

8 February 2024

Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2001

Project reference code: ERC0348.

Dear Ms Collyer,

Accommodating Financeability – Draft Determination

Energy Networks Australia (ENA) welcomes the opportunity to make this submission in response to the Commission's draft determination on accommodating financeability¹.

ENA represents Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia. All ENA transmission members support this submission with the exception of AusNet.

Our electricity transmission members are focused on delivering the timely and efficient investment that is needed, as Australia transitions to a lower carbon economy. AEMO has identified actionable ISP projects totalling \$16.4 billion² which are required to ensure that the needs of electricity consumers are met at the lowest overall cost. AEMO explains that these projects will repay this expenditure and provide a further \$17 billion in net market benefits over the period to 2050.

In submitting its rule change, ENA explained that its primary objective is to deliver value for consumers by ensuring that the regulatory framework is capable of financing these actionable ISP projects to ensure their timely delivery. In this regard, ENA's position is fully aligned with the Commission's observations that:³

- » Transmission is a critical enabler for the transition to net zero;
- » Improving the ability of TNSPs to efficiently access finance, where needed, to deliver actionable ISP projects in a timely and efficient way that is in the long-term interest of consumers; and

¹ AEMC, Draft determination, National Electricity Amendment (Accommodating Financeability in the Regulatory Framework) Rule, 14 December 2023.

² AEMO, 2024 draft Integrated System Plan, 15 December 2023, page 44.

³ AEMC, Draft determination, National Electricity Amendment (Accommodating Financeability in the Regulatory Framework) Rule, 14 December 2023, paragraph 5.

- » Delayed investment in transmission infrastructure would come at a cost to consumers.

Given this context, ENA considers that consumers will benefit from the implementation of the Commission's draft Rule, which is a major step forward in recognising and resolving the financeability issues that arise in relation to actionable ISP projects. In particular, ENA considers that the Commission's approach strikes an appropriate balance between the two Rule change requests lodged by the Commonwealth and ENA, by recognising that:

- » A principles-based approach, as initially proposed by the Commonwealth, would fail to provide investor confidence and, therefore, would not promote the long-term interests of consumers; and
- » Embedding a formula in the Rules, as initially proposed by ENA, would not provide sufficient flexibility to accommodate future changes in the AER's Rate of Return Instrument.

As explained in the attachment to this submission, ENA has identified possible changes to the draft Rule that would further enhance its operation to the benefit of consumers. Notwithstanding these suggested changes, ENA strongly supports the draft Rule change.

ENA's key points in response to the draft determination are:

- » ENA agrees with the Commission that the financeability assessment and resolution must be prescriptive and quantitative, rather than discretionary and qualitative. Only a prescriptive, quantitative approach can provide a transparent, objective and predictable framework that supports investor confidence and promotes the interests of consumers.
- » ENA accepts the Commission's position that the AER should develop the details of the financeability test in a Financeability Guideline, rather than embedding a formula in the Rules. The draft Rule should be amended to ensure that the Financeability Guideline adopts a formulaic approach that recognises the asymmetric costs associated with failing to identify and remedy a financeability issue, consistent with the Revenue and Pricing Principles in the National Electricity Law.⁴
- » ENA considers that the Rule drafting should be amended to clarify that the financeability test may apply to any stage of an actionable ISP project.⁵ This approach recognises that an 'early works' stage may involve significant expenditure that could raise financeability issues. ENA also considers it important

⁴ National Electricity Law, section 7A(6) requires that regard should be had to the economic costs and risks of the potential for under and over investment by a regulated network service provider.

⁵ For the avoidance of doubt, although the financeability test may apply to each stage of a project, AER will verify that the total allowed expenditure does not exceed the prudent and efficient amount for the overall project.

that the financeability test is allowed to apply again following project construction, so that the minimum cashflow necessary to achieve financeability is brought forward.

