

AEMC – Market Bodies Advisory Group – Meeting outcomes and actions – 27 September 2022

AEMC Transmission Planning and Investment Review

Market Bodies Advisory Group (MBAG) meeting #11 – 27 September 2022

Meeting outcomes and actions

1. Attendees

- AER: Kris Funston and [REDACTED]
- AEMO: [REDACTED]
- ESB: Anthea Harris.
- AEMC:
 - Danielle Beinart,
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

2. Agenda

1. Acknowledgement of Country and welcome
2. Purpose of discussion
3. Overview of final policy positions for each workstream in stage 2
4. Next steps

3. Actions

No	Action	Action Owner	Due by	Status
1	The AEMC project team will provide an early draft of the planning activities chapter to the AER if time permits.	[REDACTED]	20/10/2022	Complete
2	The AEMC project team will consider whether the word "and" will be changed to "and/or" in definition of early works.	[REDACTED]	20/10/2022	Complete

4. Key points/outcomes

Update on timing for the review

- Stage 2 final report will be published late October 2022.
- Stage 3 draft report was published last week.

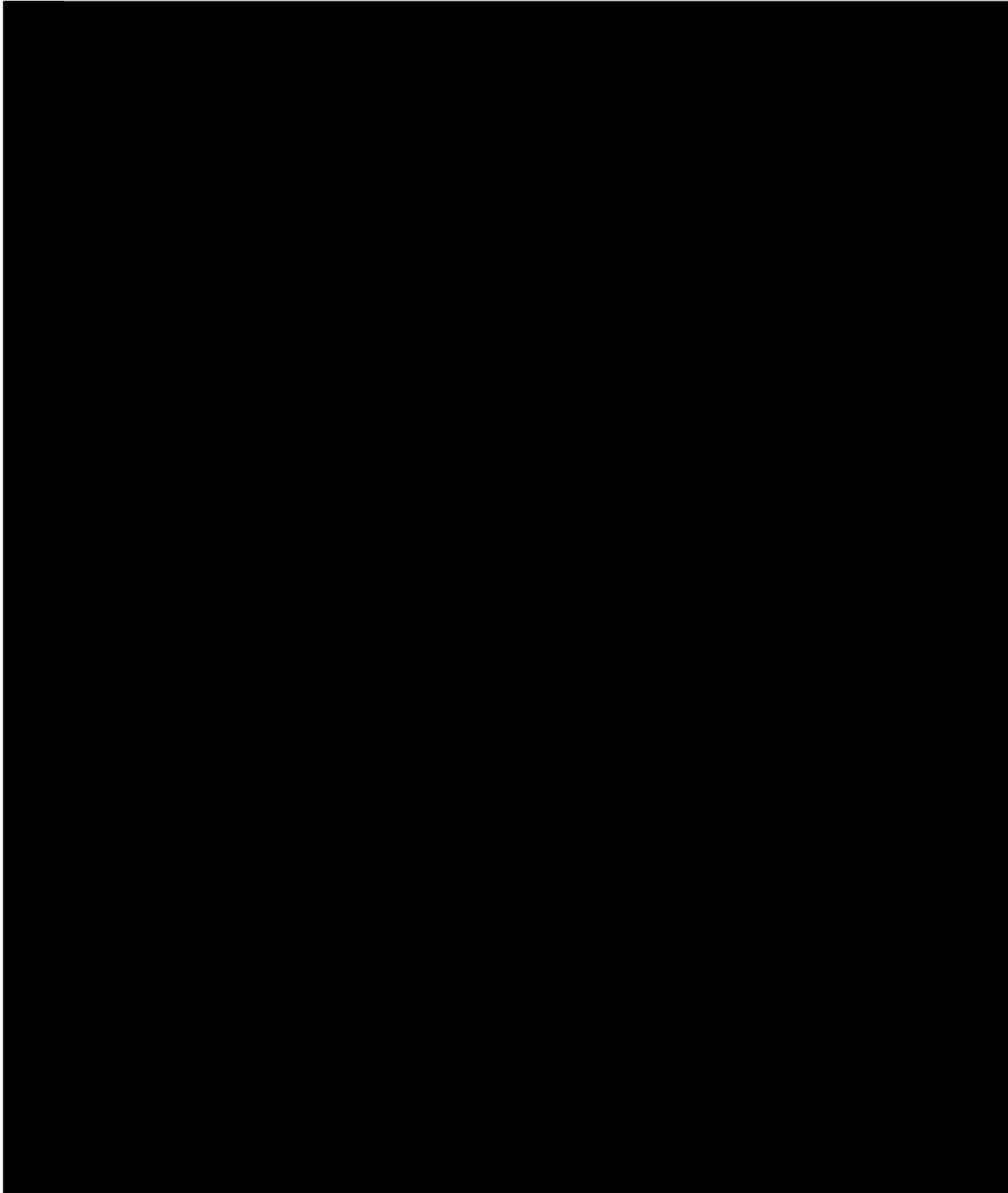
Update on financeability chapter

- Market bodies agreed on wording for principle (a) and (b).
- Market bodies enquired about how the concessional finance workstream in stage 3 will fit in with the financeability workstream.
 - The AEMC project team explained that the AER would consider how concessional financing is factored in when they are undertaking the assessment of whether to allow varied depreciation. In terms of how it directly relates to the principles, the project team doesn't consider concessional finance as conflicting with the principles but there may be

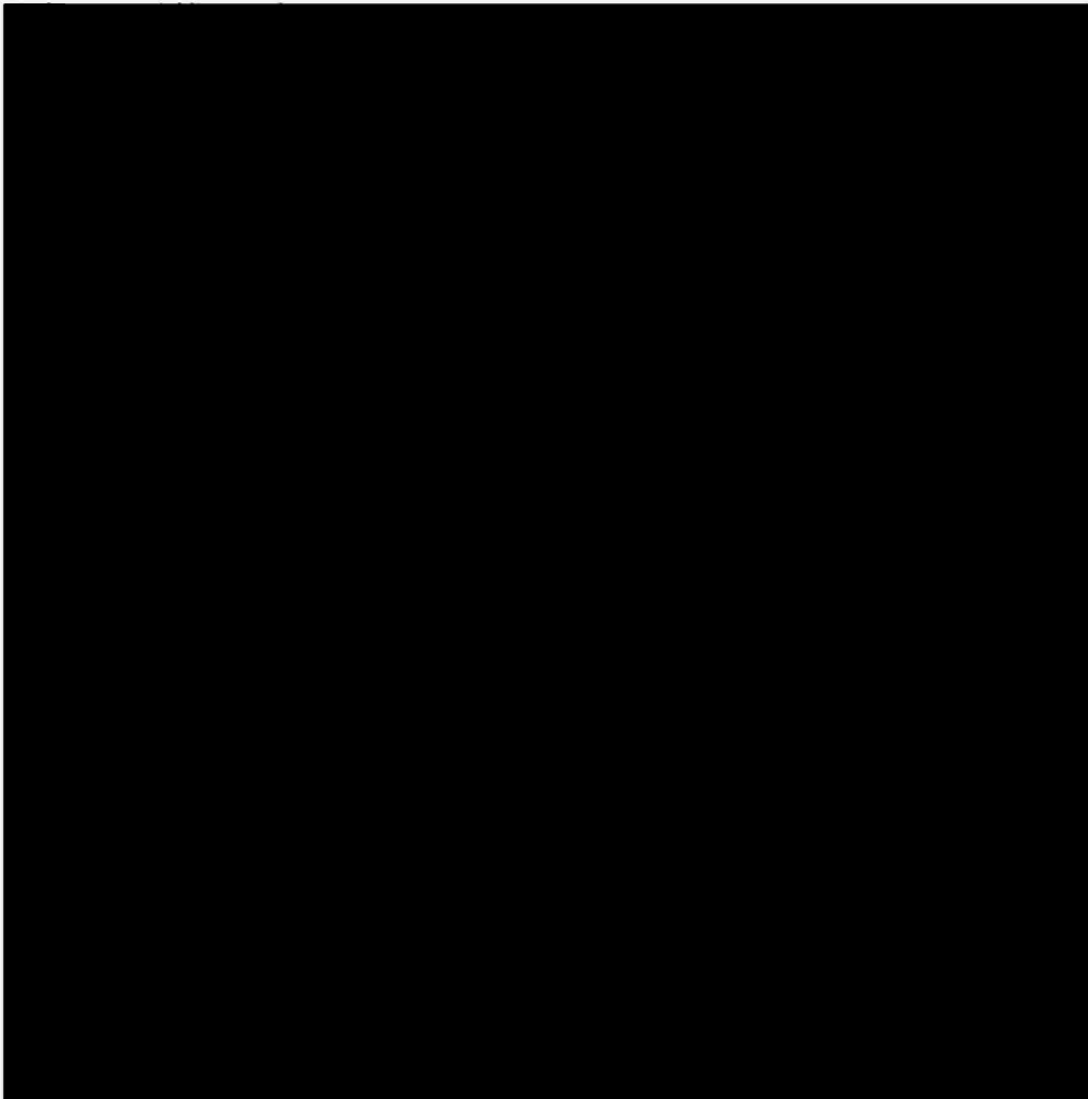
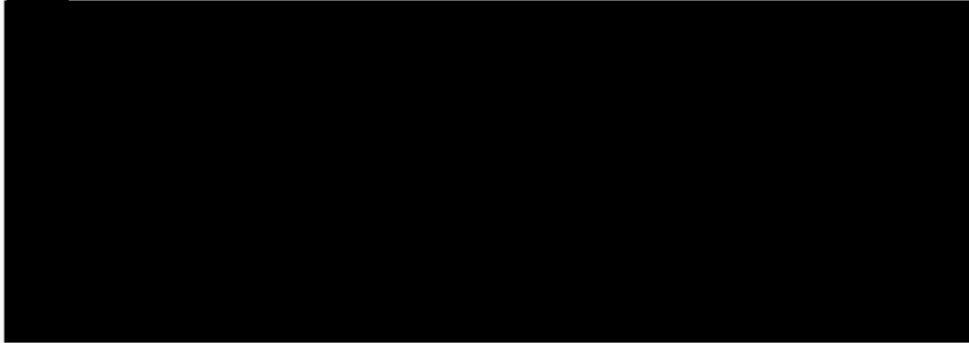
AEMC – Market Bodies Advisory Group – Meeting outcomes and actions – 27 September 2022

