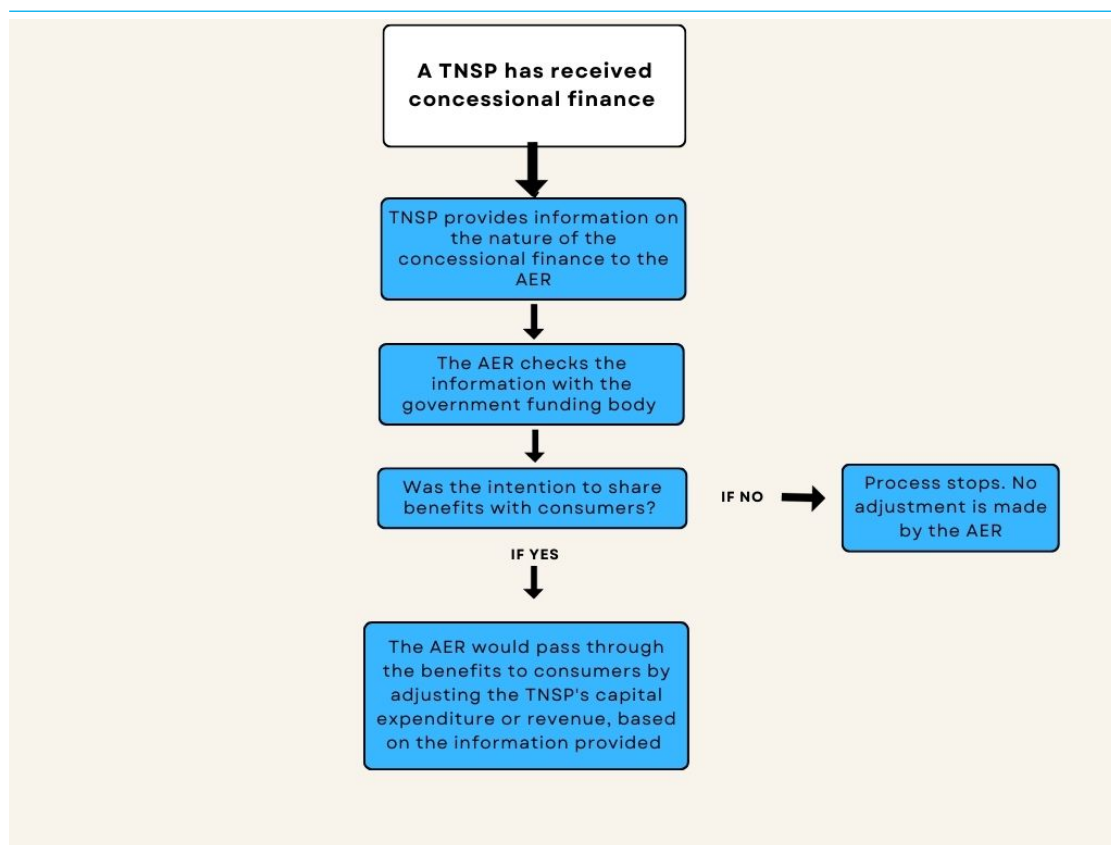
The rule change request seeks to:

- Require TNSPs to inform the AER about the existence of a concessional financing arrangement.
- Require TNSPs to provide certain information to the AER about the value of the benefit that the TNSP and GFB have agreed should be passed onto consumers.
- Require the AER to seek and consider submissions from the GFB on whether it intended that some or all of the benefit of the concessional finance be passed through to consumers.
- Enable the AER to allow an agreed-upon quantum or proportion of benefit to pass to consumers and to enable the AER to treat the consumer benefits of the concessional finance as a capital contribution by adjusting the regulatory asset base (RAB) or through a MAR adjustment, determined through negotiation by the TNSP and GFB.

These are discussed further below.

The following graphic provides an outline of the process detailed in the rule change request proposal.

Figure 3.1: The proposed process for the treatment of concessional finance benefits



Source: AEMC

3.1.1 Information requirements

The Minister considers that the NER should allow the AER the ability to determine the intention of the government funding body and the extent to which it intends the benefit of such finance to be passed onto consumers in the form of either a capital contribution or an adjustment to recoverable revenue.

Who should be responsible for informing the AER about the existence of a concessional financing arrangement?

