THE HON CHRIS BOWEN MP
MINISTER FOR CLIMATE CHANGE AND ENERGY

MS23-003135

Ms Anna Collyer
Chair
Australian Energy Market Commission
Level 15
60 Castlereagh Street
SYDNEY NSW 2000

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Dear Chair Anna

Please find attached a rule change proposal to amend the National Electricity Rules to encourage transmission network service providers to undertake more planning activities earlier in the economic assessment process.

These necessary changes were recommended in the Australian Energy Market Commission's (AEMC) final report for Stage 3 of its Transmission Planning and Investment Review.

I endorse this rule change request and ask the AEMC progress with its initiation.

Yours sincerely

CHRIS BOWEN

Australian Government
Department of Climate Change, Energy, the Environment and Water

Rule Change Request

Encouraging earlier planning activities for efficient delivery of ISP projects

December 2023

1. Request to make a Rule

1.1 Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

2. Relevant background

2.1 AEMC Transmission Planning and Investment Review

The Australian Energy Market Commission (AEMC) established the Transmission Planning and Investment Review (the Review) to consider how to ensure the regulatory framework can support the timely and efficient delivery of major transmission projects, while ensuring investments in these projects are in the long-term interests of consumers. The review had two major reports. The Stage 3 final report (published May 2023) focused on recommendations to manage uncertainty in the longer-term.

2.2 Early planning activities play an import role in the efficient delivery of ISP projects

Early works are activities that commence prior to the construction of a transmission project, to improve cost estimates and help to ensure the project can be delivered in a timely manner. Early works are not explicitly defined or referred to in the National Electricity Rules (NER) but are referend to in numerous regulatory documents.[1]

In practice, early works are preceded by preparatory activities. Preparatory activities are undertaken to investigate the cost and benefit estimates of Integrated System Plan (ISP) projects.

Transmission Network Service Providers (TNSPs) have an obligation under the NER to undertake preparatory activities for all actionable and future ISP projects, where specified in the ISP. These activities can include:

- Route selection and easement assessment work and relevant cost estimations,
- Preliminary assessments of environmental and planning approval; and
- Stakeholder and local council engagement.

Early works and preparatory activities lead to better outcomes for consumers by reducing uncertainty in the delivery of major transmission projects through improved expenditure forecasts, managing the risk of project delays, and promoting innovative and cost-effective design. Clarifying the meaning of early works will help stakeholders:

[1] 'Early works' are referend in the ISP, the AER's Cost Benefit Analysis Guideline and Guidance Note on the Regulation of Actionable ISP projects.

- distinguish early works from preparatory activities, and understand the types of activities TNSPs can complete when the ISP recommends completing early works, and
- understand what to include in an early works contingent project application (CPA), discussed in the following Stage 3 recommendations.

2.3 In the Stage 3 Final Report of the Review, the AEMC recommended changes to the NER to encourage earlier planning activities

Stage 3 of the Review recommended changes to encourage TNSPs to efficiently undertake more planning activities earlier in the economic assessment process. This will improve the information available to TNSPs during the identification and assessment of transmission investment options. It will also help to reduce the likelihood of unnecessary or higher costs being incurred later in the process (e.g., the costs associated with delays or addressing community or environmental impacts).

To incentivise earlier planning and early works activities, the AEMC recommended changes to the NER to:

- Enable TNSPs to submit an early works CPA without needing to first complete a regulatory investment test for transmission (RIT-T) or passing the feedback loop.
- Introducing a NER definition of early works to underpin the AER's assessment of an early works CPA to protect consumers against inefficient costs.
- Clarify that AEMO can specify examples of preparatory activities and early works for actionable ISP projects in the ISP.

3. Statement of Issue

3.1 Uncertainty and delays could deter TNSPs undertaking timely early works

The Review examined whether the economic assessment process for ISP projects appropriately balances timeliness and rigour. The Review identified that the NER does not provide the required certainty for TNSPs to conduct early works earlier in the planning (RIT-T) process.

The current economic assessment process for ISP projects is:

1. **TNSP network planning:** The TNSP identifies the need to augment its network and publishes augmentation options in its Transmission Annual Planning Report.
2. **ISP:** AEMO's ISP identifies the optimal development path—the least cost combination of transmission, generation, and storage-- to meet system needs through a combination of actionable and future ISP projects. For actionable projects AEMO identifies one or more credible options the TNSP must consider in its RIT-T, known as ISP candidate options.
3. **RIT-T:** The TNSP identifies and assesses the net market benefit of all credible options (ISP candidate options and others) to the meet the identified need. The option with the greatest net market benefit becomes the preferred option.

4. **ISP feedback loop:** AEMO assesses whether the preferred option aligns with the most recent ISP's optimal development path.
5. **Contingent project application:** The TNSP applies to the AER to amend the TNSP's revenue determination to include the cost of the preferred option. The AER considers whether the project is reasonably required to be undertaken and assesses if the costs are prudent and efficient. Costs cannot exceed the value assessed by AEMO in the feedback loop.
6. **Project commencement:** With AER approval of the CPA, the TNSP can commence the project with the certainty that it will recover all project costs.

Normally, a TNSP would commence early works after the AER approves the CPA for the preferred option. In this case the cost of early works is part of the project's costs and the TNSP has certainty early works costs will be recovered.

However, in some cases undertaking early works concurrently with the RIT-T can speed up project delivery because it encourages better planning upfront – reducing the risk of delays to major projects. For example, there may be assets and equipment with long delivery times the TNSP requires regardless of the preferred option. Purchasing these assets and relevant equipment or securing a place in the delivery queue earlier may avoid delivery delays and costs associated with supply chain delays, supporting the timely delivery of transmission projects.

