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3 July 2024

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

Dear Ms Collyer

Re: Bringing early works forward to improve transmission planning

The Australian Energy Regulator (AER) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) Draft Determination on Bringing Early Works Forward to Improve Transmission Planning.

The AER supports the Draft Determination's implementation of the recommendations from the Transmission Planning and Investment Review (TPIR) Stage 3 report.¹

This submission sets out our support for the inclusion of a definition of 'early works' and the intent of the proposed early works principles in the National Electricity Rules (the Rules). We also outline our intention regarding updates to the *Guidance Note on the Regulation of actionable ISP projects* (Guidance note), which includes providing illustrative examples to stakeholders.² We then outline our position on including early works costs within the RIT-T. We recommend the Rules clarify both the treatment of these costs and the requirements on the AER to provide further guidance. Finally, we support the delay of the AEMC's Integrated System Plan (ISP) review.

¹ AEMC, *Final Report Transmission Planning and Investment Review stage 3*, https://www.aemc.gov.au/sites/default/files/2023-05/stage_3_final_report_transmission_planning_and_investment_review.pdf

² AER, *Guidance note - Regulation of actionable ISP projects – March 2021*, <https://www.aer.gov.au/documents/aer-final-guidance-note-regulation-actionable-isp-projects-march-2021>

Proposed definition and insertion of early works principles

The AER support the inclusion of a definition of early works in the Rules to provide clarity and certainty to stakeholders.

The AER considers the proposed principles set out in draft clause 6A.8.2, extracted below, will aid in its assessment of early works Contingent Project Applications (CPAs) by further defining the scope of early works activities and providing greater certainty for stakeholders:

‘In assessing whether to approve the costs of early works for an actionable ISP project where that project has not been the subject of a completed regulatory investment test for transmission, the AER must have regard to whether the:

- a) early works are common to all ISP candidate options and any other options that would be identified in a regulatory investment test for transmission for the actionable ISP project; and
- b) outcome of the early works activities can be sold or utilised to support other projects.’

The AER supports the intent of the principles to ensure that the assessment of options considered in the RIT-T is not biased, whilst better ensuring cost efficiency. A broader scope of early works activities may result in inefficient expenditure, whereby consumers ultimately bear the costs. The principles seek to better protect the interests of consumers, whilst still ensuring the timely and efficient delivery of transmission projects.

Including the principles in the Rules, as opposed to in AER guidelines, will provide greater certainty and clarity for stakeholders. The AER also agrees with draft recommendation 3 of the Draft Determination to update our Guidance note to provide additional guidance to assist TNSPs with preparing early works CPAs, as outlined below.

The AER’s only concern with the proposed principles in draft clause 6A.8.2 is the potential ambiguity of the term “support other projects” in paragraph (b). It is not clear what the threshold for how real, likely or timely another project must be to satisfy this principle. This may result in a wider scope of early activities being proposed than intended. However, we consider this could be mitigated by further clarification in the AER’s Guidance note and the AEMC’s final rule change determination.

We further note, and support, the proposal in the Draft Determination that the ISP may specify examples of early works and preparatory activities for actionable ISP projects to assist TNSPs when preparing their early works CPAs.

Guidance Note on the Regulation of actionable ISP projects

To provide stakeholders with additional guidance and illustrative examples of early works activities, the AER intends to update our Guidance note. We agree with the AEMC this would be the best place for further guidance as it contains significant direction on the preparation of CPAs for actionable ISP projects, as well on the staging of actionable ISP projects (including for early works activities). Updating the Guidance note will ensure consistent, up to date guidance is available to stakeholders on how the AER will assess early works CPAs.

The AER is considering the following illustrative examples of early works be included in this Guidance note as examples of early works that would be less problematic from the perspective of aligning with the proposed definition of early works (and principles):

- Ordering (or reserving a place in the queue for) long lead-time assets where all credible options would require its use; however, consideration would still need to be given to the likelihood of an option progressing.