- » ENA remains concerned that the 'no worse off' component of the financeability test will not promote investor confidence, contrary to the Commission's intentions. The principal concern is that maintaining a TNSP's current financeability position, when it may be well below the benchmark level, may not provide sufficient cashflow to enable a new actionable ISP project to be financed.
- » ENA would welcome the Commission's clarification that biodiversity and environmental offset or remediation costs should be depreciated on an 'as incurred' basis. These activities tend to produce benefits as soon as the expenditure is incurred, which may be many months, if not years, before the project is commissioned. This observation supports an 'as incurred' approach to depreciation, rather than 'as commissioned'.
- » ENA also supports the Commission's proposal that the Rule commences as soon as possible, in advance of the publication of the Financeability Guideline.

In addition to addressing these points in Attachment 1, ENA has asked Gilbert + Tobin to review the draft Rule. Attachment 2 sets out drafting suggestions, which reflect the points raised in this submission and clarify the intended operation of the Rule. ENA would be pleased to discuss these suggested drafting amendments with the Commission.

ENA looks forward to working with the Commission as it progresses this Rule change determination. In the meantime, if you would like to discuss this submission, please contact Verity Watson in the first instance at the following email address: vwatson@energynetworks.com.au.

Yours sincerely,



Dominique van den Berg,
Chief Executive Officer

Attachment 1 - Submission: Accommodating financeability in the regulatory framework Rule

Introduction

ENA welcomes the Commission's conclusion that there is a material financeability issue that needs to be addressed through a Rule change. This position is consistent with the views of the Commonwealth in its Rule change request, which explained that addressing financeability risks will benefit consumers by ensuring that the urgently needed actionable ISP projects proceed in accordance with the timeframes specified by AEMO. Furthermore, these projects will also play a central role in Australia achieving its emissions reduction targets, consistent with the recently amended National Electricity Objective.

From ENA's perspective, the financeability issue is evidenced by the experience of transmission networks operating under the existing regulatory framework. The practical reality is that some actionable ISP projects have only been able to proceed with financial support from the Commonwealth's Rewiring the Nation fund. It is therefore timely to amend the regulatory framework to ensure that these important projects are capable of being fully financed by capital markets, without an on-going reliance on government financial support, as current levels of support may not be available in the future. Furthermore, it must be emphasised that the proposed changes only provide for the re-profiling of revenue, rather than providing additional revenue. In this regard, the Commission's proposed Rule change is modest in its scope, while potentially delivering significant benefits to consumers.

ENA also agrees with the Commission's draft determination that inter-generational considerations should not be factored into the AER's financeability assessment.⁶ Consumers' interests are best served by ensuring that the significant net benefits provided by actionable ISP projects, estimated by AEMO to be \$17 billion, can be achieved without delay. It would be contrary to consumers' long-term interests if these savings were not fully realised because the profile of revenues required to support these projects were considered to have an inter-generational impact⁷.

In the remainder of this submission, ENA discusses its views on the following matters which are relevant to the draft determination:

- » The Rules should be prescriptive and quantitative, not discretionary and qualitative.
- » The financeability test should be specified in guidelines.

⁶ AEMC, Draft determination, National Electricity Amendment (Accommodating Financeability in the Regulatory Framework) Rule, 14 December 2023, page 6.

⁷ As noted in ENA's submission to the consultation paper, inter-generational equity concerns do not arise for the many households and businesses that are both today's consumers and future consumers.

- » The financeability test should apply to any stage of an actionable ISP project, including ‘early works’ and at the revenue determination following project completion.
- » The ‘no worse off’ approach may not enable new actionable ISP projects to be financed.
- » Biodiversity and environmental offset or remediation costs should be depreciated on an ‘as incurred’ basis.
- » The Rule change should commence as soon as possible.

We discuss each of these topics in turn.

1. Prescriptive and quantitative, rather than discretionary and qualitative

ENA agrees with the Commission that a principles-based approach to assessing financeability would not achieve the objective of securing investor confidence. In focusing on investor confidence, the Commission explains that it is critical for supporting timely investment in actionable ISP projects which, in turn, support emissions reduction, reliability and security, and efficient market arrangements.⁸

From ENA’s perspective, in order for investors to commit to financing actionable ISP projects, they need to be able to understand:

- » how a regulatory assessment of financeability of actionable ISP projects will be undertaken; and
- » how any financeability problem identified by such a process would be remedied through regulatory action.