Currently, if a TNSP commences early works prior to AER approval of a CPA, there is a risk that the costs associated with these activities may not be recoverable. Where a TNSP does initiate early works, TNSPs may not decide to incur significant early works costs to manage this risk; resulting in, for example, less extensive environmental or land use impact analysis or poor or limited ongoing community engagement. The current arrangements thus deter TNSPs from the timely commencement of early works to an appropriate standard and scope and can mean TNSPs delay projects.

For some projects, AEMO has addressed this problem by defining an ISP project as a two-stage project with the TNSP submitting a CPA for each stage, with stage 1 being early works specific. However, this approach depends on the two-yearly ISP development cycle and may not be timely enough for some projects.

Governments have also addressed this issue by underwriting early works for a project, whereby the TNSP is assured that should it not be able to subsequently obtain AER approval to recover costs its costs would be met by the Government. This has enabled early works for some projects to proceed, however, it is an ad hoc mechanism and not automatically available to all projects.

The Review also highlighted that there is currently no consistent definition of early works in the NER or what activities the AER should consider early works, further adding to cost recover uncertainty.

To encourage more and earlier planning activities and therefore improve the timely delivery of critical transmission infrastructure, the following barriers must be addressed:

- Early works costs are only able to be recovered following the completion of a RIT-T and feedback loop, which may lead to TNSPs delaying the commencement of early works activities or performing them less extensively.
- There is no consistent definition of early works in the NER to guide the AER's assessment of an early works CPA.

4. Description of the proposed rule

The proposed early works rule would amend the NER to implement the rule change recommendations contained in the Review's Stage 3 final report. The proposed amendments, which were prepared by the AEMC and accompanied the Stage 3 final report, are attached to this request.

In summary, these are:

- TNSPs be enabled to submit a separate early works specific CPA to the AER without needing to first complete a RIT-T and feedback loop.
    - This is to encourage TNSPs to bring forward early works and undertake more thorough planning activities earlier in the economic assessment process.
- Introducing in the NER a definition of early works to guide the AER's assessment of an early works CPA, provide cost recovery certainty, and protect consumers from inefficient expenditure.
- Clarifying in the NER that AEMO, in the ISP, can specify examples of early works and preparatory activities for actionable ISP projects.

In addition to the AEMC's TPIR recommendations, the Commonwealth is proposing amendments to the NER to delay the AEMC's ISP review by two years. This change will allow better alignment with the Commonwealth's supercharged ISP review and provide time for current reforms to embed.

4.2. TNSPs should be able to submit an early works CPA without having to complete a RIT-T and feedback loop

4.2.2. Application to un-staged ISP projects

TNSPs should have the explicit ability to submit an early works CPA, for an actionable ISP project, without having to complete a RIT-T and feedback loop.[2] This would enable the TNSP to conduct essential activities earlier – such as securing long-lead items and production slots – for the project to proceed without delay according to ISP timelines.

The proposed rule also clarifies that when a TNSP is preparing a RIT-T, feedback loop and CPA for an actionable ISP project, a TNSP must reflect the costs approved in any prior early works CPAs for the specific actionable ISP project to accurately reflect the total cost of the project.[3]

[2] Proposed clause 5.16A.4(b1), 5.16A.5(e), 5.16A.6(b) of the NER.
[3] Proposed clause 5.16A.6(d) and 6A.8.2(b)(9) of the NER.

4.2.3. Application to staged ISP projects

This proposed change may represent a time saving of up to four months for an ISP staged project to complete the economic assessment process relative to the current arrangements as conducting earlier planning activities, such as early works, may reduce supply chain delays and mitigate other project delay risks.

Like un-staged projects, a TNSP could purchase equipment which will be needed regardless of the preferred option to avoid costs associated with equipment supply chain delays.

Due to each stage of an actionable ISP staged project being considered a distinct actionable ISP project, the costs approved in an early works CPA for staged ISP projects would not need to be included in any subsequent RIT-T, feedback loop or CPA as these costs are discrete from the following stages.

Under this proposal for both staged and un-staged ISP projects, TNSPs will maintain the discretion not to bring early works/cost recovery forward in cases it is considered not beneficial or necessary.[4]

4.2.4. There should be additional guidance on what can and cannot be included in an early works CPA

To ensure early works CPAs are in the long-term interests of consumers, there should also be guidance or restrictions in the NER of what could be allowed in an early works CPA. This may take the form of a set of principles to be included in the NER that would guide TNSPs in preparing an early works CPA and the AER in its consideration of these CPAs.

Principles in the NER to inform what early works costs should be approved will help ensure the costs of early works are only recovered where the consumer benefits of earlier project delivery outweigh the potential harms given the uncertainty that a different investment option might be selected. Alternatively, the AER could develop or update guidelines on what can and cannot be included in an early works CPA. This could be outlined in guidance provided by the AER or incorporated as an aspect of a definition of 'early works' in the NER.

'Early works' is not defined in the National Electricity Rules (NER) but is referenced in several regulatory documents including the Integrated System Plan (ISP), the Australian Energy Regulator's (AER's) *Cost Benefit Analysis Guideline* and the AER's *Guidance Note on the Regulation of Actionable ISP projects*.

It is essential that there is a clear definition of early works in the NER to guide the assessment of an early works CPA.

The proposed definition introduces principles to assist the AER in determining whether costs proposed in an early works CPA are for activities that:

- Improve the accuracy of cost estimates for that project, or

[4] Proposed clause 5.16A.4(b1) of the NER.

- Facilitate delivery in line with the timeframes specified by the most recent ISP.[5]

The Commonwealth considers that alongside this definition in the NER, the AER should update current guidance, or create new guidance, that aims to address risks associated with bringing early works forward. These guidelines should:

- Provide clarity on the types of early works to be brought forward,
- Have regard to the cost efficiency of proposed early works activities.

This rule change process should further consider the need for such guidance.