some implications on it. Principle (c) gives thought to broader range of factors, not just concessional financing.

- The project team outlined that they are thinking through the interlinkages carefully and that the concessional financing Rule change may be considered alongside any financeability Rule change.
- Market bodies suggested that the AEMC considers these two Rule changes in tandem as they impact each other and are both aiming to achieve similar outcomes.



AEMC – Market Bodies Advisory Group – Meeting outcomes and actions – 27 September 2022



AEMC – Market Bodies Advisory Group – Meeting outcomes and actions – 27 September 2022



5. Next steps

Milestone	Date
Public forum on stage 3 draft report	4 October 2022
Market Bodies Advisory Group meeting	20 October 2022
Publish TPIR stage 2 final report	27 October 2022

AEMC – Market Bodies Working Group – meeting 24# minutes – 18 August 2022

AEMC Transmission Planning and Investment Review
 Market Bodies Working Group (MBWG) meeting 24# – 18 August 2022
 Meeting minutes

1. Attendees

AER	AEMO	ESB	AEMC
<ul style="list-style-type: none"> • [REDACTED] (in part) • [REDACTED] (in part) 	<ul style="list-style-type: none"> • [REDACTED] 		<ul style="list-style-type: none"> • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED]

2. Agenda

1. Overview of preliminary policy positions for the stage 2 final report:
 - Financeability
 - Social licence
 - Planning activities
 - Feedback loop
2. Discuss the outcomes from the Energy Ministers’ Meeting (12/08/2022)
3. Next steps

3. Meeting actions and outcomes

No	Action	Action Owner	Status
1	[REDACTED]	[REDACTED]	In progress
2	[REDACTED]	[REDACTED]	In progress
3			
4			

4. Next steps

Action	Date

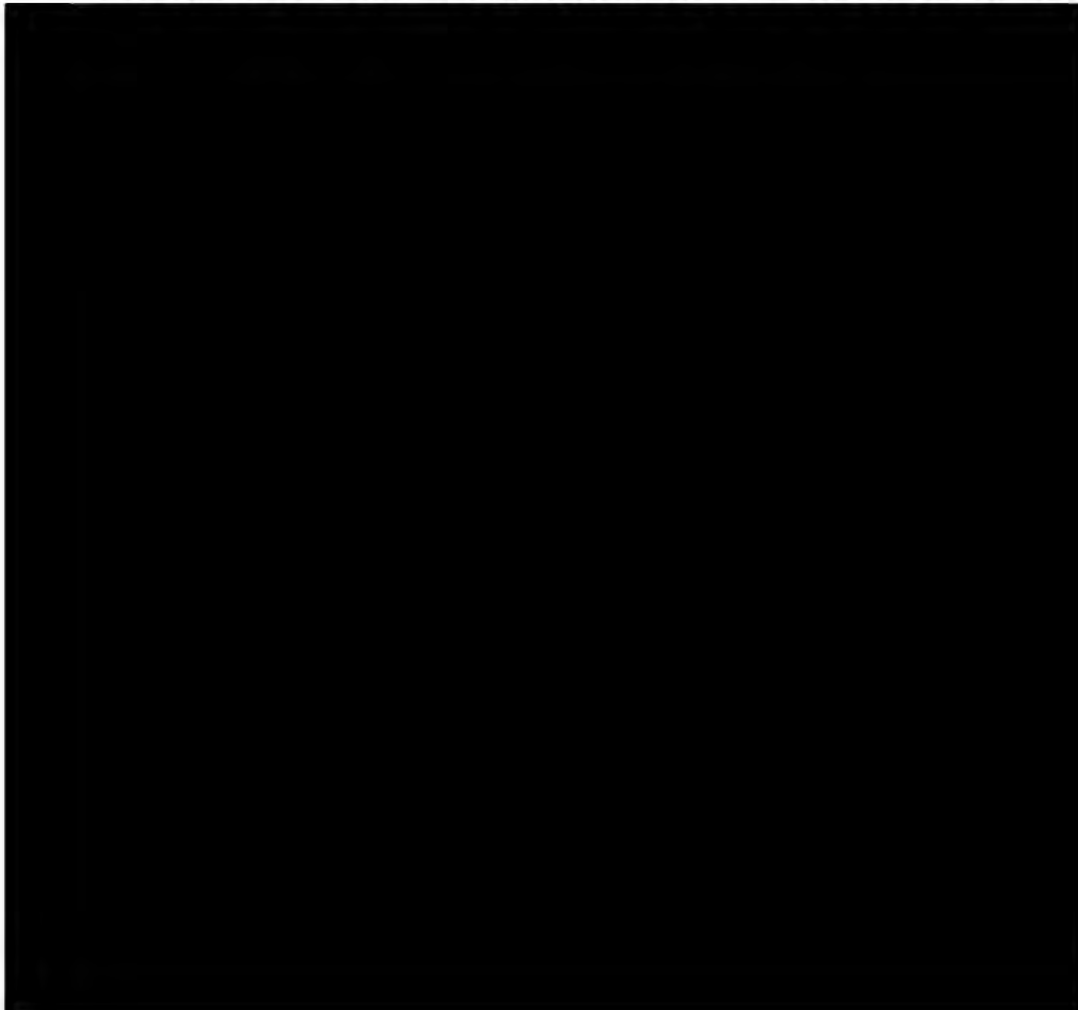
AEMC – Market Bodies Working Group – meeting 24# minutes – 18 August 2022