To achieve these objectives, a transparent mechanism for identifying and resolving financeability issues is required which can be applied objectively in a repeatable and predictable manner. In other words, the Rules relating to financeability must reflect a prescriptive, quantitative approach. As investors are able to make investment choices across competing projects internationally, a regulatory environment that is discretionary and unpredictable will make it more difficult to attract funding, which would be contrary to the long-term interests of consumers.

ENA therefore strongly supports the Commission’s position that the AER must only apply its selected financial metrics in a manner that is replicable and predictable, thereby providing certainty for both consumers and for TNSPs and their investors.⁹ As explained in ENA’s Rule change request, it is not possible to sustain investor confidence if regulatory decisions regarding the financeability of an actionable ISP project are discretionary.

⁸ AEMC, Draft determination, National Electricity Amendment (Accommodating Financeability in the Regulatory Framework) Rule, 14 December 2023, page 7.

⁹ Ibid, page 20.

ENA notes that the draft determination makes clear the intention of the draft Rule in relation to the prescriptive and quantitative nature of the financeability assessment. Nevertheless, ENA considers that it would provide greater clarity to all stakeholders if this intention were made more transparent in the Rule provisions. Attachment 2 provides a drafting suggestion to address this issue, including clarifying the role of the Financeability Guidelines, which is discussed next.

2. ENA supports the development of binding Financeability Guidelines

For background, ENA's Rule change request proposed that a financeability formula should be specified in the Rules. We explained that the objective nature of the formula would produce predictable financeability assessments and regulatory action to address financeability problems, thereby providing stakeholders with greater certainty and investors with the confidence they need to commit to actionable ISP projects. ENA's Rule change request explained how a formulaic approach, based on the methodologies employed by credit ratings agencies, could be implemented.

The Commission's draft determination did not accept ENA's proposal to specify a financeability formula in the Rules on the grounds that this approach would be unnecessarily restrictive and inflexible. In particular, the Commission explains that the weightings of financial metrics and the selection of financial metrics themselves could reasonably be expected to change over time, noting that credit ratings agencies update their methodologies from time to time. The Commission therefore concludes that specifying the financial metrics and weightings in the AER's Financeability Guidelines would be preferable, as amending these guidelines would be administratively simpler.¹⁰

ENA considers that the adoption of a quantitative assessment in Financeability Guidelines is, on balance, a preferable solution for the reasons outlined in the Commission's draft determination. In relation to the operation of the financeability test, ENA agrees with the Commission that cashflows should be brought forward by the minimum amount necessary to address a financeability issue. In accordance with this principle, ENA also agrees with the Commission that concessional finance needs to be factored into the AER's financeability assessment, in accordance with the terms of the concessional finance agreement.

ENA notes that the draft Rule does not specifically require the AER to apply its Financeability Guideline in conducting the financeability test. While the clear intention of the draft determination is that the AER must apply its Financeability Guideline, it would be preferable for the draft Rule to state this requirement explicitly. As already noted, the Commission's intention is that the Financeability Guideline adopts a formulaic approach, so that it provides certainty to investors.

A related issue is that the draft Rule provides no guidance to the AER on how it should develop the Financeability Guidelines. ENA considers that it would be

¹⁰ AEMC, Draft determination, National Electricity Amendment (Accommodating Financeability in the Regulatory Framework) Rule, 14 December 2023, page 19.

appropriate for the draft Rule to refer to the Revenue and Pricing Principles in the National Electricity Law. In particular, the Financeability Guideline should take account of the asymmetric costs associated with failing to identify and remedy a financeability issue.¹¹ In other words, given the nature of these projects and their role in the optimal pathway, the AER should err on the side of caution because it is better to bring forward additional cashflow to ensure that an actionable ISP project is financeable, rather than providing insufficient cashflow with the consequence of project deferral or delay.

ENA also considers it important that the Rule specifically requires the AER, in developing its Financeability Guideline, to have regard to the financial metrics and weightings typically applied by credit rating agencies. While this requirement is specified in the draft determination, it is not explicitly included in the draft Rule. ENA has therefore suggested a drafting amendment to address this issue, which will ensure that all stakeholders understand the scope and purpose of the Financeability Guideline without having to refer back to the Rule determination for guidance.