- Examination of route components (particularly components with overlap) to better identify and understand potential geographic, community and environmental impacts of the routes being considered.
- Commencing land acquisition for corridors and/or substation sites where the location would be common to all credible options.
- Detailed design of substations, where capability would be the same for all credible options.

The following examples outline the sorts of activities the AER consider may require further scrutiny of, and therefore expect TNSPs to provide more robust justification for, including in an early works CPA:

- Ordering assets where only some credible options would require it.
- Commencing land acquisition for lines where the route is yet to be selected between the candidate options.

These illustrative examples are not intended to be an exhaustive list. The AER will give further consideration to relevant examples through updates to the Guidance note.

Inclusion of approved early works costs in the RIT-T

The AER supports draft clause 5.16A.7(d) below which stems from the TPIR stage 3 report:

‘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.’

Including such a clause in the Rules provides further clarity to TNSPs on how to treat approved early works costs. However, the AER suggests this clause be amended to also make clear that these approved early works costs must be included in the RIT-T regardless of whether they have already been spent (or incurred) by the TNSP. Typically, costs that have already been incurred may be considered as ‘sunk’ and hence excluded from the RIT-T. However, this should not be the case with these early works costs as the proposed rule change will allow early works to be undertaken before the RIT-T to confirm the preferred option is completed. The AER considers providing this additional clarity in the proposed clause 5.16A.7(d) on spent costs will better aid in the interpretation of this clause.

In submissions to our consultation paper on the 2024 Review of the cost benefit analysis guidelines and RIT application guidelines, stakeholders expressed their views on the treatment of early works costs in a RIT-T.³ In the consultation paper, the AER proposed early works costs should be included in a cost benefit analysis (CBA) even if they have already been approved in an early works CPA under this proposed Rule to ensure the early works activities do not unduly bias the options assessment in the RIT-T itself. Some stakeholders held different opinions on this matter. Bringing forward early works comes with a risk that consumers may end up paying more than they otherwise would and different risks arise depending on the way these sunk costs are treated. To ensure the rule change promotes the National Electricity Objective, it would be useful for the AEMC’s final determination to clearly outline the policy intent of the treatment of these costs, and weigh the risks against the benefits of the rule change.

³AER, *2024 Review of the cost benefit analysis guideline and regulatory investment test guidelines* – submissions to the consultation paper, <https://www.aer.gov.au/industry/registers/resources/reviews/2024-review-cost-benefit-analysis-and-regulatory-investment-test-guidelines/initiation>

The AER considers any amendments to the Rules regarding the treatment of early works costs in the RIT-T should also be supported by additional guidance in the AER's CBA Guideline. We consider it would be beneficial if the Rules clarify this requirement. We also consider there should be a transitional provision that enables any consultation (such as consultation occurring during the 2024 Review of the CBA Guidelines and RIT application guidelines) completed prior to the final determination to count towards the AER's consultation requirements. This approach would be consistent with the other rule changes stemming from the AEMC's Transmission Planning and Investment Review which have required timely updates to AER guidelines for consistency with the Rules.⁴

Delay of AEMC's ISP review

The AER supports the delay of the AEMC's ISP review by two years. This would allow changes to the regulatory framework arising from the multitude of rule changes following the TPIR review, as well as the outcomes following the recent Energy and Climate Change Ministerial Council ISP Review to take effect.

Continuing engagement

We appreciate the opportunity to provide feedback on the Draft Determination and welcome the opportunity to continue engaging on this rule change proposal.

Yours sincerely



Stephanie Jolly
Executive General Manager
Consumers, Policy and Markets

Sent by email on: 03.07.2024

⁴ For example, Clauses 11.161.3(a) and (b) of the Rules, resulting from the Enhancing community engagement rule change, that requires the AER to update the CBA Guideline and provides for any consultation undertaken prior to the final rule taking effect to count towards the consultation procedures.