The rule change request proposes that the TNSP should be responsible for notifying the AER about the existence of concessional finance. The request further states that the NER should ensure that the AER is informed by the TNSP if the TNSP, or any entity in its corporate structure, receives concessional finance from a GFB.

QUESTION 2: RESPONSIBILITY TO INFORM THE AER ABOUT THE EXISTENCE OF A CONCESSIONAL FINANCING ARRANGEMENT

Do you agree that the TNSP should notify the AER about the existence of a concessional finance arrangement?

What types of information about the concessional finance arrangement should be provided to the AER and by whom?

The rule change request proposes that when the service provider is informing the AER if it, or another entity, has received concessional finance the NER should provide that the TNSP must provide the following information:

- The name of the GFB that provided the concessional finance and contact details for that body.
- A description of the amount and type of concessional finance provided.
- If the concessional finance was provided to an entity other than the TNSP, the name and ACN of the entity that received the concessional finance and contact details for that entity.
- A copy of the agreement between the GFB and the TNSP or, if relevant, the entity that received the concessional finance that sets out the terms on which the concessional finance was provided.
- A description of the capital expenditure in relation to which the concessional finance was provided.
- If the concessional finance was provided to an entity other than the TNSP, how some or all of the benefit of the concessional finance was provided to the TNSP.
- A statement from the TNSP as to whether the GFB intended that some or all of the value of the concessional finance be treated as a capital contribution.

QUESTION 3: WHAT TYPES OF INFORMATION ABOUT THE CONCESSIONAL FINANCE ARRANGEMENT SHOULD BE PROVIDED TO THE AER AND BY WHOM

Do you agree with the types of information that should be provided to the AER, as detailed in the rule change request, and that the TNSP be required to provide the information?

How should the GFB's intent for the purpose of the concessional finance be determined? And how should the consumer benefit of concessional finance be treated?

The Minister suggests that the NER should require the AER to consult with the TNSP, the GFB, and if relevant, the entity that received the concessional finance, to ensure that the intent of the funding provided by the government body is clearly determined.

They further suggest that the AER should be required to seek and consider submissions from the GFB on whether it intended that some or all of the benefit of the concessional finance be passed through to consumers as a capital contribution or as a reduction in a TNSP's revenue, and if yes, what portion of that value should be treated as a capital contribution or revenue reduction.

BOX 1: TREATING CONCESSIONAL FINANCE BENEFITS AS A CAPITAL CONTRIBUTION OR A REVENUE ADJUSTMENT

The GFB and TNSP, under the proposed approach, are expected to negotiate whether the benefits of concessional finance intended to be shared with consumers are to be treated as a capital contribution or a revenue adjustment (known as 'the adjustment mechanism').

The AER, under the proposed approach, would consult with the TNSP and the GFB to confirm the intent of the concessional finance is given effect, including whether benefits are intended to be shared with consumers, the value of the benefits to be shared, and the adjustment mechanism to use.

Treating concessional finance benefits as a capital contribution

The rule change proposal seeks to allow the AER to treat some or all of the difference in the net present values (NPV) of:

- the debt/equity at the concessional rate of debt/equity, and
- the debt/equity cost at the benchmark efficient rate (as set in the RORI),

('the concessional finance benefit') as a capital contribution resulting in a reduction to a TNSP's RAB.

Treating concessional finance benefits as a revenue (MAR) adjustment

The rule change proposal also seeks to allow the AER to adjust a portion of a TNSP's full aggregate annual revenue (MAR) to reflect the value of the concessional finance benefit, as calculated above.

If the GFB and TNSP agree to a revenue reduction adjustment mechanism, then consideration would need to be given to the time period over which the benefits are reflected. This is distinct from a capital contribution adjustment mechanism, which would see the RAB reduced in a single year, and the benefit to consumers realised from that point forward.

Source: The rule change request (The Hon Chris Bowen MP, *Rule Change Request: Treatment of Concessional Finance for Transmission Network Service Providers*, March 2023) and AEMC.