In terms of process, ENA notes that the AER's Financeability Guideline will likely require updates over time. To avoid confusion as to which version of the Financeability Guideline is applicable to a particular financeability request, it would be sensible to revise the draft Rule to include a provision that makes it clear which version of the Financeability Guidelines applies. Attachment 2 provides suggested drafting changes to address this issue, in addition to changes to clarify the role and purpose of the Financeability Guidelines, as discussed above.

3. The financeability test should apply to any stage of an actionable ISP project, including 'early works' and at the revenue determination following project completion

The Commission's draft determination explains that TNSPs would not be able to request a financeability test in relation to an early works contingent project application (CPA) for two reasons:

- » Firstly, the quantum of an early works CPA is unlikely to be significant enough to result in a financeability issue and therefore does not warrant the AER conducting a financeability test; and
- » Secondly, at the early works stage, it is likely to be too early to accurately forecast construction capital expenditure that occurs during CPA stage 2.

In relation to the first point, ENA is aware that some early works proposals may involve significant expenditure where, for example, construction-related activities are required to facilitate the timely delivery of the ISP project. These construction-related activities may include:

¹¹ National Electricity Law, section 7A(6) requires that regard should be had to the economic costs and risks of the potential for under and over investment by a regulated network service provider.

- » Undertaking pre-construction works, including procurement of equipment with long lead times; and
- » Ameliorating biodiversity and environmental impacts.

While atypical, ENA notes that Transgrid's early works CPA for VNI West proposes expenditure of approximately \$1 billion, while the AER's early works determination for Humelink accepted the forecast expenditure of approximately \$320 million. ENA considers that expenditure of this magnitude may raise financeability issues that should be addressed.

ENA's position, therefore, is that the Rules should provide the flexibility to allow a TNSP to request a financeability test for an early works CPA. ENA accepts the Commission's observation that it would be too early to conduct a financeability test for the total project at the time the early works CPA is submitted, as the construction cost estimates will not be sufficiently certain. However, this issue should not prevent the test from applying to early works expenditure in circumstances where the magnitude of that expenditure raises financeability issues. At the construction stage of the project (CPA-2), the financeability test could be applied to the construction cost component of the project.¹²

A further drafting change should be introduced to allow the financeability test to be applied or reapplied at the revenue determination immediately following the completion of project construction. This additional step recognises that the actual construction costs of a project may be significantly higher or lower than forecast at the final CPA stage. To ensure that the minimum cashflow is brought forward to ensure financeability, it will be necessary to apply or reapply the financeability test once the actual project costs are known. Attachment 2 provides suggested drafting changes to reflect this additional step in the financeability testing process.

In addition, it is appropriate to broaden the drafting of the Rule so that the financeability test may be applied to ISP projects that are included in a TNSP's revenue proposal, in addition to those ISP projects that are assessed under the CPA process. ENA is not aware of any reason why a financeability test should not be applied during a revenue determination process.

4. The 'no worse off' approach will not provide investor confidence

The Commission's draft Rule proposes that if a TNSP's financeability position is below the benchmark credit rating, currently BBB+, the financeability test will ensure that its position does not deteriorate further. We refer to this component of the test as the 'no worse off' approach.

The 'no worse off' approach implicitly assumes that a new actionable ISP project can be financed providing that the TNSP's implied credit rating for the regulated business does not deteriorate from its current position. Therefore, if a TNSP's implied credit rating

¹² While the financeability test will be applied to each stage of a project, AER will verify that the total allowed expenditure does not exceed the prudent and efficient amount for the overall project.

were currently below investment grade, the draft Rule would assume that a new actionable ISP project could also be financed at below investment grade. Conceptually, therefore, ENA is concerned that the draft Rule would not necessarily ensure that actionable ISP projects could be financed.