5. Meeting outcomes

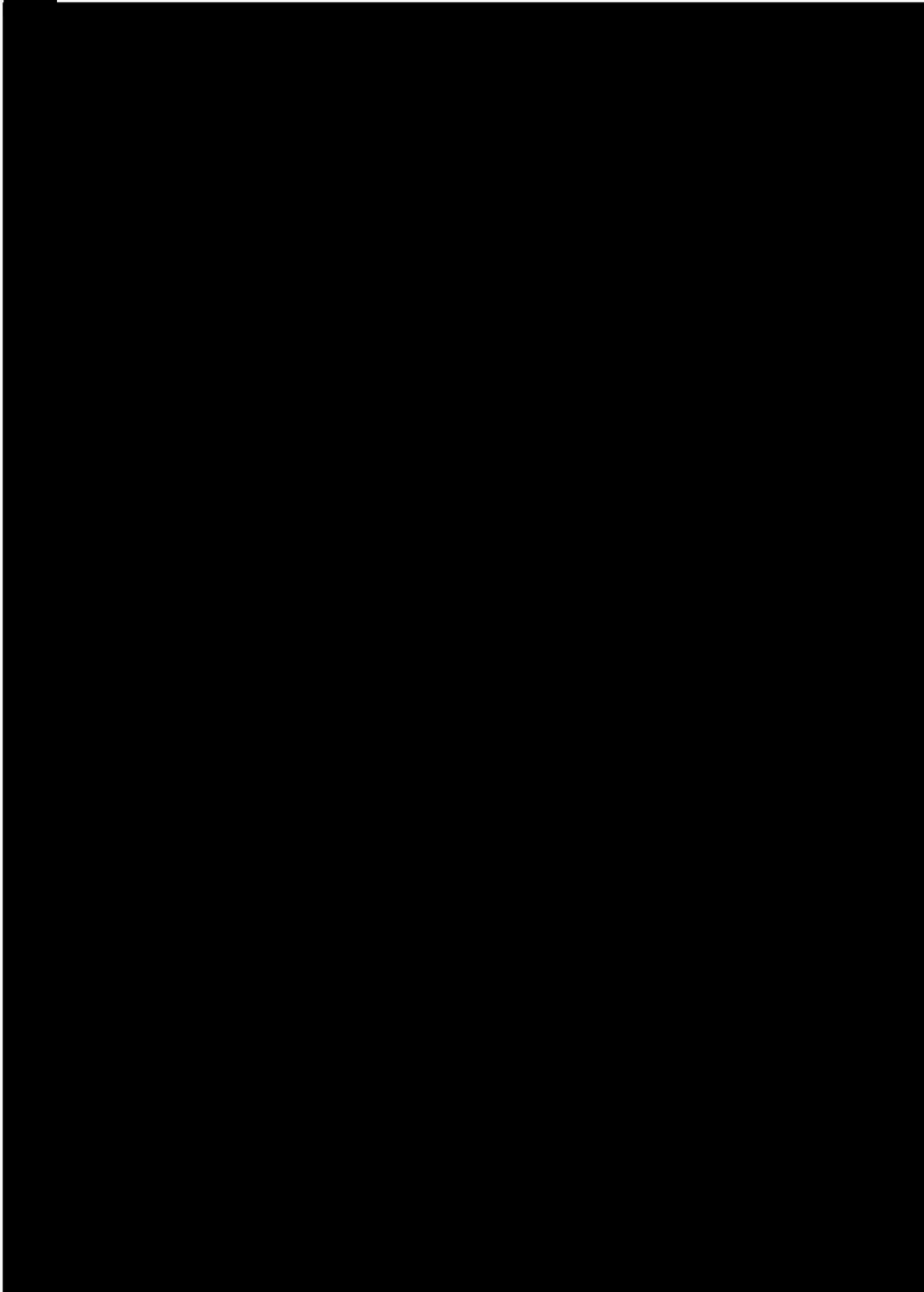
Financeability

Providing the AER with flexibility to assess whether financeability issues are arising:

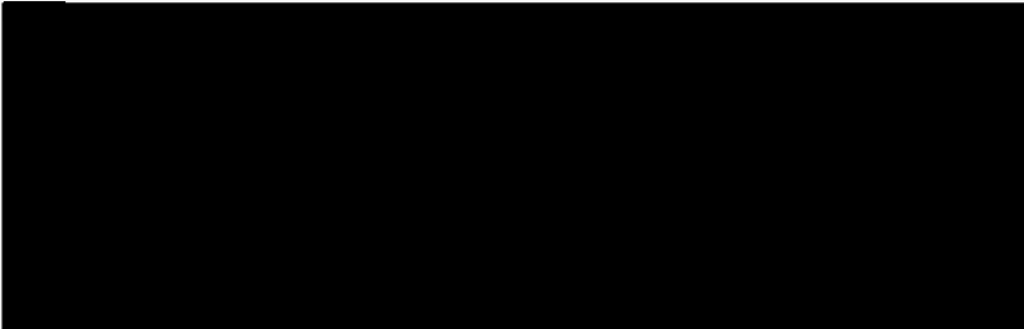
- The AEMC project team outlined the stakeholder feedback on the financeability draft report positions at a high level and noted overall support for this position by most stakeholders, with the exception of TransGrid. Preliminary policy positions for the final report were also outlined.



AEMC – Market Bodies Working Group – meeting 24# minutes – 18 August 2022



AEMC – Market Bodies Working Group – meeting 24# minutes – 18 August 2022



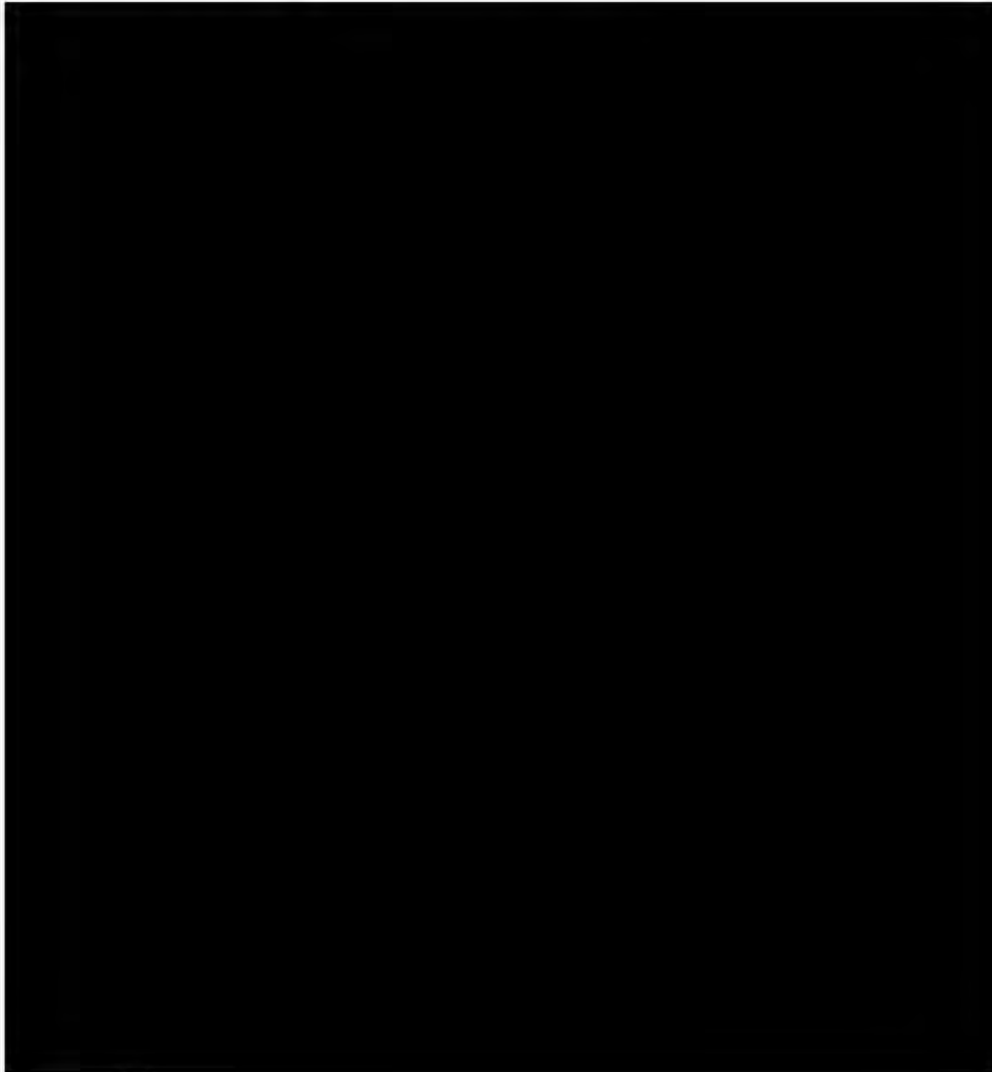
Update on stage 3

- The AEMC project team provided a brief update on the economic assessment process workstream, particularly that option 3 and 4 may be merged into one option as they are considered subsets on the same option.
- Concessional financing and progressing a delivery incentive on NSPs were also raised as being explored as part of stage 3.