QUESTION 4: HOW THE AER CONFIRMS THE INTENT OF THE CONCESSIONAL FINANCE AND THE METHOD(S) THROUGH WHICH THE AER CAN TREAT THE CONCESSIONAL FINANCE BENEFITS

1. Do you agree that the AER should confirm the amount to be treated as a benefit to consumers and/or TNSPs with the TNSP and the GFB?
2. Do you agree that this amount should be treated as either a capital contribution and deducted from the RAB or as a MAR adjustment? Do you prefer one method over another? Why?
3. Do you see any issues with treating some or all of the benefits as either a capital contribution or as a revenue adjustment?
4. Do you agree the AER should be required to seek submissions from the government funding body:
 - to ensure benefits are passed on to customers and/or TNSPs as intended, and
 - to determine whether they intended that some or all of the benefit of the concessional finance be treated as a capital contribution or a MAR adjustment, if required?

If not, how should the AER confirm intent and treatment of consumer benefits?

3.2 Will the proposed solution resolve the problem?

The rule change request states that the proposed solution will address the issue by amending the NER to:

- Explicitly recognise the offering of concessional finance to TNSPs and the sharing of benefits with consumers.
- Specify who is responsible for informing the AER of the offering of concessional finance and providing the required information to facilitate the treatment of benefits including the intent of the concessional finance.
- Specify how the AER confirms the intent of the concessional finance and the method(s) through which the AER can treat the concessional finance benefits.

The proposed solution seeks to ensure that the benefits of concessional finance can be shared with consumers, where intended, and the AER is provided with the necessary powers under the NER to gather relevant information and facilitate the regulatory treatment of the concessional finance benefits.

QUESTION 5: PROPOSED SOLUTION

1. Do you think the proposed solution is the most appropriate way to share benefits of concessional finance with consumers, or is there another more effective solution that could be implemented (including non-rules based solutions)?
2. Do you think the proposed solution:
 - a. is targeted, fit for purpose and proportionate to the issues it is intended to address?
 - b. considers the broader direction of reforms in transmission infrastructure?
 - c. provides for simplicity and transparency in regulatory arrangements?

3.3 What are the costs and benefits of the proposed solution?

The benefits of the proposed solution cited in the rule change request are that it would:

- Lower costs to consumers related to the investment in transmission infrastructure.
- Incentivise TNSPs to build the necessary transmission infrastructure when they receive concessional finance.
- Increase certainty in the investment environment by providing clarity on the treatment of concessional finance benefits.

The rule change request states that the costs of the proposed solution are expected to be minimal and administrative in nature.

QUESTION 6: COSTS AND BENEFITS OF THE PROPOSED SOLUTION

What do you think the direct and indirect costs and benefits of the proposed solution are likely to be? Are the costs likely to be proportionate to the problem they are intended to address?

3.4 What implementation issues might there be?

The rule change request outlines how the TNSPs, GFB and AER will be impacted by the proposed solution, including:

- TNSPs receiving the proportion of the concessional finance benefit determined and agreed to by the GFB and TNSP.
- TNSPs being required to provide relevant information to the AER.
- The GFB being required to consult with the AER to confirm their intent of the concessional finance benefit.
- The AER incorporating the treatment of the concessional finance benefit in the TNSP's regulatory determination processes of the TNSP.

We will give consideration to any transitional arrangements that may be required to accommodate the implementation of the proposed solution to existing concessional finance agreements.¹³

QUESTION 7: IMPLEMENTATION CONSIDERATIONS

1. Do you have any suggestions regarding the commencement timeframe?
2. Are there additional measures that should be considered that would support the effective implementation of the desired solution?

3.5 How would the rule change apply in Victoria?

Victoria is the only jurisdiction in the NEM where AEMO has declared network functions. In Victoria, the functions undertaken by TNSPs elsewhere are split between AEMO and declared transmission system operators (DTSOs). AEMO is accountable for the provision of the shared network, procuring services from DTSOs (such as AusNet Services), who own and operate the shared network assets.

The rule change request outlines how concessional finance benefits would be shared with consumers in Victoria's Declared Shared Network for transmission assets procured through contestable and non-contestable processes.

The rule change request proposes that arrangements for the delivery of concessional finance benefits in Victoria's contestable process will be determined by the GFB (the CEFC) and AEMO, as the Victorian transmission planner. For a contestable project, any sharing of concessional finance benefits with consumers will be through a reduction in the overall total cost of a tenderer's bid.

In Victoria, non-contestable projects are permitted to be rolled into the service provider's RAB. This rule change request proposes to apply to non-contestable augmentations. The TNSP, under the proposed arrangements, will be required to notify the AER whether they have received concessional finance as part of their revenue determination. The AER in response can use its proposed powers to vary the MAR allowance or reduce the RAB of the relevant service provider to reflect the benefits shared with consumers.

