

8 February 2024

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

Project Reference: ERC0349

Dear Ms Collyer,

Concessional Finance for Network Service Providers – Draft Rule Determination

Energy Networks Australia (ENA) welcomes the opportunity to make this submission in response to the Commission’s draft determination on concessional finance¹, following the Rule change request lodged by the Honourable Chris Bowen MP, Commonwealth Minister for Climate Change and Energy.

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. Our electricity transmission members are focused on delivering the actionable ISP and other projects, which are urgently needed to facilitate the energy transformation that is central to Australia’s carbon reduction commitments. Our members are also concerned with the affordability issues facing electricity consumers, particularly given the current cost of living pressures.

As explained in the Rule change request and the Commission’s earlier consultation paper, the Commonwealth has committed \$20 billion in low-cost finance, the ‘Rewiring the Nation’ fund, for the urgent upgrade and expansion of Australia’s transmission networks. This finance is intended to facilitate lower costs and faster delivery of critical transmission infrastructure. Under the current Rules, however, it is not possible for the benefits of concessional finance to be passed on to consumers. Evidently, this is a gap in the framework that needs to be addressed.

¹ Australian Energy Market Commission, Draft rule determination, National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule, 14 December 2023.

ENA strongly supports the purpose of the draft Rule, which is to enable the benefits of concessional finance to be passed onto consumers in accordance with the intentions of the Government Funding Body (GFB) which is providing that finance. In particular:

- » ENA supports the application of the draft Rule to transmission and distribution networks.
- » ENA recognises that the proposed Rule is important in ensuring that the benefits of concessional finance are shared between the Network Service Provider (NSP) and consumers in accordance with the agreement between the NSP and the GFB. ENA therefore agrees that the AER should receive a copy of that agreement or a schedule to that agreement, as proposed in footnotes 7 and 15 of the draft determination.² In accordance with the draft determination, ENA notes that the draft Rule should be amended to allow the NSP to provide a schedule to the agreement, providing that it addresses the information in clauses 6.2.9(b) and 6A.3.3(b) of the draft Rule. We also support the Commission's conclusion that the AER's

role should be limited to implementing the terms of the concessional finance agreement by adjusting the allowed regulated revenues either directly or indirectly through an amendment to the regulatory asset base.

- » ENA supports the proposed approach for updating regulated revenues to reflect the consumer benefits from concessional finance. In particular, the 40 day timeframe (with the possibility of extending to 60 days in complex cases) appears reasonable. ENA also considers that the proposed arrangements for Victoria are appropriate.
- » ENA agrees that financial support from Governments may affect the ranking of projects in the ISP and RIT-T. As a practical matter, however, concessional finance agreements may only be settled after the Optimal Development Path and the RIT-T have been concluded. ENA therefore agrees with the Commission that the AER should update the Cost Benefit Analysis Guidelines and the RIT Application Guidelines to provide guidance on the level of funding certainty required before concessional financing can be used to support a project option in the economic assessment process.
- » ENA supports the transitional arrangements, noting that the Commission's proposal is to apply the new Rule from 14 December 2023.

ENA has asked Gilbert + Tobin to review the draft Rule to identify any practical issues that may need to be considered by the Commission as it finalises its Rule determination. To assist the Commission, Gilbert + Tobin's suggested drafting amendments are provided as an attachment to this submission, which raise the following issues for the Commission's consideration:

- » **Interface with the financeability draft Rule.** The financeability draft rule appears to assume that any concessional finance agreements will be entered into before

² Ibid, pages iii and 1.

making a Contingent Project Application (CPA) and will, therefore, be factored into any financeability assessment. However, in some cases a concessional finance agreement may be entered into during or after the CPA. To address this issue, a drafting change is required to allow the financeability adjustment (i.e. the decision to bring forward cashflow) to be amended to take account of the concessional finance.

- » **Definition of GFB.** We have suggested a minor change to the definition of GFB, to make it clear that this is limited to bodies that provide funding for the purposes of a concessional finance agreement.
- » **Amount to be pass through to electricity consumers.** The draft Rule contemplates that the concessional finance agreement will specify the amount to be passed through to electricity consumers. However, it may be that the agreement explains how the amount should be calculated, rather than specifying the amount. It is therefore appropriate to amend the draft Rule to also provide for the calculation to be specified, rather than only the amount.
- » **Consequential change required to the transmission pricing Rules.** In order to ensure that the concessional finance benefit is passed onto the appropriate electricity consumers, it is necessary to amend the transmission pricing Rules in Part J of Chapter 6A. The amendments require the allocation of the Annual Aggregate Revenue Requirement to be attributed to the prescribed transmission services in a manner that gives effect to the intention of the GFB in the concessional finance agreement. In the absence of this amendment, the benefit of concessional finance would be apportioned across all prescribed transmission services in accordance with the definition of 'attributable cost share', meaning that the benefit is shared across all transmission customers.
- » **Minor inconsistency between the transmission and distribution provisions.** The draft Rule includes clause 6.6.1B which allows the AER to amend a distribution determination to reflect the distribution concessional finance adjustment. However, there is no equivalent provision in the draft Rule that applies to transmission determinations. This appears to be a drafting oversight.

In addition to the above points, ENA has identified an apparent inconsistency between the executive summary in the draft determination and the draft Rule, as the former suggests that the NSP's notification of a concessional finance agreement should include 'any other matter the AER considers necessary'.³ ENA notes that this suggestion is not included elsewhere in the draft determination, nor is it reflected in the draft Rule. ENA therefore assumes that the executive summary does not reflect the Commission's position in relation to this matter. For the avoidance of doubt, ENA does not consider it necessary for the AER to be provided with any information other than that specified in clauses 6.2.9(b) and 6A.3.3(b) of the draft Rule.