From: [Victoria Mollard](#)
To: [REDACTED]
Subject: Notes from AEMO exec meeting
Date: Wednesday, 29 March 2023 11:16:24 AM

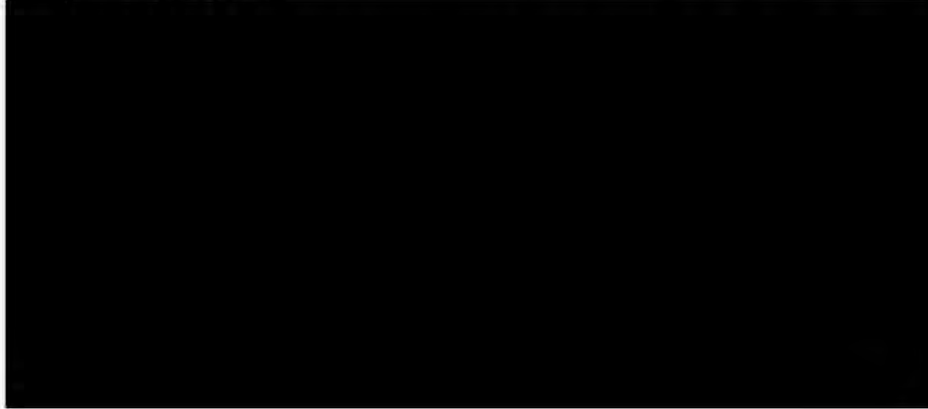
AEMC attendees: BB, MB, VM, DB

AEMO attendees: Merryn York, [REDACTED] Michael Gatt, Violette M



- TPIR:
 - Share draft chapters with market bodies – first chapters to market bodies today for red flag review; economic assessment will come later
 - Next steps – expecting soon rule changes on stage 2 recommendations
 - Stage 3 policy areas – 3 workstreams:
 - Economic assessment – component 1 – will publish draft rules for early planning works (DCCEW rule change expected)
 - Economic assessment – component 2 – form of RIT-T, shifted from making a recommendation on that to outlining what our vision is for future reform in this area [REDACTED]

- Will we package up stage 2 rule changes together or run as separate? Will run as separate



Victoria Mollard Executive General Manager
Australian Energy Market Commission
T +61 2 8296 7872
victoria.mollard@aemc.gov.au | www.aemc.gov.au

Assistant:  [@aemc.gov.au](mailto: [redacted]@aemc.gov.au)

The Australian Energy Market Commission office is located on land traditionally owned by the Gadigal people of the Eora nation.

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Friday, 22 September 2023

22/09/2023 5:18 pm

Greetings - apologies for the post-5pm special. May come back to you re. feedback loop based on meeting we had today with Transgrid who are not supportive at this point. Danielle thinks it may be worth some comms resource (Tier 2) given it's a Min Bowen rule change and given Transgrid's position.



22/09/2023 5:18 pm

Which project?

22/09/2023 5:19 pm

This is for the "improving the workability of the feedback loop" rule change.

Due to go to ELT next week for initiation.

22/09/2023 5:20 pm

Oh right. I thought you were talking about actual feedback loop.

Yes the Tier Three we discussed.

No worries.

22/09/2023 5:21 pm

Ah! Yes, there are many good jokes about the name of this project.

22/09/2023 5:21 pm

We can easily escalate to Tier Two if need be.

22/09/2023 5:21 pm

We think it might be wise based on meetings with ENA and Transgrid in the last 24hrs.

Monthly AEMC-DCCEEW network team catch up 3rd November 2022**Rough notes****Attendees:**

DCCEEW: [REDACTED]

AEMC: [REDACTED]

Organisational updates (AEMC, DCCEEW)

Restructuring in line with the Cth budget. Working out the best way to deliver the Commonwealth's program. A few more faces will be at this meeting. Will have a point team specifically on network reform, working on our issues. New org chart in 2-3 weeks, which they will share with us.

[Energy Minister's Meeting outcomes update](#) (DCCEEW lead)

[REDACTED]

New initiative – the Department is hosting a stakeholder “readout/discussion” in terms of outcomes of EMM. On this afternoon. Many industry players put their hands up to attend. Department will directly communicate with stakeholders.

[REDACTED]

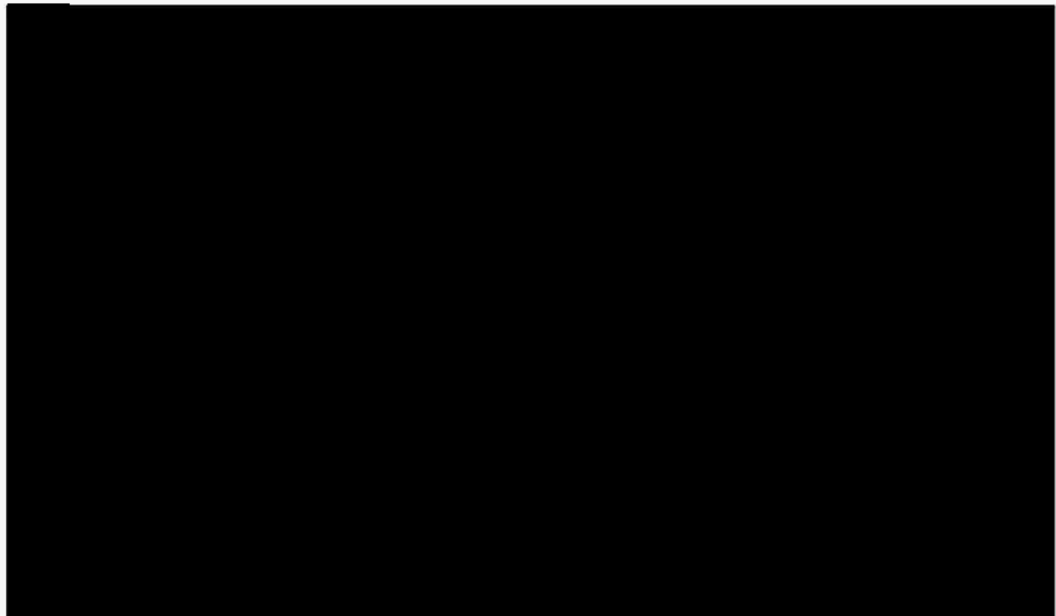
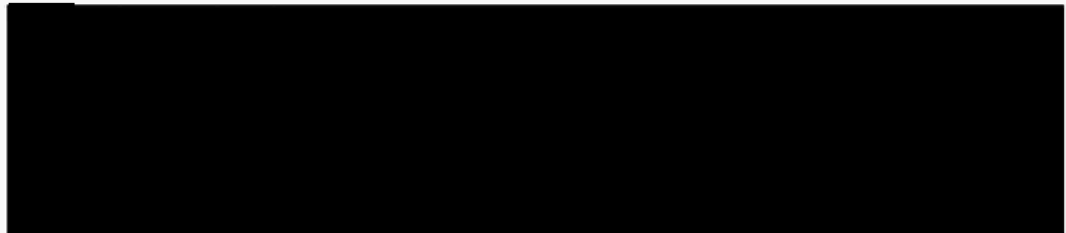
[REDACTED]



TPIR related rule changes

The Commonwealth is happy to take the lead on all the TPIR stage 2 rule changes. They think it might make more sense for them to pick them all up. DCCEEW has more capacity to do that work than others.