4.2 AEMO can specify early works and preparatory activities in the ISP

This rule proposes clarifying in the NER that AEMO, in the ISP, can specify examples of early works and preparatory activities for actionable ISP projects. The ISP providing specific examples of early works and preparatory activities will assist:

- TNSPs in including efficient costs in their revenue proposal or early works CPA, and
- the AER when assessing the efficiency of early works costs.

AEMO should build on this list, where beneficial, within the ISP. Further, AEMO providing this information in the ISP would not obligate TNSPs to complete specific activities.[6]

The proposed rule clarifies that the ISP may specify early works for all actionable ISP projects, rather than only specifying for staged ISP projects.[7]

The NER should further clarify that TNSPs must conduct preparatory activities for actionable ISP projects, that the TNSP considers beneficial, where these activities have not already commenced.[8] This clarifies that TNSPs must carry out preparatory activities for actionable ISP projects regardless of whether these activities are specified in the ISP or not.

4.3 Delaying the AEMC's ISP review would better align with the ECMC's review of the ISP and allow reforms time to embed

The Commonwealth proposes delaying the AEMC's ISP Review currently due to be completed by 1 July 2025 under the NER.[9] The AEMC's ISP Review is expected to consider the ISP process, including the benefits assessment portion of the RIT-T and the performance of the actionable ISP project rules introduced in 2020.

A delay to the AEMC's review would enable better alignment with the outcomes of the Energy and Climate Ministerial Council (ECMC) Supercharged ISP Review and the suite of rule changes to the transmission economic assessment process submitted by the Commonwealth Minister for Climate Change and Energy.

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[5] See proposed definition of early works in Chapter 10 of the NER.
[6] Proposed clause 5.22.6(a)(6)(vii) of the NER.
[7] Proposed clause 5.22.6(a)(6)(vii) of the NER.
[8] Proposed clause 5.22.6(d)(1) of the NER.
[9] NER Clause 11.126.10

Given the wide-scale change to the economic assessment process underway, a delay allows the AEMC to embed the current suite of rule changes and then assess in detail how the reforms have performed.

The Commonwealth is proposing a 2-year delay to the AEMC's Review, which would see its completion by 1 July 2027.

5. How the proposed rule will address the issue

Giving cost recovery certainty for early works will encourage early works to be conducted by TNSPs earlier in the planning process, ultimately leading to better upfront planning and increasing the pace of transmission delivery.

Earlier cost recovery certainty for early works will:

- Enable TNSPs to develop options for transmission investment that more accurately reflect social, cultural, heritage and environmental impacts.
- Identify supply chain risks and challenges earlier in the planning process to prevent unforeseen delays later in the project.
- Mitigate the risk of later project cost increases and project delays due to later consideration of critical social, cultural, heritage and environmental factors that may increase costs.
- Allow time for comprehensive evaluation of land use and easements for timelier development of potential routes.

Defining early works in the NER, clarifying early works activities in guidelines and AEMO specifying early works activities in the ISP will remove uncertainty about early works activities TNSPs can undertake.

6. How the proposed rule will or is likely to contribute to the achievement of the National Electricity Objective

The national electricity objective (NEO), as set out in section 7 of the National Electricity Law, is:

> "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; and,
(c) the achievement of targets set by a participating jurisdiction –
    i. for reducing Australia's greenhouse gas emissions; or
    ii. that are likely to contribute to reducing Australia's greenhouse gas emissions."

The relevant aspect of the NEO, with respect to this rule change request, is the promotion of efficient investment in electricity services for the long-term interests of consumers of electricity with respect to price, quality, safety, reliability, and security of the supply of electricity.

Timely and efficient investment in actionable ISP projects is required to ensure reliability and security of the supply of electricity, and to reduce adverse impacts on price as the electricity system transitions to net zero.

The proposed amendments advance the NEO by:

1. Supporting timely and efficient project delivery to promote better outcomes for consumers by encouraging TNSPs to undertake increased and earlier planning activities.
2. Improving economic efficiency through greater cost recovery certainty for TNSPs.
3. Retaining flexibility in the regulatory framework and making the delivery of the preferred option more adaptive to changes in conditions because of greater planning undertaken earlier.
4. Facilitating decarbonisation through reducing the risk of transmission delays and supporting the timely connection of renewable energy resources.

7. Expected costs, benefits and impacts of the proposed rule

7.1 Expected benefits

Undertaking more planning activities earlier in the process would enable TNSPs to develop options for transmission investment that more accurately reflect social, cultural, heritage and environmental impacts. This would mitigate the risk of later project cost increases and project delays because of the later consideration of these factors. Bringing these activities forward could also mitigate the risk of additional costs to consumers due to supply chain delays and labour supply issues currently impacting major transmission projects.

The proposed early works amendments would help ensure early and thorough stakeholder engagement.

Delaying the AEMC's review would enable better alignment with the outcomes of ECMC's Supercharged ISP Review and allow the suite of rule changes to the transmission economic assessment process submitted by the Commonwealth to be embedded and assessed.

7.2 Expected costs

The proposed amendments are not expected to impose any significant new costs on the energy market bodies, TNSPs or consumers. They will result in TNSPs recovering the costs for early works earlier for some projects and could potentially help reduce project costs. These amendments are not expected to materially increase project costs.

There is the risk of a TNSP recovering costs for early work, which are passed on to consumers, but the project does not go ahead. However, the Commonwealth considers the risk of this eventuating is low.

There will be some additional administrative and compliance costs associated with the proposed rule, due to a TNSP completing two CPAs for a project, but these costs are not expected to be material.

7.3 Expected impacts

TNSPs, market bodies and consumers are likely to be impacted by this rule change.

TNSPs may be impacted by:

- Being able to submit a separate early works specific CPA to the AER without needing to first complete a RIT-T or feedback loop.
- Having certainty they will recover the cost of early works regardless of whether the project passes the RIT-T and proceeds.
- Early works being conducted earlier in the regulatory process.
- Clarifying the requirement to carry out preparatory activities for actionable ISP projects it considers to be beneficial where they have not already commenced and regardless of whether these activities are specified by AEMO in the ISP.