In practice, ENA recognises that the 'no worse off' approach may still enable actionable ISP projects to be financed despite this conceptual concern. In particular, to ensure that projects will be financeable under the 'no worse off' approach, investors would need to be confident that the TNSP's financeability position will not fall materially below the benchmark credit rating. Unfortunately, however, it is doubtful whether investors could be confident of that outcome because:

- a. TNSPs must typically commit to an ISP project several years before the AER conducts the financeability test for that project. This means that investors will need to estimate the TNSP's future financeability position several years in advance of the AER's application of the financeability test.
- b. A TNSP's financeability position may materially deteriorate below the benchmark level if new large non-ISP projects are added to the TNSP's capital base. For example, TNSPs may be required to undertake large non-ISP projects to meet new obligations.
- c. As fully depreciated assets are replaced with new assets, a TNSP's financeability position will tend to deteriorate. This effect will exacerbate the impact of large, non-ISP projects on a TNSP's financeability position.

Contrary to the Commission's intentions, therefore, the draft Rule will not provide certainty to investors that an actionable ISP project will be financeable. The resolution to this issue is to apply the financeability test to each discrete project in those cases where the TNSP's financeability position is below BBB+. This discrete project approach ensures that, where the TNSP's financeability position is below BBB+, each project obtains a cashflow profile that is consistent with achieving the benchmark credit rating for that project.

For the avoidance of doubt, ENA accepts the following elements of the Commission's proposed approach:

- If a TNSP's financeability position is above the benchmark credit rating, a whole of regulated business approach to assessing financeability should be adopted.
- The minimum cashflow required to ensure the financeability of an actionable ISP project should be brought forward.
- If a TNSP's financeability position is below the benchmark credit rating, cashflow should only be brought forward with the objective of enabling the new project to be financed (and not to improve the financeability position of the TNSP).

While ENA recognises that the Commission has previously rejected a discrete project approach, ENA considers that the application of this method is preferred if the TNSP's financeability position is below the benchmark level. ENA would therefore appreciate the Commission's reconsideration of this issue.

ENA also proposes a provision that enables the financeability test to apply to Intending TNSPs. In the absence of this provision, an Intending TNSP, such as Marinus Link, would

be unable to address financeability issues in accordance with the new Rule. ENA is unaware of any reason why financeability issues cannot arise for Intending TNSPs or why the same approach to addressing these issues should not be applied.

5. Biodiversity and environmental offset or remediation costs should be depreciated on an as incurred basis.

ENA has previously expressed its support for the Commonwealth's proposal that biodiversity and environmental offset costs¹³, should be depreciated on an 'as incurred' basis. In particular, ENA agrees with the Commonwealth's view that the benefits of biodiversity and environmental offsets will be obtained before project commissioning¹⁴, which means that network charges would be broadly aligned with consumer benefits under the Commonwealth's proposed approach. The alignment of costs and benefits is consistent with principles of economic efficiency.

The Commission's draft determination does not consider it necessary to make a Rule change regarding this issue because an as incurred depreciation approach is already permitted under the Rules.¹⁵ While ENA agrees with the Commission that as incurred depreciation is permitted under the current Rules, it would be helpful if the Commission confirmed that an as incurred depreciation approach should apply to this expenditure.

All stakeholders would benefit from clarifying this issue in the Rules because any request for a financeability test would be made in the knowledge of how biodiversity and environmental offset or remediation costs should be depreciated. Furthermore, the Commission's confirmation that these costs should be depreciated on an as incurred basis, as proposed by the Commonwealth, would help ease financeability pressures and reduce the number of financeability tests that would need to be conducted by the AER.

6. Commencement of the Rule change

ENA supports the commencement of the Rule change at the earliest opportunity, even though the AER may not be able to publish its Financeability Guidelines until December 2024. The early introduction of the new Rule would recognise the urgent need to address the emerging financeability problems.

¹³ ENA notes that this language is more generic than 'biodiversity offset costs', as some States refer to biodiversity offset; environmental offset; and remediation costs.

¹⁴ Australian Government, Department of Climate Change, Energy, the Environment and Water - Treatment of financeability for Transmission Network Service Providers, Rule change proposal, March 2023 pages 4 and 5.

¹⁵ AEMC, Draft determination, National Electricity Amendment (Accommodating Financeability in the Regulatory Framework) Rule, 14 December 2023, page 21.