Social licence – this rule change won't take long to draft, as it largely draws on the TPIR stage 2 work. Can get to us when we want.



Notes from meeting with Transgrid 24/02/2023

- Provide us with an overview of the problem – ensure alignment – talk about design principles
- They anticipate they have time – think RTN will solve VNI and Humelink – so we don't need to reply on government funding
- Concerned about the AER discretion and investment certainty – concerned about putting the AER into a quasi-ratings agency role. Keen to push for certainty and
- [REDACTED] from Finance : Transgrid – current regulatory framework doesn't give the certainty of a commensurate return
- Equity is the highest form of risk capital – private investment will only be forthcoming if the regulatory framework gives them certainty – greenfield projects are not the same risk profile as bau projects
- Requires significant debt financing – if cash flows are insufficient to meet debt financing requirements
- Likely to see deferrals or delays
- [REDACTED] – overview of the design principles
- Principles:
 - Any rule change would apply only to actionable ISP projects – no implications for the RORI and no change to existing RAB assets or non ISP investment. Actionable ISP specific
 - These actionable ISP projects are in the long term benefits of consumers
 - In practice the final investment decision is at or before CPA 1 – not realistic for a TNSP to decide to not proceed with a project at the end of CPA 2. Too much reputational risk for a project to not proceed. Investors need to commit capital much earlier in the process.
 - That any solution needs to be objective test that investors can see prior to when investors make the FID – which would be prior to CPA 1. (unless investors have certainty around financeability at that stage they are being asked to invest capital without knowing whether an issue exists
 - This is from the perspective of investors – if they don't have clarity
- A precise formula based test – that will trigger a FA test.
- Objective – defined as a quantitative measure
- [REDACTED] it's a matter of discretion-
- The issue is a cashflow – any remedial action would be a NPV neutral depreciation adjustment
- AER would have a guideline – is that sufficient to provide the level of confidence that is needed?
- Timing issue – investors being asked to make an “irrevocable decision”
- [REDACTED] = steps to whether it is a problem – then what you would do about that problem.
- Transgrid – asking about level of formulaic approach versus a more qualitative approach. But they assert that there are other factors to consider.
- Emphasising the benchmark basis – not looking at the feature of a specific business
-

29 8 2023

Doesnt need to put itself in the shoes of the lender

Experience in the application

More specificity

Flexibility to get to the outcome

Project v RAB

Already behind due to other large scale project

→ Bottom of range v top range metrics

→ Hurdle 2

→ Timmy at CPA2

→ Financeability

- Repurchase

- Cost of debt

From: [REDACTED]
Sent: Tuesday, February 14, 2023 12:20 PM
To: [REDACTED]
CC: [REDACTED]
Subject: Financeability and Social Licence Rule Change Requests [SEC=OFFICIAL]
Attachments: DCCEEW - Financeability rule change request - for comment - February 2023.docx; DCCEEW - Social licence rule change request - for comment - February 2023.docx

Hi [REDACTED],

Please find attached the final drafts of the 'Financeability' and 'Social Licence' rule change requests that were circulated to all jurisdictions for comment on Friday 10 February 2023.

As noted previously, both rule change requests reflect the final recommendations of the TPIR Stage 2 final report.

If you have any additional comments on the two rule change requests, it would be much appreciated if you could please respond with comments by **24 February 2023**.

We are also happy to meet and discuss any comments.

Kind regards,

[REDACTED]

[REDACTED]

A/g Senior Policy Officer

Electricity Division | Networks Reforms and Projects |

Gadigal Nation, L18 201 Sussex Street, Sydney 2000

Department of Climate Change, Energy, the Environment and Water

P [REDACTED] | E [REDACTED]@industry.gov.au

DCCEEW.gov.au ABN 63 573 932 849

Acknowledgement of Country

Our department recognises the First Peoples of this nation and their ongoing connection to culture and country. We acknowledge First Nations Peoples as the Traditional Owners, Custodians and Lore Keepers of the world's oldest living culture and pay respects to their Elders past, present and emerging

OFFICIAL



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Rule Change Proposal

Treatment of financeability for Transmission Network Service
Providers

January 2023

OFFICIAL

OFFICIAL

1. Request to make a Rule

1.1. Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

2. Relevant background

2.1. Energy Ministers Meeting

On 28 October 2022, Energy Ministers agreed that the Commonwealth submit a rule change request to the Australian Energy Market Commission (AEMC) seeking to mitigate the foreseeable risk that financeability concerns may arise for Integrated System Plan (ISP) projects.

2.2. AEMC Transmission Planning and Investment Review

The AEMC established the Transmission Planning and Investment Review (the Review) to ensure that the regulatory framework can support the timely and efficient delivery of major transmission projects, while ensuring investments in these projects are in the long-term interests of consumers.

On 27 October 2022, the AEMC published the Review's Stage 2 Final Report. This Report focused on developing recommendations to manage uncertainty in the near-term. A recommendation in the Stage 2 final report was to address foreseeable financeability issues.

The Commonwealth agrees with the AEMC's final position outlined in Stage 2 of the Review and considers that changing a Transmission Network Service Provider's (TNSP) cash flow profile through a net present value (NPV) neutral adjustment to depreciation is an appropriate solution to address financeability issues, should they arise.

2.3. Alleviating financeability concerns

Prior to the proposal of this reform, TNSPs have sought alternative methods to address their financeability concerns, such as sourcing appropriate financing from the Commonwealth, including through the Rewiring the Nation program.

Following the implementation of this proposed rule change, the Commonwealth expects the Australian Energy Regulator's (AER) ability to vary depreciation profiles to be the primary mechanism that TNSPs will need to pursue to address any financeability concerns they may have.

3. Statement of Issue

3.1. There is a risk that financeability challenges could arise in relation to actionable ISP projects

This rule change request seeks to introduce greater flexibility in the revenue-setting framework for actionable ISP projects within the National Electricity Rules (NER), to address the risk of financeability issues that may be faced by TNSPs.

Financeability refers to the ability of TNSPs to efficiently raise capital to finance their activities. The AEMC in the Stage 2 Final Report of the Review noted that financeability concerns for a

TNSP may arise from the way that cash flow is impacted by major investments.¹ Successive ISP iterations will likely see major transmission works brought forward and/or delivered concurrently in a way that creates a risk of financeability issues arising.

As noted in the Review, when a network business invests in a project, it starts receiving a return on the investment based on a forecast capital expenditure.² The network business also starts receiving a return on the investment (depreciation), from consumers, when the investment is commissioned.

- The total allowed revenue from this 'depreciation' is determined by the depreciation profile of assets (typically a straight-line basis), and an adjustment for inflation indexation.

Dependent on the financing and capital structures that have been adopted by the TNSP, the businesses cash flow profile may not match its financing requirements.

This has the potential to have short-term negative impacts on some of the financial metrics that are used to assess the creditworthiness of a business. The ratio of funds from operations (FFO) to net debt (or FFO/net debt) is one such metric.

In the ordinary course of investment, new transmission assets (or augmentations) would be unlikely to have significant impact on these financial metrics as TNSP's Regulatory Asset Bases (RAB) have a diversity of assets with different durations to expiry.

Typically, a TNSP could absorb large one-off investments with appropriate changes to its capital structure without adverse impact to financial metrics. Shareholders supporting cashflows through contributing equity in early years and receiving higher cash flows in later years is one example of this. In practice however, TNSP's will likely be constrained from adapting their capital structures to finance the size and scale of sequential ISP projects.

Given that successive ISPs could see major transmission works moved forward or delivered concurrently, there is a risk financeability issues will arise for TNSPs; placing pressure on cash-flows and by extension credit metrics.