Consumers may be impacted by:

- Minimising bill impacts by
    - Helping ensure the timely delivery of transmission infrastructure
    - Enabling new renewable generation, enabling lower wholesale electricity costs in the longer term.
- Paying for early works for projects that do not proceed.

The reform may also impact the market bodies through:

- The AER assessing two CPAs for one project—an early works CPA and a CPA for project construction.
- The requirement for the AER to assess an early works CPA without having a RIT-T as reference.
- Additional administrative work for the AER associated with both the implementation and administration of the proposed amendments.
- The AER developing guidelines required to implement this rule change request.

Proposed changes to the National Electricity Rules as recommended by the AEMC in Stage 3 of the Transmission Planning and Investment Review

5. Network Connection Access, Planning and Expansion

Part D Network Planning and Expansion

5.15A Regulatory Investment test for transmission

5.15A.1 General Principles and application

(a) The *AER* must develop and publish the *regulatory investment test for transmission* in accordance with the *transmission consultation procedures* and this rule 5.15A.
(b) The *regulatory investment test for transmission* will apply to *RIT-T projects* which are not *actionable ISP projects* (in accordance with rule 5.16) and to RIT-T projects which are *actionable ISP projects* (in accordance with rule 5.16A) but will differ in its application to each of those types of projects.
(c) The purpose of the *regulatory investment test for transmission* in respect of its application to both types of projects is to identify the *credible option* that maximises the present value of net economic benefit to all those who produce, consume and transport electricity in the market (the *preferred option*). For the avoidance of doubt, a *preferred option* may, in the relevant circumstances, have a negative net economic benefit (that is, a net economic cost) to the extent the identified need is for *reliability corrective action* or the provision of *inertia network services* required under clause 5.20B.4.
(d) The regulatory investment test for transmission application guidelines under clause 5.16.2 apply to RIT-T projects which are not actionable ISP projects.
(e) The Cost Benefit Analysis Guidelines under clause 5.22.5 apply to RIT-T projects which are actionable ISP projects.

5.16A Application of the RIT-T to actionable ISP projects

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5.16A.4 Regulatory investment test for transmission projects

(a) If a *Transmission Network Service Provider* is identified as a *RIT-T proponent* in an *Integrated System Plan* for an *actionable ISP project*, then that *Transmission Network Service Provider* is the *RIT-T proponent* for that *RIT-T project* and must apply the *regulatory investment test for transmission* to, and consult all *Registered Participants*, *AEMO* and *interested parties* on, that *RIT-T project* in accordance with this clause 5.16A.4.
(b) A *Transmission Network Service Provider*'s obligations under paragraphs (a) and (c) cease if *AEMO* publishes an *Integrated System Plan* or an *ISP update* that shows that the *actionable ISP project* no longer forms part of the *optimal development path*.

(b1) A *Transmission Network Service Provider* may, but is not obliged to, undertake *early works*. If the *Transmission Network Service Provider* elects to undertake *early works*, it may commence the application of the *regulatory investment test for transmission* in parallel with any *early works contingent project application* or after the approval of that application (at its discretion).

Project assessment draft report

(c) The *RIT-T proponent* must prepare a report in accordance with paragraphs (d) to (h) (*project assessment draft report*) and publish it by the date specified in the *Integrated System Plan* for

that *RIT-T project* or such longer time period as is agreed in writing by the *AER* and make that report available to all *Registered Participants*, *AEMO* and *interested parties*.

(d) The *project assessment* draft report must:
  (1) include the matters required by the *Cost Benefit Analysis Guidelines*;
  (2) adopt the identified need set out in the *Integrated System Plan* (including, in the case of proposed *reliability corrective action*, why the *RIT-T proponent* considers *reliability corrective action* is necessary);
  (3) describe each *credible option* assessed;
  (4) include a quantification of the costs, including a breakdown of operating and capital expenditure for each *credible option*;
  (5) assess market benefits with and without each *credible option* and provide accompanying explanatory statements regarding the results;
  (6) if the *RIT-T proponent* has varied the *ISP parameters*, provide demonstrable reasons in accordance with 5.15A.3(b)(7)(iv);
  (7) identify the proposed *preferred option* that the *RIT-T proponent* proposes to adopt; and
  (8) for the proposed *preferred option* identified under subparagraph (7), the *RIT-T proponent* must provide:
    (i) details of the technical characteristics; and
    (ii) the estimated construction timetable and commissioning date.

(e) The *RIT-T proponent* must publish on its website the *project assessment draft report* within 5 *business days* of the *project assessment draft repor*t being made. The *RIT-T proponent* must promptly provide the *project assessment draft report* to *AEMO* after it is made and *AEMO* must publish on its website the report within 5 *business days* of receipt.

(f) The *RIT-T proponent* must seek submissions from *Registered Participants*, *AEMO* and *interested parties* on the proposed *preferred option* presented, and the issues addressed, in the *project assessment draft report*.

(g) The period for consultation referred to in paragraph (f) must be not less than 6 weeks from the date that *AEMO* publishes the report on its website.

(h) Within 4 weeks after the end of the *consultation period* required under paragraph (g), at the request of an *interested party*, a *Registered Participant* or *AEMO* (each being a relevant party for the purposes of this paragraph), the *RIT-T proponent* must meet with the relevant party if a meeting is requested by two or more relevant parties and may meet with a relevant party if after having considered all submissions, the *RIT-T proponent*, acting reasonably, considers that the meeting is necessary.