³ Ibid page iii, paragraph 18.

ENA looks forward to working with the Commission as it finalises its Rule 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 - Concessional Financing Potential drafting improvements

Drafting issue	Potential solution
<p>Scope of adjustments that may be made</p> <p>Currently, the scope of adjustments is limited to RAB adjustments and direct pass through.</p> <p>For actionable ISP projects where:</p> <ul style="list-style-type: none"> » a mechanism has already been implemented to address a financeability issue (e.g. depreciation schedule adjustments); and » the concessional finance agreement is entered into after that adjustment has been made. <p>a further form of CF adjustment could be to adjust that mechanism.</p>	<p>In cl 6A.3.3(b)(3), the following could be added as an additional type of Transmission CF Adjustment that may be contemplated under a concessional finance agreement:</p> <p>(iv) <u>where the <i>concessional finance</i> relates to capital expenditure for an <i>actionable ISP project</i> in relation to which a financeability adjustment has been made under 6A.6.3A(p), an adjustment to the mechanism for making that financeability adjustment.</u></p> <p>An equivalent amendment is not required to cl 6.2.9, as this adjustment could only apply in relation to actionable ISP projects for which a financeability adjustment has been made under Chapter 6A.</p>
<p>Specification of amounts or values in a concessional finance agreement</p> <p>The Draft Rule requires that a concessional finance agreement specify either a ‘value’ for a RAB adjustment or an ‘amount’ to be passed through to Transmission Network Users.</p> <p>However in some cases it may be necessary and appropriate to specify a methodology (e.g. a formula) rather than a fixed amount or value for consumer benefits to be passed through. This should be accommodated in the rule drafting.</p>	<p>Amend paragraphs (4) and (5) of cl 6.2.9(b) and 6A.3.3(b) as follows:</p> <p>(4) where paragraph (3)(i) applies, a description of the asset to which the <i>concessional finance</i> applies, as well as the value, timing and details of the adjustment to be made to the regulatory asset base, <u>including the adjustment value or method for determining that value, timing of the adjustment</u> and the relevant asset lives of the associated assets;</p> <p>(5) where paragraph (3)(ii) applies, the amount to be passed through to <i>Distribution Network Users</i> in each year of each <i>regulatory control period</i> that the amount is to be passed through, <u>or a method for determining that amount;</u></p>

Drafting issue	Potential solution
<p>Time limit extension for complex / difficult adjustments</p> <p>Paragraph (h) allows the AER to extend the time limit for making a CF Adjustment under paras (c) or (d) by a further period of up to business 60 days where the AER “is satisfied” that making the adjustment “involves issues of such complexity or difficulty that the time limit ... should be extended”, provided the AER gives the DNSP / TNSP written notice of that extension not later than 10 business days before the expiry of the [initial] time limit.</p> <p>An adjustment that is found to be sufficiently complex or difficult to warrant the full 60 business day extension could result in a period of 100 business days between the AER receiving the CFA and making its adjustment. This is considerably longer than the intended 40 business day time limit.</p>	<p>Any extension to time limits under paragraph (h) should be proportionate to the level of complexity or difficulty of the relevant adjustment to avoid unnecessary delays to the making of adjustments.</p>
<p>Amendments to determinations</p> <p>The amendments to Chapter 6A of the NER do not include an equivalent provision to cl 6.6.1B itself, which provides for amendments to determinations to reflect the CF adjustment. It is not clear if this is intentional, and if so why it has been omitted.</p> <p>We note that in the AEMC’s amendments to Chapter 6A it proposes to amend cl 6A.3.2 so that a TNSP’s MAR will be adjusted for any Transmission CF Adjustment. It seems to be envisaged that a Transmission CF Adjustment would operate in a similar way to a cost pass through, contingent project or correction under 6A.15. However in the case of 6A.7 (pass through), 6A.8 (contingent projects) and 6A.15, the rules provide for reopening / amendment to the revenue determination itself. We suggest that an equivalent provision be inserted for CF adjustments.</p>	<p>Insert equivalent provision to cl 6.6.1B in Chapter 6A.</p>



Drafting issue	Potential solution
<p>Consequential amendment to principles for allocation of AARR</p> <p>In some cases, a concessional finance agreement could specify that benefits are to be passed through in a particular way. For example, it may be intended by the funding body that a particular group of Transmission Network Users obtain any benefit, rather than this being apportioned across all users. Where this is intended by the funding body, this should be permitted under the transmission pricing rules (and specifically the principles for allocation of aggregate annual revenue requirements).</p>	<p>The following could be added to the AARR allocation principles in cl 6A.23.2:</p> <p>(e) <u>Where the <i>maximum allowed revenue</i> has been adjusted under clause 6A.3.2 for a Transmission CF Adjustment determined in accordance with clause 6A.3.3, the treatment of that adjustment for the purposes of allocating the AARR must be in accordance with the relevant <i>concessional finance agreement</i>.</u></p>
<p>Definition of ‘government funding body’</p> <p>The definition is very broad and does not have any nexus to ‘funding’. The definition should be limited to such bodies that provide / seek to provide funding for purposes of a concessional finance agreement.</p>	<p>We suggest the below revision to the proposed Glossary definition of “Government funding body” in the Draft Rule:</p> <p>Government funding body means a government or government agency (including, without limitation, an entity owned, or where there is a controlling interest, by a Commonwealth, State or Territory government) <u>that provides or seeks to provide funding to a <i>Network Service Provider</i> (or related party of a <i>Network Service Provider</i>) pursuant to a <i>concessional finance agreement</i>.</u></p> <p>This revision is intended to ensure the Draft Rule sufficiently captures the intended agreements and does not inadvertently capture BAU agreements.</p>