The Review found that this risk was material where successive ISPs result in a large amount of new investment for a TNSP relative to its existing RAB.

The Commonwealth agrees that the existing revenue framework is not sufficiently flexible to address the financeability challenges. While the AER has some flexibility under current arrangements to adjust the profile of regulatory allowances:

- Further clarity is required on how the AER should assess and, if necessary, adjust depreciation profiles for ISP projects to address cash flow concerns.
- Changing a TNSP's cash flow profile through a net present value neutral adjustment to depreciation is an appropriate solution to address the issue.
- The AER should be given flexibility to address the risk of financeability challenges on a case-by-case basis, having regard to a set of principles specified in the NER.

¹ Australian Energy Market Commission, Transmission Planning and Investment Review Stage 2 final report, Sydney, 27 October 2022, p. 8.

² Australian Energy Market Commission, Transmission Planning and Investment Review Stage 2 final report, Sydney, 27 October 2022, p. 8.

4. Description of the proposed rule

The proposed financeability rule would amend the NER to implement the rule change recommendations contained in the Review's Stage 2 Final Report, dated 27 October 2022. The proposed amendments, which were prepared by the AEMC and accompanied the Stage 2 Final Report, are attached to this request.

The Commonwealth proposes:

- The AER should have explicit discretion to vary the depreciation profile for an actionable ISP project on a case-by-case basis following a request for amendment from a TNSP.
 - This is to support the capacity of TNSPs to finance efficient capital expenditure associated with such major projects. It is proposed that a TNSP can make an application to amend the depreciation profile for a specific project, no earlier than six months prior to either contingent project application (CPA) 1 or CPA 2 and no later than four months prior to CPA1 or CPA2 lodgement.
- The rules should include a set of principles to guide the AER in determining whether or not to amend the depreciation profile for a specific actionable ISP project.

The proposed amendments would promote the timely and efficient delivery of ISP projects by introducing greater flexibility into the revenue-setting framework mitigating the foreseeable risk of financeability for TNSPs.

This rule change request seeks to implement these recommendations.

4.1. AER explicit discretion to vary the depreciation profile

The AER should have more flexibility to vary the depreciation profile for actionable ISP projects if financeability issues arise. The majority of stakeholders engaged in the Review supported varying depreciation as the appropriate solution to these challenges.

The review concluded:

"...it is important to ensure that the AER has sufficient flexibility to address the risk of financeability challenges on a case-by-case basis, including the ability to shape cash flows for specific projects in a manner that is appropriate to compensate a business for its efficient costs over time, as well as incentivise timely and efficient new transmission investment. Further, the Commission considers it is important that the overall regulatory framework is flexible enough to address financeability issues if they arise, regardless of whether concessional financing is available or not."³

This rule change request and proposed draft rule seeks to:

- Allow the TNSP to make an initial request to the AER to develop and publish an issues paper that provides an indication of the AER's thinking on the proposed depreciation change, prior to submitting a request to approve that an asset is depreciated. The request would be made between 6 to 4 months before submission of the CPA, and the issues paper would be published within 2 months of receiving the request (unless the AER requires additional

³ Australian Energy Market Commission, *Transmission Planning and Investment Review Stage 2 final report*, Sydney, 27 October 2022, p. 10.

information from the TNSP, in which case the time limit would be extended by the period of time it takes the TNSP to provide the additional information) (proposed cl 6A.6.3(h)-(l)).

- Allow the TNSP for an actionable ISP project to request the AER to vary the depreciation profile for the project. The request for the AER to vary the depreciation profile for the project would be made when the TNSP submits the CPA (proposed cl 6A.6.3(d) and (e)).
- Insert a set of principles to guide the AER's approach when considering such requests (proposed cl 6A.6.3(f)), in particular, by requiring the AER to have regard to:
 - the relative consumer benefits from the provision of network services over time
 - the capacity of the TNSP to efficiently finance its overall regulatory asset base including efficient capital expenditure
 - any other factors the AER considers relevant.
- Empower the AER to prepare guidelines relating to the making and determination of such requests (proposed cl 6A.6.3(g))
- Require a revenue proposal to include the TNSP's nominated depreciation schedules and information about whether the relevant assets form part of an actionable ISP project (proposed amendments to cl 6A.1.3(7)).
- Insert relevant definitions into Ch 10 of the NER.

4.2. The AER's approach to assessing requests to vary depreciation should be guided by a set of principles in the rules

This rule change request and associated proposed rule seek amendments to the NER to insert a set of principles to guide the AER in developing its approach and assessing requests to amend depreciation in relation to specific actionable ISP projects (proposed cl 6A.6.3(f)). The three principles the AER must be required to have regard to in determining if to vary depreciation are:

Principle 1: The relative consumer benefits (having regard to the reliability and price risk associated with transmission delivery delays) from the provision of network services over time (the inter-generational equity principle).

Principle 2: The capacity of the TNSP to efficiently finance its overall RAB, including efficient capital expenditure (which focuses on the capacity to finance a project at the network business level, rather than at the project level).

Principle 3: Any other factors the AER considers relevant, having regard to Principles 1 and 2.

The proposed NER amendments also seek to allow the AER to develop guidelines relating to the making and the determination of such request including;

- the approach the AER proposes to use
- the information the AER requires for the purpose of that determination and
- the information the AER requires for developing and publishing the issues paper (proposed cl 6A.6.3(g)) for which the TNSP must have regard to when making the request for varied depreciation for an actionable ISP project.

4.2.1 Principle 1

Principle 1: *The relative consumer benefits (having regard to the reliability and price risk associated with transmission delivery delays) from the provision of network services over time (the inter-generational equity principle).*

Principle 1 requires the AER to consider whether the impact of varying depreciation on the benefits/costs borne by present and future customers is appropriate. If variations are made to depreciation by accelerating depreciation in the early years of an investment, and slowing it down in later years, the intergenerational impact on customers must be considered.

The Commonwealth agrees with the Review's conclusion that:⁴

“...the appropriate way of assessing inter-generational equity trade-offs is from the perspective of overall consumer benefits. A shift in depreciation will be net present value neutral from the perspective of the TNSP. This means that consumers overall will pay the same over the life of the asset. Near-term consumers will pay a larger share than later consumers, but in [sic] this in turn allows the project to proceed. If shifting of the depreciation profile allows the project to proceed in a timely manner then [the] these [sic] consumer benefits from the delivery of the project can be unlocked. We expect the AER will have regard to this perspective when assessing requests to amend depreciation profiles.”

4.2.2 Principle 2

Principle 2: *The capacity of the TNSP to efficiently finance its overall RAB, including efficient capital expenditure (which focuses on the capacity to finance a project at the network business level, rather than at the project level).*

Principle 2 requires the AER to have regard to the network business as a whole (the regulated network service provider), rather than individual projects, when assessing whether to vary the depreciation profile for an actionable ISP project. This is in line with the AER's requirements to have regard to the network business as a whole when setting the revenue TNSPs can recover from their customers.⁵

The Review notes that the core parts of the regulatory framework reflect this focus of economic assessment, such as the allowed rate of return, at a network business level. For example, the allowed rate of return is set for regulated network service providers and not individual projects.⁶ The revenue and pricing principles also make it clear that it is the “regulated network service provider” that “should be provided with a reasonable opportunity to recover at least efficient costs”.⁷

As stated in the Review:⁸

“The Commission considers that ... adopting specific metrics as the sole measure of businesses' financeability may not be appropriate. Moody's and other credit rating agencies combine an assessment of both qualitative and quantitative metrics to arrive at an overall

⁴ Australian Energy Market Commission, Transmission Planning and Investment Review Stage 2 final report, Sydney, 27 October 2022, p. 10.

⁵ NER clause 6A.1.1

⁶ AER (2018), Rate of Return instrument

⁷ Clause 7A(2) of the NEL.