Project assessment conclusions report

(i) As soon as practicable after the end of the *consultation period* on the *project assessment draft report* referred to in paragraph (g), the *RIT-T proponent* must, having regard to the submissions received, if any, under paragraph (f) and the matters discussed at any meetings held, if any, under paragraph (h), prepare and make available to all *Registered Participants*, *AEMO* and *interested parties* and publish a report (the *project assessment conclusions report*).

(j) The *project assessment conclusions report* must set out:
  (1) the matters detailed in the project assessment draft report as required under paragraph (d); and

(2) a summary of, and the RIT-T proponent's response to, submissions received, if any, from interested parties sought under paragraph (f).

(k) The *RIT-T proponent* must publish on its website the *project conclusions report* within 5 *business days* of the *project assessment conclusions report* being made. The *RIT-T proponent* must promptly provide the *project assessment conclusions report* to *AEMO* after it is made and *AEMO* must publish on its website the report within 5 *business days* of receipt.

(l) A *RIT-T proponent* may discharge its obligation under paragraph (i) to make the *project assessment conclusions report* available by including the p*roject assessment conclusions report* as part of its *Transmission Annual Planning Report* provided that the report is published within 4 weeks from the date of publishing the *project assessment conclusions report* under paragraph (i).

5.16A Actionable ISP project trigger event

In order to be eligible to submit a contingent project application in relation to an actionable ISP project (or a stage of an actionable ISP project ~~if the *actionable ISP project* is a staged project~~) under clause 6A.8.2, ~~all of~~ the following criteria must be satisfied ("trigger event") for each category:

Category 1 – contingent project application for an actionable ISP project

(a) the *RIT-T proponent* must issue a *project assessment conclusions report* that meets the requirements of clause 5.16A.4 and which identifies a project as the *preferred option* (which may be a stage of an *actionable ISP project* ~~if the actionable ISP project is a tagged project~~);

(b) the *RIT-T proponent* must obtain written confirmation from *AEMO* that:

(1) the *preferred option* addresses the relevant identified need specified in the most recent *Integrated System Plan* and aligns with the *optimal development path* referred to in the most recent *Integrated System Plan*; and

(2) the cost of the *preferred option* does not change the status of the *actionable ISP project* as part of the *optimal development path* as updated in accordance with clause 5.22.15 where applicable;

(c) no *dispute notice* has been given to the *AER* under rule 5.16B(c) or, if a *dispute notice* has been given, then in accordance with rule 5.16B(d) the dispute has been rejected or the *project assessment conclusions report* has been amended and identifies that project as the *preferred option*; and

(d) the cost of the *preferred option* set out in the *contingent project application* must be no greater than the cost considered in *AEMO's* assessment in subparagraph (b); or

Category 2 – early works contingent project application

(e) the *contingent project application* is an *early works contingent project application*.

5.16A Actionable ISP project trigger event

(a) A *Transmission Network Service Provider* may submit more than one *contingent project application* in respect of an *actionable ISP project*.

(b) A *Transmission Network Service Provider* may submit an *early works contingent project application* notwithstanding that the provider has not commenced, or completed, the *regulatory investment test for transmission* for the relevant *actionable ISP project*.

(c) A *Transmission Network Service Provider* may, but is not obliged to, submit an *early works contingent project application*:

(1) where the first stage of the *actionable ISP project* relates to *early works* in the latest *Integrated System Plan*; or

(2) notwithstanding the *actionable ISP project* in the latest *Integrated System Plan* does not contemplate *early works*.

(d) In applying the *regulatory investment test for transmission* for an *actionable ISP project*, the *Transmission Network Service Provider* must include the costs of *early works* notwithstanding those costs may have been approved by the *AER* under an *early works contingent project application.*

…

5.22 Integrated System Plan

…

5.22.6 Content of Integrated System Plan

Content of an integrated system plan

(a) An *Integrated System Plan* must:

(1) identify a range of *development paths*;

(2) for each *development path*, identify the group of projects that form part of the development path;

(3) describe how each development path performs under any sensitivities *AEMO* considers reasonable;

(4) identify the *optimal development path* which must be based on a quantitative assessment of the costs and benefits of various options across a range of scenarios, in accordance with *Cost Benefit Analysis Guidelines*;

(5) for the *optimal development path*, identify the actionable *ISP projects*, *future ISP projects* and *ISP development opportunities*;

(6) for each *actionable ISP project* specify:

(i) the date by which the *project assessment draft report* must be published and made available to relevant persons, which date must be:

(A) at least 6 months after, and within 24 months of, the date of publication of the *Integrated System Plan*; and

(B) based on the anticipated commencement date of the actionable ISP project;

(ii) the relevant *Transmission Network Services Providers* who will be the *RIT-T proponen*t for the *actionable ISP project*;

(iii) the *ISP candidate option* or *ISP candidate options*;

(iv) the *non-network* options that were considered by *AEMO* as part of the *Integrated System Plan* process in relation to that *actionable ISP project* (where relevant);

(v) the *identified need* related to that *actionable ISP project* and whether it is *reliability corrective action*;

(vi) whether the *actionable ISP project* is a *staged project* and, if so, the stages;

(vii) if applicable, any *preparatory activities* or *early works* that *AEMO* considers would be beneficial for a *Transmission Network Service Provider* to undertake for that project; and

(7) include the results of a net present value analysis for each *development path* for each scenario, together with an explanatory statement regarding the results.

(b) An *integrated system plan* may:

(1) include relevant information about ISP development opportunities;

(2) identify potential REZs;

(2A) for any REZs for which a *REZ design report* is being prepared under clause 5.24.1(b)(1), include an update as to the current plan for the development of the *transmission network* for the relevant *REZ stages*; and

(3) include sensitivities showing the impacts of energy or environmental policies of a participating jurisdiction where *AEMO* has been requested to do so by that *participating jurisdiction*. These sensitivities are in addition to those sensitivities considered in clause 5.22.6(a)(3) and do not form part of any *development path*.