Attachment 2 - Financeability - Potential drafting improvements

Drafting issue	Potential solution
Drafting improvements to align with AEMC policy intent	
<p>Definition of ‘financeability position’</p> <p>There is currently no definition of the term ‘financeability position’. We have proposed a definition consistent with the intent of the Draft Rule.</p>	<p>Suggest a definition of the term as follows:</p> <p>financeability position means the position of a <i>Transmission Network Service Provider</i> calculated:</p> <ul style="list-style-type: none"> (a) <u>applying the metrics and weightings specified in the financeability guideline; and</u> (b) <u>based on projected cashflows determined in accordance with the post-tax revenue model.</u>
<p>Procedural requirements for the financeability test</p> <p>We think the rules should make clear that the AER must apply the methods and formulae set out in its guidelines and must have regard to the information contained in the financeability request. We consider this is consistent with the policy intent.</p>	<p>[m1] In applying the financeability test, the AER must:</p> <ul style="list-style-type: none"> (1) <u>apply the formulae and methods specified in the financeability guidelines; and</u> (2) <u>have regard to the information set out in the financeability request.</u> <p>[Note: a consequential change would also be required to 6A.6.3(j), to change the reference from paragraph (m) to refer to this new paragraph.]</p>

Drafting issue	Potential solution
<p>Timing for determination on a financeability application</p> <p>The Draft Rule does not currently specify timeframes for an AER determination on a financeability request. To provide greater certainty for TNSPs, we would recommend a timeframe provision – clarifying that a determination will be made no later than the date on which the AER makes a determination on the CPA or Revenue Proposal.</p>	<p>[n1] <u>A determination under paragraph (n) must be made no later than the date on which the AER makes its determination on the <i>contingent project application, early works contingent project application or Revenue Proposal</i> (as applicable).</u></p>
<p>Addressing a financeability issue</p> <p>The Draft Rule should make clear that, where a financeability issue exists, the AER must address it via one of the available mechanisms (under the Draft Rule, use of the word “may” suggests there could be discretion around whether to address the issue).</p> <p>We also recommend that, where the AER intends to adopt a different solution to what was originally proposed, it be required to notify the TNSP and provide an opportunity for submissions on the proposed solution. There is currently no requirement for a draft determination, and therefore in the absence of this consultation requirement the AER could proceed to implement a mechanism that is unworkable or inadequate.</p>	<p>(o) If the AER makes a determination under paragraph (n) to address a financeability issue, it may <u>must</u> address the financeability issue by doing any one or more of the following:</p> <ol style="list-style-type: none"> (1) depreciating the asset (or group of assets) forming part of the actionable ISP project using a profile that it considers appropriate, including by approving the financeability request; or (2) taking other steps through another mechanism available to the AER under the Rules. <p>(o1) <u>If the AER intends to address a financeability issue through a mechanism that differs from the mechanism set out in the financeability request, it must provide a reasonable opportunity for the <i>Transmission Network Service Provider</i> to make further submissions on the proposed mechanism prior to making a determination under paragraph (n).</u></p>

Drafting issue	Potential solution
<p>Content of the financeability guidelines</p> <p>The policy intent is for the financeability test to be ‘prescriptive’. Given this intent, we would recommend requiring a “formula” for determining the financeability position and a method for determining the position in relation to the threshold – both of which are to be specified in the guideline in a manner that can apply ‘automatically’ and without discretion. This adopts the same language as that used in the NEL regarding the Rate of Return Instrument (NEL, s 18J(2)(b)).</p> <p>A “formula” in this context is intended to refer to a mathematical relationship or rule that can be applied using defined inputs. This could be, for example, an inequality relationship or an equation.</p>	<p>(s) The financeability guidelines must set out:</p> <p>(1) <u>how the AER determines a formula for determining the financeability position for a the Transmission Network Service Provider</u> for the purposes of paragraph (l), which must be based on a selection of financial metrics and a specified weighting to apply to each of those metrics;</p> <p>(2) an explanation of the basis for the selection of each financial metric and the weighting to apply to each financial metric referred to in sub-paragraph (1); and</p> <p>(3) <u>how a method for determining whether the financeability position for a Transmission Network Service Provider relates to is higher or lower than the financeability threshold</u> for the purposes of paragraph (m).</p> <p>(s1) The financeability guidelines must specify:</p> <p>(1) <u>the formula for determining the financeability position for a Transmission Network Service Provider; and</u></p> <p>(2) <u>the method for determining whether the financeability position is higher or lower than the financeability threshold,</u></p> <p><u>in a manner that can apply automatically to each Transmission Network Service Provider without the exercise of any discretion by the AER.</u></p>
<p>Amendments to the financeability guidelines</p> <p>For clarity, we would recommend a provision stating that the guidelines may be updated, but that any updates do not apply to requests pre-dating the amendment.</p>	<p>(v) <u>The AER may, from time to time, amend or replace the financeability guidelines in accordance with the <i>transmission consultation procedures</i>.</u></p> <p>(w) <u>An amendment referred to in paragraph (v) does not affect application of the financeability guidelines to a financeability request submitted prior to the date that the amendment is effective.</u></p>