⁸ Australian Energy Market Commission, Transmission Planning and Investment Review Stage 2 final report, Sydney, 27 October 2022, p. 13.

rating. For example, while FFO/Net Debt is a key factor considered by Moody's, it is not appropriate for assessment of financeability to rely so strongly on a single metric. Such an approach would also present the key issue of how an appropriate threshold for this credit metric should be determined. Further, there are a range of company-specific factors that contribute to credit ratings and credit metric thresholds, such as how a company has structured their balance sheet, [the company policy of target credit rating] and the risks associated with non-regulated revenues. These factors may lead to a narrowly defined approach to assessing financeability producing unintended consequences.

A more targeted approach to considering financeability, only where this is raised by a business with respect to a specific actionable ISP project, would be more appropriate given the issue is likely only to arise in limited circumstances.

The Commission considers it appropriate that the AER will consider the capacity to finance the ISP investment at the network business level and not at the project level. As part of this assessment, consideration should also be given to how an investment in a particular project may impact the overall position of the business (including in relation to financial metrics) and where the TNSP will sit after the inclusion of the project."

4.2.3 Principle 3

Principle 3: *Any other factors the AER considers relevant, having regard to Principles 1 and 2.*

Principle 3 aids the intent that the regulatory framework has a proportionate and flexible mechanism for addressing financeability concerns if they arise. Sufficient flexibility can be achieved by providing the AER with an appropriate level of discretion to incorporate other relevant factors into its assessment of a request to accelerate depreciation.

Principle 3 will enable the AER to factor in a broader range of factors that may impact its assessment or decision for a particular project, such as emissions reduction targets if included in the National Energy Objective (NEO). This is necessary, given that Principles 1 and 2 are not exhaustive.

5. How the proposed rule will address the issue

Including flexibility within the revenue setting framework to address the risk that financeability challenges may occur will assist in actionable ISP projects progressing in a timely manner, as they will aid in allowing TNSPs to effectively finance the projects.

These recommendations will assist in alleviating financeability concerns in the near-term as:

- The AER will be able to make decisions to vary depreciation profiles based on the depreciation principles in the NER as soon as the rule is made. The new rule can subsequently be supplemented with more detailed information in guidelines.
- TNSPs will be able to submit a request for accelerated depreciation prior to the CPA stage to facilitate investment certainty.

The amendments outlined above will help to ensure timely investment decisions to enable critical transmission infrastructure to be delivered on time.

6. How the proposed rule will or is likely to contribute to the achievement of the National Electricity Objective

The NEO, as set out in section 7 of the National Electricity Law, is:

“to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.”

The relevant aspect of the NEO, with respect to this rule change request, is the promotion of efficient investment in electricity services for the long-term interests of consumers of electricity with respect to price, quality, safety, reliability and security of the supply of electricity.

Timely and efficient investment in actionable ISP projects is required to ensure reliability and security of the supply of electricity, and to reduce adverse impacts on price as the electricity system transitions to net zero.

The proposed amendments advance the NEO in the following ways:

- Empowering the AER to vary the depreciation profile for actionable ISP projects is a flexible solution that addresses financeability challenges that may arise in the future.
 - Making the power explicit provides certainty for TNSPs as to how future financeability issues will be addressed.
 - Allowing the AER to exercise the power on a case-by-case basis enables the AER to shape cash flows for specific projects in a manner that is appropriate to compensate a business for its efficient costs over time, as well as incentivise timely and efficient new transmission investment.
- Inserting a set of principles that the AER must have regard to when exercising the power:
 - Provides certainty for TNSPs, by providing them with better information to develop their project plans and funding arrangements ahead of the AER’s decision.
 - Enables the reform to be implemented more rapidly (than if the AER were first required to formulate guidance about how it will exercise the power).
- Principle 1 acts as a consumer protection, by requiring the AER to consider the inter-generational equity of a depreciation change, by balancing the increased costs borne by near-term consumers with the benefits of projects proceeding in a timely manner.
- Principle 2 promotes economic efficiency by providing TNSPs with a reasonable opportunity to recover at least their efficient costs, and is consistent with the regulatory approach to setting revenues.
- Principle 3 promotes flexibility and enables relevant issues that may arise in the future to be considered.
- Introducing the ability for a TNSP to submit an initial (pre-CPA) request to the AER to develop an issues paper dealing with the depreciation change promotes economic efficiency, by providing TNSPs with information to make efficient and timely investment decisions. It also provides transparency around the AER’s decision-making.

7. Expected costs, benefits and impacts of the proposed rule

7.1. Expected benefits

The proposed financeability amendments provide a flexible solution to address potential future financeability issues that could threaten the timely delivery of major transmission projects.

These amendments assist in placing downward pressure on electricity prices by better ensuring the timely delivery of transmission infrastructure for consumers.

7.2. Expected costs

Varying depreciation profiles for specific actionable ISP projects will not increase the total costs borne by consumers over the life of an asset. If the variation results in an acceleration of depreciation it could shift more of the burden to near-term consumers. However, the principles would require this to be balanced against the benefits of timely delivery of major projects and the corresponding impact on price, reliability and security.

There will be administrative and compliance costs associated with the proposed rule, these are not expected to be material. The proposed rule would only require an assessment if requested by the TNSP, not for every actionable ISP project which reduces administrative burden for the AER, TNSPs and consumers.

7.3. Impacts of the change on those likely to be affected.

The intent of this rule change request is to introduce greater flexibility in the revenue setting framework to enable the AER to address the risk of financeability challenges for actionable ISP projects and improve the timelines of investment decisions for these projects.

The timely investment in and delivery of actionable ISP projects is key in the transition to net zero.

TNSPs will be impacted by:

- Being able to apply to receive an adjusted depreciation profile for actionable ISP projects through the life of an asset to finance efficient capital expenditure associated with such major projects
- The AER's assessment of their need for a change in the depreciation profile of an actionable ISP project
- The requirement to develop a request to the AER to develop and publish an issues paper that provides an indication of the AER's thinking on the proposed depreciation change.

Consumers will be impacted by:

- The shifting costs over the life of an asset which could increase the burden to near-term consumers, however, the principles in the rules will require the AER to explicitly consider whether more timely investment decisions offset this cost shifting.
- Minimising bill costs by ensuring the timely delivery of transmission infrastructure by reducing barriers to TNSPs investment decisions.

The reform will also impact the AER through:

- Requirements to follow the principles for assessment outlined in the NER.

- Conducting analysis to vary the depreciation profile for an actionable ISP project on a case-by-case basis.
- The development of guidelines.

DRAFT



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Rule Change Proposal

Social licence rule change request

January 2023

OFFICIAL

OFFICIAL

1. Request to make a Rule

1.1. Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

2. Relevant background

2.1. Energy Ministers Meeting

On 28 October 2022, Energy Ministers noted that the Australian Energy Market Commission (AEMC) was investigating options regarding a potential proponent for the social licence rule change request.

Following discussions between the Commonwealth and AEMC, it was determined that the Commonwealth would submit a rule change request and associated draft rule to implement the AEMC's recommended social licence reforms.

The Commonwealth considers this rule change request to be non-controversial.

2.2. AEMC Transmission Planning and Investment Review

On 27 October 2022, the AEMC published the Stage 2 Final Report of the Transmission Planning and Investment Review (the Review). Stage 2 of the Review focused on near term solutions and reducing uncertainty, including recommendations to provide greater clarity around social licence outcomes in the national framework.

The AEMC established the Review to consider how to ensure that the regulatory framework supports the timely and efficient delivery of major transmission projects, while ensuring investment in these projects are in the long-term interests of consumers.

2.3. Social licence jurisdictional working group

The 'social licence jurisdictional working group' is comprised of jurisdictional governments and other key bodies, including the Australian Energy Infrastructure Commissioner (AEIC). It is currently working through its 2023 forward agenda.

The working group exists to assist in the work to identify key issues and promote best practice social licence principles. Enacting these principles will support Transmission Network Service Providers (TNSPs) and communities to establish mutually beneficial relationships to enable the delivery of critical major transmission projects in a way that is equitable and just.

