



Ms. Anna Collyer  
Chair  
Australian Energy Market Commission AEMC  
Canberra ACT 2600

**Dear Ms. Collyer**

The Rewiring the Nation Office (RtNO) of the Department of Climate Change, Energy, the Environment and Water (DCCEEW) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) draft determination on bringing early works forward to improve transmission planning.

In December 2023, the Minister for Climate Change and Energy submitted a proposal to the AEMC to amend the National Electricity Rules (NER) to encourage transmission network service providers (TNSPs) to undertake more planning activities earlier in the economic assessment process. These changes only apply to actionable Integrated System Plan (ISP) projects and enable the TNSP identified as the regulatory investment test for transmission (RIT-T) proponent to apply for an early works contingent project application (CPA) before or in parallel with its RIT-T application. The Minister's proposal included the drafting changes proposed by the AEMC in its transmission planning and investment review. This proposal also included the following request:

*'To ensure early works CPAs are in the long-term interests of consumers, there should also be guidance or restrictions in the NER of what could be allowed in an early works CPA. This may take the form of a set of principles to be included in the NER that would guide TNSPs in preparing an early works CPA and the AER in its consideration of these CPAs.*

*Principles in the NER to inform what early works costs should be approved will help ensure the costs of early works are only recovered where the consumer benefits of earlier project delivery outweigh the potential harms given the uncertainty that a different investment option might be selected. Alternatively, the AER could develop or update guidelines on what can and cannot be included in an early works CPA. This could be outlined in guidance provided by the AER or incorporated as an aspect of a definition of 'early works' in the NER.'*

While the AEMC, in the draft determination, has genuinely responded to this request, several stakeholders have raised concerns that the principles in the draft determination would have the unintended effect of limiting the appetite and scope for TNSPs to undertake early works activities. As such an unintended effect would reduce the benefit of this rule change, RtNO has considered this risk in some detail.

#### Understanding of the draft principles

The AEMC has included the following principles in the draft determination as a new paragraph 6A.8.2(d1) in the NER to inform what early works costs the AER should be approve:

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*'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 AEMC proposes that the above drafting be included as a paragraph under NER clause 6A.8.2, which covers amending revenue determinations for contingent projects. These criteria do not override existing requirements for the AER to:

- Make a determination under subparagraph 6A.8.2(e)(1) if it is satisfied that the requirements have been met under subparagraphs 6A.8.2(e)(1A)-(1E). This determination includes the capital expenditure (capex) and incremental operating expenditure (opex) reasonably required to undertake the contingent project.
- Accept the relevant amounts and dates in the CPA if the AER is satisfied that requirements have been met under paragraph 6A.8.2(f). These requirements include that the proposed capex and opex reasonably reflects the capex and opex criteria and takes into account the capex and opex factors, as prescribed in the NER.
- Have regard to the factors set out under paragraph 6A.8.2(g) in making determinations under paragraph 6A.8.2(f) and subparagraph 6A.8.2(e)(1) – that is, in determining what amount of capex and opex is required. These factors include things like information in the CPA, submissions received in the course of consultation, AER analysis and whether an efficient and prudent operator in the circumstances of the TNSP would undertake that expenditure.

From staff-level conversations with the AEMC, RtNO understands that the intent of the draft principles is not to set criteria for approval of costs, but rather to ensure the AER, in making a contingent project determination on a project that is yet to have completed a RIT-T, has appropriate regard to:

- The risk that consumers might end up paying for works on a project that is not identified as the preferred option. This impact of this risk would be minimised where works are common to all ISP candidate options and can therefore be re-purposed for other projects.
- The risk that, in paying for works associated with a particular project, these sunk costs might result in an otherwise less favourable project being selected as preferred.

While RtNO agrees with this intent, there might be potential for the drafting to be interpreted narrowly with unintended consequences. This could include:

- Interpreting the principles as requiring the AER to refuse to approve the costs of high-benefit works with higher risk. This may particularly be the case for costs for works that cannot be repurposed for other projects. It would be preferable to clarify that the desired outcome would be for the AER to prudently and holistically weigh up such risks against the cost of delayed action.
  - For example, while it may be difficult to repurpose some long lead-time items (for example, HVDC cabling and converter technology used in some underground and undersea cabling arrangements) the costs of delays might be sufficiently high, and

the likelihood of an alternative option being preferred might be sufficiently low, that procurement before the completion of the RIT-T is the most prudent action.

- Interpreting the need to have regard to whether early works are common to all ISP candidate options as requiring TNSPs to exclude community engagement and environmental planning activities that are specific to particular options. Community engagement and environmental planning would typically include activities that are location-specific to particular options but should occur for all relevant options so the TNSP can meaningfully evaluate and compare the net benefits of those competing options.

Alternative approach to the draft principles

To achieve the intent of the rule change more effectively, RtNO suggests making the following changes to the principles:

- Rather than only requiring the AER to have regard to the risks of expenditure, including a principle that requires the AER to also have regard to the benefits of preventing delays.
- Rather than drafting principles with specific risk moderating factors in mind, take a high-level approach that communicates the intent of requiring the AER to have regard to certain principles. Doing so should minimise the risk of having unintended consequences due to interpretation issues. It should also enable the AER to have regard to the principles more flexibly. For example, while the ability to on-sell or repurpose kit reduces the impact of the risk that a different project is selected, there might be other ways to minimise such impacts that are currently difficult to pre-empt.

While alternative wording might be preferable, RtNO has drafted the below wording for your consideration to illustrate how the above suggestions might be incorporated.

‘6A.8.2

(d1) 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:

(1) the risk to consumers associated with undertaking *early works* on the *actionable ISP project* before the *preferred option* is identified, including whether the *RIT-T proponent* has risk mitigation or treatments in place.

(2) the expected benefits to consumers of having *early works* commence before the completion of the *regulatory investment test for transmission*, including from preventing delays, reducing the expected overall costs should the option be identified as the *preferred option*, or by enabling the meaningful application of the *regulatory investment test for transmission*.’

Yours sincerely,



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4 July 24