Drafting issue	Potential solution
Drafting to address policy issues that ENA may wish to raise	
<p>Application to early works contingent project applications or forecast capex included in a Revenue Proposal</p> <p>The Draft Rule excludes application of the financeability test to early works contingent project applications. We would recommend an amendment so that TNSPs can submit a financeability request to determine whether there is a financeability issue, regardless of whether the works are for CPA stage 1 or 2 works.</p> <p>The Draft Rule also only contemplates a request being made at the same time as a contingent project application (i.e. assuming an actionable ISP project will be a contingent project). An amendment has been made to cater for the situation where the actionable ISP project expenditure forms part of the capex forecast in a Revenue Proposal.</p>	<p>(d) <u>A Transmission Network Service Provider must may submit a financeability request at the same time as submitting:</u></p> <p>(1) <u>only submit a financeability request at the same time as submitting a contingent project application under clause 6A.8.2(a) in relation to an actionable ISP project; and or</u></p> <p>(2) <u>not submit a financeability request in relation to an early works contingent project application; or</u></p> <p>(3) <u>a Revenue Proposal under clause 6A.10.1, where the forecast of capital expenditure included in that Revenue Proposal includes expenditure on an actionable ISP project.</u></p>
<p>Assessment of financeability at a project level if below the benchmark</p> <p>Under the Draft Rule, a financeability issue will only be found to exist if the overall financeability position of the TNSP deteriorates below (or further below) the financeability threshold with the actionable ISP project.</p> <p>For the avoidance of doubt, ENA accepts the following elements of the Commission’s proposed approach:</p> <ul style="list-style-type: none"> • If a TNSP’s financeability position is above the benchmark credit rating, a whole of regulated business approach to assessing financeability should be adopted. • The minimum cashflow required to ensure the financeability of an actionable ISP project should be brought forward. • If a TNSP’s financeability position is below the benchmark credit rating, cashflow should only be brought forward with the objective of enabling 	<p>(m) A financeability issue exists for the purposes of paragraph (k) if the financeability test demonstrates that the financeability position for the Transmission Network Service Provider is:</p> <p>(1) equivalent to or higher than the financeability threshold at step one, and deteriorates below the financeability threshold following the application of step two; or</p> <p>(2) lower than the financeability threshold at step one, and deteriorates below that financeability position following the application of step two <u>the financeability position for the relevant actionable ISP project is below the financeability threshold.</u></p> <p>(m1) <u>For a person that is an Intending TNSP for the purposes of rule 6A.9, a financeability issues exists for the purposes of paragraph (k) if the financeability position for the relevant actionable ISP project is below the financeability threshold.</u></p>