Preparatory activities

(c) An *Integrated System Plan* may specify ~~whether~~ the *preparatory activities* that must be carried out for *future ISP projects* and the timeframes for carrying out *preparatory activities*.

(d) Subject to paragraph (e), ~~A~~a *Transmission Network Service Provider* must:

(1) in the case of an *actionable ISP project* for which *preparatory activities* have not yet commenced, ~~commence~~ carry out the *preparatory activities* which the *Transmission Network Service Provider* considers are reasonably necessary as soon as practicable; and

(2) in the case of a *future ISP project*, if the *Integrated System Plan* provides that *preparatory activities* must be undertaken for that project, ~~commence~~ carry out those *preparatory activities* in accordance with the timeframes specified in the *Integrated System Plan* for that project.,

(e) ~~provided that where~~ If *preparatory activities* are required to be undertaken pursuant to clause 5.24.1(b)(2), a *jurisdictional planning body* must ensure that *preparatory activities* are ~~commenced~~ carried out in accordance with the timeframes described in subparagraph (1) or (2) (as applicable).

6A Economic Regulation of Transmission Services

…

6A.8 Contingent projects

6A.8.A1 Eligibility for consideration as a contingent project

A *contingent project* in relation to a *revenue determination* means:

(a) a proposed *contingent project* that is determined by the *AER*, in accordance with clause 6A.8.1(b), to be a *contingent project* for the purposes of that *revenue determination*; or

(b) an *actionable ISP project* for which:

(1) ~~the~~ a trigger event under clause 5.16A.5 has occurred (which may be for a stage of an *actionable ISP project* or *early works*); and

(2) the *actionable ISP project*, stage of an actionable *ISP project* or *early works* the subject of the application (as relevant) exceeds either $30 million or 5% of the value of the *maximum allowed revenue* for the relevant *Transmission Network Service Provider* for the first year of the relevant *regulatory control period* whichever is the larger amount.

6A.8.1 Acceptance of a Contingent Project in a revenue determination

(a) A *Revenue Proposal* may include *proposed contingent capital expenditure*, which the *Transmission Network Service Provider* considers is reasonably required for the purpose of undertaking a *proposed contingent project*.

(b) The *AER* must determine that a *proposed contingent project* is a contingent project if the AER is satisfied that:

(1) the *proposed contingent project* is reasonably required to be undertaken in order to achieve any of the capital expenditure objectives;

(2) the *proposed contingent capital expenditure*:

(i) is not otherwise provided for (either in part or in whole) in the total of the forecast capital expenditure for the relevant *regulatory control period* which is accepted in accordance with clause 6A.6.7(c) or substituted in accordance with clauses 6A.13.2(b)(4) and (5) (as the case may be);

(ii) reasonably reflects the *capital expenditure criteria*, taking into account the capital expenditure factors, in the context of the *proposed contingent project* as described in the *Revenue Proposal*; and

(iii) exceeds either $30 million or 5% of the value of the *maximum allowed revenue* for the relevant *Transmission Network Service Provider* for the first year of the relevant *regulatory control period* whichever is the larger amount;

(3) the *proposed contingent project* and the proposed contingent capital expenditure, as described or set out in the *Revenue Proposal*, and the information provided in relation to these matters, complies with the requirements of any relevant regulatory information instrument; and

(4) the *trigger events* in relation to the *proposed contingent project* which are proposed by the Transmission Network Service Provider in its Revenue Proposal are appropriate.

(c) In determining whether a *trigger event* in relation to a proposed contingent project is appropriate for the purposes of subparagraph (b)(4), the *AER* must have regard to the need for a *trigger event*:

(1) to be reasonably specific and capable of objective verification;

(2) to be a condition or event, which, if it occurs, makes the undertaking of the *proposed contingent project* reasonably necessary in order to achieve any of the *capital expenditure objectives*;

(3) to be a condition or event that generates increased costs or categories of costs that relate to a specific location rather than a condition or event that affects the *transmission network* as a whole;

(4) to be described in such terms that the occurrence of that event or condition is all that is required for the *revenue determination* to be amended under clause 6A.8.2; and

(5) to be an event or condition, the occurrence of which is probable during the regulatory control period, but the inclusion of capital expenditure in relation to it under clause 6A.6.7 is not appropriate because:

(i) it is not sufficiently certain that the event or condition will occur during the *regulatory control period* or if it may occur after that *regulatory control period* or not at all; or

(ii) subject to the requirement to satisfy clause 6A.8.1(b)(2)(iii), the costs associated with the event or condition are not sufficiently certain.

6A.8.2 Amendment of revenue determination for contingent project

(a) A *Transmission Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to amend a *revenue determination* that applies to that *Transmission Network Service Provider* where:

(1) for a *contingent project* in a *revenue determination*, a *trigger event* for a *contingent project* in relation to that *revenue determination* has occurred; or

(2) for an *actionable ISP project*, ~~the~~ a *trigger event* under clause 5.16A.5 has occurred.

(a1) An application referred to in paragraph (a) must be made as soon as practicable after the occurrence of the *trigger event*.

