Summary of public forum on 15 December 2023

Draft determinations on Accommodating financeability in the regulatory framework (ERC0348) and Sharing concessional finance benefits with consumers (ERC0349)

OVERVIEW

On 15 December 2023 the Australian Energy Market Commission (AEMC) hosted a virtual public forum on our draft rule determinations for the rule changes on Accommodating financeability in the regulatory framework (ERC0348) and Sharing concessional finance benefits with consumers (ERC0349). The forum was attended by around 85 stakeholders.

During the forum, stakeholders had the opportunity to ask questions about these two draft rule determinations. All questions related to the Financeability (ERC0348) rule change. A summary of the discussion is outlined below.

If you have further questions you can contact the relevant project leaders:

- Accommodating financeability in the regulatory framework (ERC0348): Andrew Pirie andrew.pirie@aemc.gov.au
- Sharing concessional finance benefits with consumers (ERC0349): Chirine Dada chirine.dada@aemc.gov.au

SUMMARY: QUESTIONS AND ANSWERS ON FINANCEABILITY (ERC0348) AND CONCESSIONAL FINANCE (ERC0349)

Stakeholders sought clarity on the likely timing of the final determinations for Financeability (ERC0348) and Concessional finance (ERC0349)
The AEMC noted that the Financeability (ERC0348) and Concessional finance (ERC0349) final determinations are expected to be published 6 weeks after submissions on the draft rule determinations, as outlined below: • 8 February 2024 – submissions due • 21 March 2024 – final determination and final rule (if made) • 29 March 2024 – the final rule (if made) is expected to commence operation.

SUMMARY: QUESTIONS AND ANSWERS ON FINANCEABILITY (ERC0348)

Stakeholders sought clarity on the arrangements around TNSP requests for a financeability test and whether there are penalties for frivolous financeability requests
The AEMC noted that under the draft determination: • A request for a financeability test can only be made in relation to actionable ISP projects and not other transmission projects. • A financeability request from a TNSP must be submitted at the same time as a Contingent project application (CPA 2), other than for early works. • While the AER does not have the ability to penalise TNSPs for making frivolous financeability requests, our draft rule provides a predictable framework for TNSPs and the AER to determine whether a TNSP is made worse off from an ISP project and will have a financeability issue. The AEMC welcomed stakeholder feedback on whether the arrangements around financeability requests were clear and appropriate.

Stakeholders sought clarity on whether the Financeability draft rule would alter incentives on TNSPs to secure efficient financing in consumers' interests
The AEMC noted that the current revenue-setting framework provides an incentive for TNSPs to finance investments at the lowest cost. The draft rule is consistent with the current approach as it would not alter the incentives on TNSPs to secure finance at an efficient cost. Under the draft rule, revenues and cashflows are based on the hypothetical benchmark gearing ratio in the applicable Rate of Return Instrument (RORI) and not the actual capital structure of the TNSP, as per the current regulatory framework. Given that the assessment is based on hypothetical benchmark gearing it avoids incentive issues where a TNSP could amend its actual capital structure in a way that creates a financeability issue.

Stakeholders sought clarity on how the financeability draft rule attempts to avoid delays to ISP projects, as suggested by the AEMC
The AEMC considers that the Financeability (ERC0348) draft rule will facilitate timely investment in transmission that the ISP has determined as necessary to support emissions reductions, security and reliability. It would provide TNSPs and their investors with certainty about how the AER would conduct a financeability test and predictability in the outcomes of the test, consistent with good regulatory practice.

Stakeholders sought clarity on consultation arrangements under the Financeability draft rule
The AEMC noted that the draft rule does not include an obligation on TNSPs to consult with consumers prior to requesting a financeability test. Stakeholders would have the ability to provide feedback on financeability requests when they are assessed by the AER. The AEMC welcomed stakeholder feedback on whether the consultation arrangements were clear and appropriate.
Stakeholders asked whether, to provide transparency, a data room arrangement would be in place to view data supporting a financeability request
The AEMC noted that the financeability test will be transparent as it is based on the TNSPs regulated revenues, using the hypothetical benchmark gearing ratio. Given that the financeability test does not assess financeability based on the actual capital structure or actual financing of a TNSP, there does not appear to be a need for a 'data room' arrangement.

Stakeholders asked why it would be reasonable for a TNSP that had not received concessional finance to request a financeability test
The AEMC noted that where the benefits of concessional finance are only provided to consumers, the TNSP does not retain any benefits of the concessional finance. Therefore, given that the TNSP has not received any benefits, it is reasonable that the TNSP is eligible to submit a financeability request. It may also be the case that concessional finance only partly addresses a financeability issue. In these circumstances the draft rule allows the TNSP to seek a financeability test, but only with the GFB's consent. If a financeability request is submitted, the AER would assess whether the TNSP had a financeability issue and if required, the size of the adjustment to address the financeability issue.
Stakeholders asked whether an Intending TNSP (ITNSP) could bring forward cashflow under the draft rule to address a financeability issue
The AEMC noted that this would not be possible. ITNSPs are not able to receive cashflows when they are an ITNSP and are not yet providing prescribed transmission services. ITNSPs can only receive cashflows when their transmission asset is built and is providing prescribed transmission services, at which point they would be a TNSP.

Stakeholders questioned whether the AEMC had demonstrated that a financeability problem exists for TNSPs in relation to actionable ISP projects
The AEMC noted that: • The financeability issue was identified in the AEMC's Transmission Planning and Investment Review (TPIR) Stage 2 Final report and in the rule change proposals from the Minister and ENA. • The AEMC has satisfied itself that there is a risk that TNSPs may face financeability issues due to the pace and scale of investment required in actionable ISP projects and because the current revenue-setting framework is not sufficiently flexible to address this risk. Given the need for timely investment in actionable ISP projects, there is a need to provide greater flexibility in the revenue-setting framework in the National Electricity Rules (NER). • If a TNSP submits a financeability request, the AER will determine whether or not a financeability issue exists for each actionable ISP project. The AEMC noted that stakeholders may want to draw out their comments in a submission to the AEMC.

Stakeholders asked whether a TNSP is eligible to request a financeability test if it submits a CPA 2 prior to the making of the Financeability final determination
Under the draft rule, a TNSP is not able to request a financeability test until the Financeability final rule (if made) commences operation on 29 March 2024. The financeability request must be submitted at the same time as a CPA 2.

Stakeholders asked how the Financeability draft rule was in the best interests of consumers
The AEMC's forum slides and draft determination for Financeability set out how we consider our more preferable draft rules better contribute to meeting the NEO and therefore the long-term interests of consumers. The AEMC noted that investors and TNSPs need predictability on how financeability issues would be addressed to support timely investment. Our draft rule balances investor and consumer interests by minimising cashflows that are brought forward to address a TNSP's financeability issue in relation to actionable ISP projects. The focus is on addressing cashflow issues that may be a barrier to the timely delivery of actionable ISP projects.

Stakeholders asked whether the AEMC has considered contestability as an alternative option to the draft rule in the Financeability (ERC0348) rule change
The AEMC considered transmission contestability in TPIR and decided to place further consideration of transmission contestability on hold because: • any contestability regime must be implemented on a national basis to achieve material benefits • initiatives being progressed in some jurisdictions suggest it is unlikely that a consistent approach could be implemented in the near future and it would not be prudent to commit significant time and resources on a national contestability regime at this point. In the Financeability rule change the AEMC is seeking to support the financeability of actionable ISP projects, so that the delivery of these projects is timely. If contestability were a solution, it is a significant reform that would take several years, so would not address the issue in a timely way.