Drafting issue	Potential solution
<p>the new project to be financed (and not to improve the financeability position of the TNSP).</p> <p>Conceptually, the ‘no worse off’ approach raises a concern because it supposes that a new actionable ISP project could be financed no matter the TNSP’s implied credit rating for the regulated business. For example, if a TNSP’s implied credit rating were below investment grade, the draft Rule would assume that a new actionable ISP project could also be financed at below investment grade. For that reason, ENA is concerned that the draft Rule would not necessarily ensure that actionable ISP projects could be financed.</p> <p>Contrary to the Commission’s intentions, therefore, the draft Rule will not provide certainty to investors that an actionable ISP project will be financeable. The resolution to this issue is to apply the financeability test to each discrete project in those cases where the TNSP’s financeability position is below BBB+. The discrete project approach ensures that each project obtains a cashflow profile that is consistent with achieving the benchmark credit rating for that project.</p> <p>We recommend a provision that enables the financeability test to apply to Intending TNSPs. At present, the draft Rule cannot apply to an Intending TNSPs as the AER will be unable to assess its financeability position as Intending TNSPs will not earn regulated revenue until prescribed transmission services commence.</p>	<p>Addressing a financeability issue</p> <p>(n) If the financeability test demonstrates that there is a financeability issue, the AER must make a determination to address the financeability issue by:</p> <ol style="list-style-type: none"> (1) if paragraph (m)(1) applies, preventing the Transmission Network Service Provider’s financeability position determined in step one from deteriorating below the financeability threshold following the application of step two; (2) if paragraph (m)(2) <u>or (m1)</u> applies, preventing the Transmission Network Service Provider’s financeability position determined in step one from deteriorating below that financeability position following the application of step two <u>ensuring that the financeability position for the relevant actionable ISP project meets the financeability threshold,</u> to the extent possible.



Drafting issue	Potential solution
<p>Application in subsequent revenue determinations</p> <p>The financeability test currently only applies based on forecast expenditure and cashflows, at the CPA stage.</p> <p>The outcome of a financeability assessment may change significantly based on actual expenditure – either the financeability position of the TNSP may improve from the forecast position, or it may deteriorate. To account for this, we propose a provision for the reapplication of the financeability test at the first revenue determination following completion of the project.</p> <p>We have also suggested amendments to clarify that an adjustment may apply in one or more subsequent regulatory periods, and that the adjustment is binding for each of those subsequent periods.</p>	<p>The following could be added to the current paragraph (q):</p> <p>(q) If the AER determines under paragraph (o) that the depreciation adjustment will apply in a subsequent regulatory control periods, then, <u>subject to paragraph (q1)</u>, the depreciation adjustment is binding on the AER and the <i>Transmission Network Service Provider</i> for <u>each of those that subsequent regulatory control periods.</u></p> <p>(q1) <u>In making a revenue determination for the first regulatory control period following completion of an actionable ISP project in respect of which the AER received a financeability request, the AER must reapply the financeability test based on actual expenditure for the actionable ISP project. Where application of the financeability test based on actual expenditure delivers a different outcome, the AER must:</u></p> <ol style="list-style-type: none"> (1) <u>make appropriate adjustments to any mechanism identified under paragraph (o) to address the financeability issue; or</u> (2) <u>apply a different mechanism to address the financeability issue.</u> <p>To facilitate this subsequent application of the financeability test, the following could be added to the list of information to be provided by a TNSP with a Revenue Proposal under cl S6A.1.3:</p> <p>(11) <u>if an actionable ISP project was completed during the current regulatory control period, application of the financeability test set out in clause 6A.6.3A based on actual expenditure for the actionable ISP project.</u></p>
<p>Matters for the AER to have regard to in preparing the financeability guidelines</p> <p>The Draft Rule does not currently specify any specific matters that the AER must take into account in developing the guidelines. We have therefore</p>	<p>(u) <u>In preparing the financeability guidelines, the AER must have regard to:</u></p> <ol style="list-style-type: none"> (1) <u>the financial metrics and weightings typically applied by credit rating agencies; and</u>

Drafting issue	Potential solution
<p>provided some drafting for relevant considerations which could be set out in the NER.</p> <p>The first listed consideration reflects the AEMC’s intent that ‘the AER would adopt a set of financial metrics and weightings that are similar to the approaches used by credit rating agencies’ (Draft Determination, p 20).</p> <p>The second consideration is to ensure that the AER takes into account the potential risks and costs that may be associated with its test failing to identify a financeability issue in relation to a project, in accordance with the Revenue and Pricing Principles in the National Electricity Law. This proposed amendment recognises that it is in consumers’ long-term interests to err on the side of caution in identifying and remedying financeability risks to ensure that actional ISP projects proceed in a timely manner.</p>	<p>(2) <u>the economic costs and risks of the potential for under investment or delayed investment if a financeability issue is not identified and addressed.</u></p>