(b) An application made under paragraph (a) must contain the following information (as applicable):

(1) an explanation that substantiates the occurrence of the *trigger event;*

(2) a forecast of the total capital expenditure for the *contingent project*;

(3) a forecast of the capital and incremental operating expenditure, for each remaining regulatory year which the *Transmission Network Service Provider* considers is reasonably required for the purpose of undertaking the c*ontingent project;*

(4) how the forecast of the total capital expenditure for:

(a) the contingent project meets the threshold as referred to in clause 6A.8.1(b)(2)(iii); or

(b) the *actionable ISP project*, stage of an *actionable ISP project* or *early works* the subject of the application (as relevant) meets the threshold as referred to in clause 6A.8.A1(b)(2);

(5) the intended date for commencing the *contingent project* (which must be during the regulatory control period);

(6) the anticipated date for completing the *contingent project* (which may be after the end of the *regulatory control period*);

(7) an estimate of the incremental revenue which the *Transmission Network Service Provider* considers is likely to be required to be earned in each remaining *regulatory year* of the *regulatory control period* as a result of the *contingent project* being undertaken as described in subparagraph (3), which must be calculated:

(i) in accordance with the requirements of the *post-tax revenue model* referred to in clause 6A.5.2;

(ii) in accordance with the requirements of the *roll forward model* referred to in clause 6A.6.1(b);

(iii) using the *allowed rate of return* for that *Transmission Network Service Provider* for the *regulatory control period* as determined in accordance with clause 6A.6.2;

(iv) in accordance with the requirements for depreciation referred to in clause 6A.6.3;

(v) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph (b)(3);

(8) if paragraph (n) applies, a forecast of the total capital expenditure and the total incremental operating expenditure for the contingent project for the subsequent regulatory control period; and

(9) if the application is in respect of an *actionable ISP project* which was previously the subject of an *early works contingent project application*, a summary of the total expenditure previously approved by the *AER* and the actual costs incurred in respect of that *actionable ISP project*.

(c) As soon as practicable after its receipt of an application made in accordance with paragraphs (a), (a1) and (b), the *AER* must publish the application, together with an invitation for written submissions on the application.

(d) The *AER* must consider any written submissions made under paragraph (c) and must make its decision on the application within 40 *business days* from the later of the date the *AER* receives the application and the date the AER receives any information required by the *AER* under paragraph (h1). In doing so the *AER* may also take into account such other information

as it considers appropriate, including any analysis (such as benchmarking) that is undertaken by it for that purpose.

(e) If the *AER* is satisfied that the *trigger event* has occurred, and that the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6A.8.1(b)(2)(iii), it must:

(1) Determine (as applicable):

(i) the amount of capital and incremental operating expenditure, for each remaining regulatory year which the *AER* considers is reasonably required for the purpose of undertaking the contingent project;

(ii) the total capital expenditure which the *AER* considers is reasonably required for the purpose of undertaking the contingent project;

(iii) the likely commencement and completion dates for the *contingent project*;

(iv) the incremental revenue which is likely to be required by the *Transmission Network Service Provider* in each remaining regulatory year as a result of the contingent project being undertaken as described in clause 6A.8.2(e)(1)(i) and (ii), such estimate being calculated in accordance with subparagraph (2); and

(v) if paragraph (n) applies, the total capital expenditure and the total incremental operating expenditure which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project* in the subsequent *regulatory control period*;

(2) calculate the estimate referred to in subparagraph (1)(iv):

(i) on the basis of the capital expenditure referred to in subparagraph (1)(i);

(ii) to include the incremental operating expenditure referred to in subparagraph (1)(i); and

(iii) otherwise in accordance with paragraph (b); and

(3) amend the relevant *revenue determination* in accordance with paragraph (h) and if applicable paragraph (n).

(f) In making the *determinations* referred to in subparagraph (e)(1), the AER must accept the relevant amounts and dates, contained in the *Transmission Network Service Provider's* application, as referred to in subparagraphs (b)(2) to (8), if the *AER* is satisfied that:

(1) the forecast of the total capital expenditure for the contingent project meets the threshold as referred to in clause 6A.8.1(b)(2)(iii);

(2) the amounts of forecast capital expenditure and incremental operating expenditure reasonably reflect the capital expenditure criteria and the *operating expenditure criteria*, taking into account the capital expenditure factors and the operating expenditure factors respectively, in the context of the contingent project;

(3) the estimates of incremental revenue are reasonable; and

(4) the dates are reasonable.

(g) In making the determinations referred to in subparagraph (e)(1) and paragraph (f), the AER must have regard to:

(1) the information included in or accompanying the application;

(2) submissions received in the course of consulting on the application;

(3) such analysis as is undertaken by or for the *AER*;

(4) the expenditure that would be incurred in respect of a contingent project by an efficient and prudent operator in the circumstances of the *Transmission Network Service Provider*;

(5) the actual and expected capital expenditure of the *Transmission Network Service Provider* for contingent projects during any preceding *regulatory control periods*;

(6) the extent to which the forecast capital expenditure for the *contingent project* is referable to arrangements with a person other than the *Transmission Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;

(7) the relative prices of operating and capital inputs in relation to the *contingent project*;

(8) the substitution possibilities between operating and capital expenditure in relation to the contingent project; and

(9) whether the capital and operating expenditure forecasts for the *contingent project* are consistent with any incentive scheme or schemes that apply to the *Transmission Network Service Provider* under clauses 6A.6.5, 6A.6.5A, 6A.7.4, 6A.7.5 or 6A.7.6.

(h) Amendments to a *revenue determination* referred to in paragraph (e)(3) must only vary the determination to the extent necessary:

(1) to adjust the forecast capital expenditure for the relevant *regulatory control period* to accommodate the amount of capital expenditure determined under subparagraphs (e)(1)(i) or (e)(1)(v) (in which case the amount of that adjustment will be taken to be accepted by the AER under clause 6A.6.7(c));

(2) to adjust the forecast operating expenditure for the relevant regulatory control period to accommodate the amount of incremental operating expenditure determined under subparagraphs (e)(1)(i) or (e)(1)(v) (in which case the amount of that adjustment will be taken to be accepted by the AER under clause 6A.6.6(c)); and

(3) to reflect the effect of any resultant increase in forecast capital and operating expenditure on:

a. the *maximum allowed revenue* for each *regulatory year* in the remainder of the relevant *regulatory control period*; and

b. the *X factor* for each regulatory year in the remainder of the relevant *regulatory control period*.

(h1) A *Transmission Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Transmission Network Service Provider* under paragraph (a) within the time specified by the *AER* in a notice provided to the *Transmission Network Service Provider* by the *AER* for that purpose.