3.6 What are your views on compliance and enforcement in relation to the proposed solution?

The rule change request proposes to give the AER powers to facilitate the correct regulatory treatment of consumer benefits of concessional finance. This includes a compliance and enforcement role for the AER to confirm the TNSP's proposed treatment of the concessional finance benefits with the GFB.

¹³ We are aware announcements from Rewiring the Nation Fund have been made for [Marinus Link](#), [VNI West](#) (via [Kerang](#)), [REZs and offshore wind development](#) and [Transmission and REZ projects in NSW](#).

The rule change request seeks to allow the AER to obtain the necessary information from a TNSP to determine the agreed intent of the concessional finance and the extent to which the benefits of the concessional finance are to be passed to consumers.

The rule change request states that the NER should require the AER to consult with the TNSP, the GFB, and if relevant, the entity that received the concessional finance, to satisfy itself that the proposed treatment of the concessional finance benefit aligns with the intent of the funding provided by the government body.

Further, the request proposes that the AER should be required to seek and consider submissions from the GFB on whether it intended that some or all of the benefit of the concessional finance be passed through to consumers as a capital contribution or as a reduction in a TNSP's revenue, and if yes, what portion of that value should be treated as a capital contribution or revenue reduction. The AER is advised to consult with both the TNSP and GFB in determining the intent of the concessional finance.

QUESTION 8: COMPLIANCE AND ENFORCEMENT

Do you have any feedback on the compliance and enforcement role proposed for the AER?

3.7

Can the problem be resolved in a different or more efficient way?

We are also seeking input on whether the issue can be resolved outside of a rule change, or whether there are more preferable rules that might better promote the long term interests of consumers.

QUESTION 9: ARE THERE ALTERNATIVES SOLUTIONS THAT WOULD BE PREFERABLE?

Can you share any alternative solutions that you think would be preferable and more aligned with the long-term interests of consumers?

4 MAKING OUR DECISION

When considering a rule change proposal, the Commission considers a range of factors.

This chapter outlines:

- issues the Commission must take into account
- the proposed assessment framework
- decisions the Commission can make
- rule-making for the Northern Territory.

We would like your feedback on the proposed assessment framework.

4.1 The Commission must act in the long term interests of consumers

The Commission is bound by the National Electricity Law (NEL) to 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).

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

4.2 We must also take these factors into account

4.2.1 Revenue and pricing principles

The Commission must take into account the revenue and pricing principles set out in section 7A of the NEL in making certain rules.¹⁵ Relevantly for this rule change request, we must take those principles into account in making rules with respect to transmission system revenue and pricing and the principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power relating to the making of a transmission determination.¹⁶

The Commission considers the following revenue and pricing principles are the most relevant to this rule change request:

- A regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in complying with a regulatory obligation or requirement, or making a regulatory payment.¹⁷

¹⁴ Section 7 of the NEL.

¹⁵ Section 88B of the NEL.

¹⁶ Section 88B of the NEL refers to items 15 to 24 of Schedule 1 to the NEL, which cover transmission system revenue and pricing and regulatory economic methodologies.

¹⁷ Section 7A(2) of the NEL.

- Regard should be had to the regulatory asset base with respect to a transmission system adopted in any previous transmission determination (or other relevant determination) or in the NER.¹⁸
- A price or charge for the provision of a direct control network service should allow for a return commensurate with the regulatory and commercial risks involved in providing the direct control network service to which that price or charge relates.¹⁹

4.3 We have three options when making our decision

After using the assessment framework to consider the rule change request, the Commission may decide:

- To make the rule as proposed by the Minister²⁰
- To make a rule that is different to the proposed rule (a more preferable rule), as discussed below, or
- Not to make a rule.

