

15 July 2024

Rex Greaves
Adviser
Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney, NSW, 2000

Dear Mr Greaves,

Bringing early works forward to improve transmission planning

The Justice and Equity Centre (JEC) appreciates this opportunity to provide an updated submission in response to the draft determination on bringing early works forward to improve transmission planning.

Delaying the AEMC's review of the Integrated System Plan (ISP)

The JEC does not support the decision to delay the review of the ISP and is concerned the delayed timeframes undermine any scope for the review to have a meaningful impact.

We strongly support the need for a review and the role of the AEMC in conducting it. The coordination and planning needs of the NEM have changed substantially since 2018 and the initiation of the ISP in its current form. It is no longer fit for purpose and does not adequately promote the long-term interests of consumers in efficient investment in the energy system transition.

A review completed in July 2027, already a significant delay, will only recommend changes. These recommendations would still then need to be processed as rule changes, each taking a minimum of a year, leading to further delays to the potential impact of any changes.

Added to this, the production of each ISP is a resource intensive undertaking that lasts nearly the entire two-year period between each iteration.

These points together mean the first ISP which could potentially reflect the recommendations of the AEMC review would be in 2030. We regard this as too late to be meaningful, considering a significant proportion of investment in the energy system transition will already have been initiated by this time.

We strongly support adhering to the original timeline as stipulated in the National Electricity Rules. The deadline should remain as July 2025. If the AEMC can demonstrate this deadline is untenable, a delay to December 31, 2025, at latest, could be accommodated.

We are aware that there are rule change processes stemming from the Transmission Planning and Investment Review – this rule change proposal among them – as well as the ECMC's review and AEMO's own review. We do not consider these precluding a root and branch review that considers whether the ISP framework itself remains fit for purpose.

Specifically, we note:

- It is very likely there will be just as much change occurring in the 12 months to July 2027 as is anticipated in the 12 months to July 2025. There has been a high rate of regulatory churn for many years now and there is no reason to believe that the rate will slow any time soon. A 'lull' in regulatory churn is unlikely until the transition is substantially accomplished, at which point a review will be of no value to consumers.
- Implementing the results of the AEMC review will take time after the completion of the review. The AEMC and other stakeholders will have adequate time during consultation on converting review recommendations to rule change proposals and then rule changes to consider and evaluate the impacts and experiences of the changes stemming from the three reviews listed above.

Early consultation

We urge the AEMC to reconsider the implied beliefs that all consultation is of net benefit and that earlier consultation is better. While we strongly support effective early consultation, the reality of its role is more nuanced.

Early consultation for a project invites discussion of less developed and hypothetical options. While this is important in providing stakeholders meaningful scope to influence projects, it has the potential to increase uncertainty for stakeholders on questions of whether or not a project will go ahead, who it is likely to impact directly, and what response options exist for those who are impacted. That is, the genuine benefits of early engagement can also involve increased anxiety experienced by community members, create intra-community conflict and, in some cases, reduce social licence for the project. These are not reasons to avoid early engagement but are crucial risks which must be recognised and managed.

The consultation paper does not appear to consider these risks at any point.

Enforcement concerns

The current framing does not provide any meaningful basis for AER enforcement. The consultation paper contains the following line:

Our draft rule clarifies that when preparing a RIT-T, feedback loop assessment and CPA (to recover the total project costs), a TNSP must reflect the costs approved in any prior early works CPA for the specific actionable ISP project to accurately reflect the total cost of the project.

Experience over recent years demonstrates It is very unlikely that no costs will change between the Early Works CPA and the other elements of the RIT-T. As a result, the requirement in the quote appears to be broadly unenforceable. Either it will have to be waived

by the AER in practice or TNSPs will be forced to hedge by inflating cost estimates, which is likely to increase costs overall and come at the expense of consumers.

Instead of the broad requirement that costs do not change from the Early Works CPA onwards, the rule should require the AER to provide guidance on what constitutes reasonable grounds for cost changes and how these should be approached by TNSPs.

There is also ambiguity in the wording of the draft rule which creates confusion, with the lack of clear direction for the AER reducing its capacity to enforce the requirement. The word 'reflects' as used above can be interpreted in two different and opposing ways by different readers. For some people it means that the later costs are the same as the costs laid out initially, ie. they mirror them (as we have interpreted it). Others may interpret 'reflects' to mean 'broadly relate to but – by definition – not be the actual thing'. That is, there's a relationship but it's not one to one. In this case it is unclear how much change in costs falls within reflecting the initial costs used in the Early Works CPA.

We recommend the final rule contain more explicit wording and clarification of the intent in the final rule.

Cost ceilings for Early Works CPA

The proposed rule change imposes a floor for an Early Works CPA it should also impose a ceiling. This ceiling should be defined in terms of the proportion of the overall costs of a project that can appear in the Early Works CPA.

The Early Works CPA is approved before the AER confirms that the TNSP has shown the project returns net benefits to consumers. This means there is scope for Early works approval to undermines the capacity for the AER to do its job and provide the central consumer protection in the transmission approval framework: the AER's confirmation that the project is in the net benefit of consumers.

If the AER finds itself in the situation of determining that a RIT-T should not be passed, having already approved significant early works, the AER will be in the unenviable position of either having to approve a project that does not provide net benefit to consumers (is not in consumers' interests), or handing consumers a bill of hundreds of millions or even billions of dollars for Early Works completed on a project that does not go ahead. The TNSP in this scenario can recover the costs of early works from consumers from the moment the AER approves the Early Works CPA. It does not face any cost aside from foregone earnings from the additional costs from CPAs 1 and 2 to its regulatory asset base.

In short, we consider this fundamentally undermines the AER's ability to protect and promote the consumer's interests.

Experience demonstrates this is not a hypothetical or immaterial concern. The Early Works request for the NSW/Transgrid section of VNI West, which was recently approved, run to \$1,096.3 million (\$Real 2022–23) in capital expenditure (capex).¹ Per the AER determination,

The total costs for VNI West are estimated at \$3,963.6 million (\$Real 2022–23), with the costs split about 50/50 between the Victorian component and the NSW component, delivered by Transmission Company Victoria and Transgrid, respectively.²

If the project does not pass the net benefit test in the RIT-T, this would constitute a little over \$1 billion of cost to consumers which would need to be redirected to other projects, with uncertain benefit to consumers.

To manage this, an upper limit on early works should be imposed, stated in terms of the proportion of the overall cost of the project that can be spent in Early Works.

Additionally, a third principle should be added to the two proposed principles that guide the AER's actions in relation to Early Works costs to capture this risk explicitly. As proposed, the risk of project cancellation is not included in the two principles, and so the AER is not expected to consider it in its assessment of an Early Works CPA.

Recommendations

- *That the AEMC's review of the ISP not be delayed. The review should be completed in July 2025, per the existing National Electricity Rules (NER). Should the AEMC demonstrate this is not achievable, the deadline could be extended to December 31, 2025.*
- *That the final rule require the AER to provide guidance on what constitutes reasonable grounds for cost changes and how these should be approached by TNSPs.*
- *That a ceiling be imposed on allowable Early Works costs, defined as a proportion of the overall cost of the project which can be spent in Early Works.*
- *That a third principle be added to the rule requiring the AER to consider the risk of project cancellation in its assessment of an Early Works CPA.*

We welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth. Please contact me at mlynch@piac.asn.au regarding any further follow up.

Yours sincerely,

Michael Lynch
Senior policy officer
0404 560 386

¹ AER, 6 May, 2024, 'Transgrid's Victoria to NSW Interconnector West Stage 1 Early Works Contingent Project Application', p.iii.

² *Ibid.*