Extension of time limit

(i) If the *AER* is satisfied that amending a *revenue determination* under subparagraph (e)(3) and paragraph (h) or if paragraph (n) applies, determining the total capital expenditure and the total incremental operating expenditure under subparagraph (e)(1)(v), involves issues of such complexity or difficulty that the time limit fixed in paragraph (d) should be extended, the *AER* may extend that time limit by a further period of up to 60 business days, provided that it gives written notice to the *Transmission Network Service Provider* of that extension no later than 10 *business days* before the expiry of that time limit.

(j) If the *AER* extends the time limit under paragraph (i), it must make available on its website a notice of that extension as soon as is reasonably practicable.

(k) Subject to paragraph (k3), if the *AER* gives a written notice to *the Transmission Network Service Provider* stating that it requires information from an *Authority* in order to make a decision on an application made by the *Transmission Network Service Provider* under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the AER gives that notice to the *Transmission Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.

(k1) Subject to paragraph (k3), if the *AER* gives a written notice to the *Transmission Network Service Provider* stating that, in order to make a decision on an application made by the *Transmission Network Service Provider* under paragraph (a), it requires information from a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the AER gives that notice to the *Transmission Network Service Provider* and when that information is made publicly available is to be disregarded.

(k2) Where the *AER* gives a notice to the *Transmission Network Service Provider* under paragraph (k) or (k1), it must:

(1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k) or (k1), as the case may be, has commenced;

(2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k) or (k1), as the case may be, has ended; and

(3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.

(k3) Paragraphs (k) and (k1) do not apply if the *AER* gives the notice specified in those paragraphs to the *Transmission Network Service Provider* later than 10 *business days* before the expiry of the time limit fixed in paragraph (d).

Amendment of revenue determination

(l) Except where paragraph (m) or (n) applies, if the *AER* amends a *revenue determination* under paragraph (h), that amendment must take effect from the commencement of the next regulatory year.

(m) Except where paragraph (n) applies, if a *Transmission Network Service Provider* submits an application under paragraph (a) within 90 *business days* of the end of a *regulatory year*, an amendment to the *revenue determinatio*n must take effect from the second *regulatory year* that commences after the application is submitted.

(n) If a *Transmission Network Service Provider* submits an application under paragraph (a) in the final regulatory year of a regulatory control period or during the last 90 *business days* of the penultimate *regulatory year* of the *regulatory control period* and the *AER* makes a determination under subparagraph (e)(1)(v), then the AER must within 6 months following the making of the *revenue determination* for the subsequent *regulatory control period*¸ amend that *revenue determination*:

(1) with effect from the second *regulatory year* of that subsequent *regulatory control period* in accordance with paragraphs (h) and (n);

(2) to include the incremental revenue which is likely to be required by the *Transmission Network Service Provider* in each *regulatory year* (other than the first *regulatory year*) as a result of the *contingent project*, such estimate being calculated on the basis of:

(i) the amounts determined under paragraph (e)(1)(v);

(ii) paragraph (b)(7) applying in respect of the subsequent regulatory control period; and

(iii) providing the *Transmission Network Service Provider* with the time cost of money based on the allowed rate of return for the provider for the relevant *regulatory control period* arising from the delay in the amendment of the current and/or subsequent *revenue determination*.

…

6A.9.4 Transmission determinations for proposed transmission systems of intending TNSPs

(a) A *revenue determination* for a proposed *transmission system* may, despite anything to the contrary in this Chapter, provide for capitalisation of a *return on capital* (calculated using the allowed *rate of return*) in respect of any period in a *regulatory control period* prior to the date on which *prescribed transmission services* are first provided.

(b) A *transmission determination* for a proposed *transmission system* may:

(1) despite clause 6A.4.2(c), specify a *regulatory control period* of less than 5 *regulatory years;*

(2) include amounts determined in accordance with clause 6A.8.2 if, for an actionable ISP project, ~~the~~ a *trigger event* under clause 5.16A.5 has occurred; or

(3) if no *prescribed transmission services* are expected to be provided at any time during that *regulatory control period*, exclude from the transmission determination some of the decisions that would otherwise be made by the AER under rule 6A.14.

(c) A *transmission determination* for a proposed *transmission system* or a converting *transmission system* must specify the date from which *prescribed transmission services* will commence or the manner in which the date is to be determined.

10 Glossary

…

contingent project

In relation to a distribution determination, a *proposed contingent project* that is determined by the *AER*, in accordance with clause 6.6A.1(b), to be a *contingent project* for the purposes of that distribution determination.

In relation to a revenue determination, has the meaning given in clause 6A.8.A1~~1A~~.

early works

Activities undertaken by a *Transmission Network Service Provider* in respect of an *actionable ISP project*:

(a) prior to the construction of the *preferred option*; and

(b) which:

(i) improve the accuracy of cost estimates for that project; or

(ii) facilitate that project being delivered within the timeframes specified by the most recent *Integrated System Plan*.

early works contingent project application

An application by a *Transmission Network Service Provider* to amend its *revenue determination* in respect of the costs of *early works*.

trigger event

For a Distribution Network Service Provider, in relation to a proposed contingent project or a contingent project, a specific condition or event described in clause 6.6A.1(c), the occurrence of which, during the relevant regulatory control period, may result in the amendment of a distribution determination under clause 6.6A.2.

For a Transmission Network Service Provider, in relation to:

(a) a proposed contingent project or a contingent project in a revenue determination, a specific condition or event described in clause 6A.8.1(c), the occurrence of which, during the relevant regulatory control period, may result in the amendment of a revenue determination under clause 6A.8.2; and

(b) an actionable ISP project, ~~the~~ an event specified in clause 5.16A.5, the occurrence of which, during the relevant regulatory control period, may result in the amendment of a revenue determination under clause 6A.8.2