The Commission may make a more preferable rule (which may be materially different to the proposed rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule is likely to better contribute to the achievement of the NEO.²¹

4.4 Proposed assessment framework

Considering the NEO and the issues raised in the rule change request, the Commission proposes to assess this rule change request using the following focus areas:

- Principles of market efficiency
 - Risk allocation — does the proposal consider the impacts of different approaches to risk allocation on stakeholder behaviours and outcomes, specifically TNSPs and the regulator?
- Outcomes for consumers
 - Incentives — does the proposal detail an appropriate regulatory treatment to capture the consumer benefit of concessional finance in the regulatory framework?
- Principles of good regulatory practice
 - Simplicity and transparency — does the proposal provide a simple and transparent mechanism for notification and capturing of consumer benefits from concessional finance in the regulatory framework?
 - Consider broader direction of reform — does the proposal give regard to complementary reforms being considered including the AEMC's recommended reforms

18 Section 7A(4) of the NEL.

19 Section 7A(5) of the NEL.

20 The Minister for Climate Change and Energy, Rule change request, *Treatment of Concessional Finance for Transmission Network Service Providers*, 11 April 2023.

21 Section 91A of the NEL.

to transmission planning and investment and rule change request on providing flexibility in addressing TNSP financeability concerns?

- Decarbonisation — noting the proposal does not directly influence the assessment of a project's economic case, is the proposal consistent with the timely decarbonisation of the energy market?

QUESTION 10: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework?

4.5

The proposed rule would not apply in the Northern Territory

Parts of the NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.²²

The proposed rule would not apply in the Northern Territory, as it amends provisions in NER chapter 6A that does not apply in the Northern Territory.²³ Consequently, the Commission will not assess the proposed rule against additional elements required by the Northern Territory legislation.

²² National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (**NT Act**). The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016.

²³ Under the NT Act and its regulations, only certain parts of the NER have been adopted in the Northern Territory. The version of the NER that applies in the Northern Territory is available on the AEMC website at: <https://energy-rules.aemc.gov.au/ntner>.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
GFB	Government Funding Body
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
Proponent	The proponent of the rule change request

A SUMMARY OF STAKEHOLDER SUBMISSIONS TO TPIR STAGE 3 DRAFT REPORT ON CONCESSIONAL FINANCE

Table A.1: Summary of stakeholder views on concessional finance in TPIR Stage 3 Draft Report

KEY ISSUE	STAKEHOLDER VIEWS
<p>Defining and clarifying the objective of concessional finance (CF) and the need for additional guidance in the NER</p>	<p>Stakeholders widely support the AEMC developing additional guidance on the treatment of benefits from CF.</p> <p>Some stakeholders commented that:</p> <ul style="list-style-type: none"> The NER should provide for appropriate transitional arrangements to account for agreements already entered between TNSPs and Government funding bodies, or where negotiations are already underway (e.g. Marinus Link). Consideration should be given to how concessional finance arrangements would apply in Victoria, given transmission arrangements that separate planning and delivery, and the Federal Government’s recent commitment to provide a concessional loan to support VNI West.
<p>Notifying the AER about CF, including provision of information, and how the intent of the CF is communicated to the AER</p>	<p>Most stakeholders agreed that the TNSP is best placed to notify the AER of the decision on CF and to provide the necessary information to the AER.</p> <p>Some stakeholders commented that:</p> <ul style="list-style-type: none"> Both parties to the CF arrangement should notify the AER and that this is likely to occur in practice. The regulatory framework should enable the AER to consult with the government funding body (financier) to determine whether the intention was for consumers and/or the TNSP to benefit from the CF, and if so, the proportion of the concessional finance intended to benefit each party.

KEY ISSUE	STAKEHOLDER VIEWS
<p>How the AER treats CF</p>	<p>Most stakeholders agreed additional guidance is required on how the determined value of the CF benefit should be treated by the AER in the revenue determination process.</p> <p>A large group of stakeholders provided detailed proposals on how the regulatory framework and the AER should treat benefits from CF. Some stakeholders commented that:</p> <ul style="list-style-type: none"> • The NER should facilitate a range of possible regulatory mechanisms (including treating the consumer benefit as a capital contribution, making an adjustment to a TNSP’s MAR, or making an adjustment to a TNSP’s prices) and these stakeholders suggested that the mechanism should be agreed on by the TNSP and provider of CF, avoiding the need for the AER to develop guidelines and exercise discretion in its determination. • An ex-post assessment framework would promote transparency and ensure TNSPs have passed on the CF benefits. • Actual Commonwealth lending rates should be included in regulatory decisions, including the WACC. Changes to the relevant laws or rules may be required and should not be considered a barrier.

Note: For more information, please see the AEMC *Transmission Planning and Investment Review* project page [here](#). Submissions received in relation to concessional finance are located under the heading “Stage 3 Draft Report”.