3. Statement of Issue

3.1. Clarifying expectations around Transmission Network Service Providers engagement with local communities and other stakeholders affected by major transmission projects would assist in obtaining and maintaining social licence

Social licence, for these purposes, refers to the activities undertaken by TNSPs to build and maintain broad community acceptance of the development and operation of, major

transmission projects. Obtaining and maintaining social licence is critical to the timely and efficient delivery of major transmission projects.

This rule change request seeks to improve social licence outcomes by expanding the definitions of 'preparatory activities' and 'interested party' in the National Electricity Rules (NER) to include local communities and other stakeholders affected by major transmission projects. It is also seeking to enshrine a set of minimum community engagement expectations in the NER for which TNSPs must comply.

The NER provides for many opportunities for stakeholders to engage in the planning stages of transmission projects, though it is unclear where in the process TNSP led engagement and consultation with local communities is most valuable.

Ineffective community engagement by TNSPs can result in failure to obtain a 'social licence', risking timely and efficient delivery of transmission projects. Effective engagement ensures issues around transmission route selection are identified and managed early before key decisions are made, and that more accurate costs are reflected in the overall cost assessment of a project. Currently, there are inconsistencies in the NER in relation to requirements for TNSPs to engage with local communities and other affected stakeholders at key points in the planning process for major transmission projects.

The Review, acknowledged that:

- TNSPs, local communities and other stakeholders affected by major transmission projects are critical partners in the delivery of those projects.
- Building and maintaining trust between stakeholders is critical if TNSPs are to deliver projects efficiently and on time.

'Local communities and other stakeholders affected by a major transmission project' include; local councils, local community members and other relevant community stakeholders wishing to express their views about the development of a major transmission project.

The Review also recognised that:

- The NER provides many opportunities for community stakeholders to engage in the planning and regulatory processes but does not explicitly recognise the value of early engagement with these stakeholders in the national planning process for major projects, other than for Renewable Energy Zones (REZs).
- There is misalignment in and between the NER and the Australian Energy Regulator's (AER) various guidelines regarding whether and when TNSPs should engage with stakeholders.

The Review recommended that the NER be amended to ensure that expectations on TNSPs to engage and consult local communities and other affected stakeholders at key points in the planning process are consistent and clear for all major transmission projects.

4. Description of the proposed rule

This rule change requests seeks to amend the NER to implement the rule change recommendations contained in the Review's Stage 2 Final Report. The proposed amendments, which were prepared by the AEMC and accompanied the Stage 2 Final Report, are attached to this request.

The proposed amendments will promote the timely and efficient delivery of Integrated System Plan (ISP) projects by ensuring the expectations for TNSPs to engage and consult local communities and other affected stakeholders at key points in the planning process are clear and consistent for all ISP projects.

The proposed amendments will:

- Expand the definition of ‘preparatory activities’ to include engagement and consultation with local councils, local community members, members of the public and any other relevant stakeholders wishing to express their views (proposed cl 5.10.2(e)).
- Expand the definition of ‘interested party’ as it applies to the existing RIT-T consultation procedures for actionable ISP projects to include local councils, local community members, members of the public and any other relevant stakeholders wishing to express their views about the development of the project (proposed cl 5.15.1(b)).
- Require TNSPs to comply with a set of ‘community engagement expectations’ (that are comparable to the existing expectations placed on jurisdictional planning bodies for REZs) when preparing a RIT-T for an actionable ISP project and engaging with local communities and other stakeholders as part of preparatory activities for future and actionable ISP projects (proposed cl 5.10.2, cl 5.16A.4(r), 5.24.1(e)).

The proposed amendments will provide clarity and certainty around engagement expectations for these parties and will remove misalignment in and between the NER and the AER’s various guidelines around engagement with this cohort of stakeholders.

5. How the proposed rule will address the issue

The proposed rule amendments will clarify the expectations on TNSPs to engage with and consult local communities at key points in the planning process for major transmission projects, which is likely to improve social licence outcomes for these projects.

The proposed rule aims to help address issues where communities believe a major transmission project will cause disruption or other negative impacts, by ensuring the NER provides sufficient guidance and clarity on the information provisions and level of engagement required by TNSPs to build and maintain social licence.

The proposed rule change will set clearer expectations for TNSPs and communities, and require TNSP’s to better articulate the benefits and costs for major transmission project construction to these critical parties.

6. How the proposed rule will or is likely to contribute to the achievement of the National Electricity Objective

The National Electricity Objective (NEO), as set out in section 7 of the National Electricity Law, is:

“to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.”

The relevant aspect of the NEO for present purposes is the promotion of efficient investment in, electricity services for the long term interests of consumers of electricity with respect to price, quality, safety, reliability and security of the supply of electricity.

The proposed social licence amendments advance the NEO through supporting efficient and robust decision-making for all parties. Decision-making will be improved through the provision of clear guidance and increased transparency as to when engagement with local communities will occur, and who will be consulted.

The clear guidance on social licence activities in the NER will help to support the efficient and timely delivery of major transmission projects. This will, alongside additional guidance from the AER, increase transparency for affected parties. An aim of the additional guidance is to reduce uncertainty for local communities and other affected stakeholders with regards to expectations for ongoing engagement and when first contact will be made by TNSPs. Making social licence activities consistent for all major transmission projects:

- removes confusion around engagement expectations for the TNSPs, the AER, local communities, and other affected stakeholders
- supports efficient decision-making by TNSPs
- improves regulatory certainty.

7. Expected costs, benefits and impacts of the proposed rule

7.1. Expected benefits

Greater clarity on the requirements for social licence activities are likely to assist TNSPs in earning the trust of communities by providing clearer cases for major transmission projects and clearly articulating the benefits. Community acceptance of the project will put TNSPs in a stronger position to deliver major transmission projects on time and within budget.

Increased engagement with communities and enhanced community trust may also provide TNSPs with more flexibility to innovate, and improve the identification and management of project risks, creating benefits for all stakeholders.

As noted in the Review:

“Meaningful, early, high quality engagement with local communities and other stakeholders has several benefits including:

- Improves stakeholder and community understanding of the costs and risks of a major transmission project[s].
- Facilitates understanding of any community concerns, including around route selection by affected stakeholders, which can inform the identification and management of risk.
- Provides opportunities to identify and assess whether project options (including credible options for assessment in the RIT-T) are likely to be able to be delivered in time to meet the need, particularly where there are community concerns.
- Provides opportunities for the preferred option to be designed with the benefit of local community input.
- Provides TNSPs with opportunities to address or manage concerns raised and demonstrate to communities how it has taken their concerns and feedback into account.”

In addition, the proposed rule is likely to:

- Help establish relationships between TNSPs and communities, assisting in assuring the longevity of transmission projects.
- Empower communities to identify as active participants in Australia's transition to a net zero economy.

Further, the proposed rule will assist in providing cost recovery certainty for TNSPs for their social licence activities.

7.2. Expected costs

The proposed amendments are not expected to impose any significant new costs on TNSPs or consumers.

It is understood that many TNSPs are already engaging with local communities. The purpose of this rule change request is to ensure there is consistency in the nature, timing and comprehensiveness of this engagement. Any additional costs in engagement should be offset by improved timeliness of delivery of major projects.

7.3. Impacts of the change on those likely to be affected.

TNSPs social licence activities may be impacted by the expanded definitions of 'preparatory activities' and 'interested party'. Additionally, TNSPs will be impacted by now needing to comply with a set of 'community engagement expectations' that will be enshrined in the NER.

Local communities and other stakeholders affected by a major transmission project will be positively impacted through the updated engagements they will partake in with TNSPs as part of the expanded definitions and expectations in the NER.

The rule change will provide clarity and certainty for the AER around expectations on TNSPs on engaging with these parties when developing associated guidance and when assessing efficiency of TNSPs costs.

From: [REDACTED]
Sent: Thursday, March 16, 2023 10:24 AM
To: [REDACTED]
CC: [REDACTED]; Danielle Beinart
Subject: RE: Feedback loop rule change request - AEMO's feedback [SEC=OFFICIAL]

Hi [REDACTED]

Thank you for confirming this, I will add your suggested wording into the rule change request.

Thanks again,

[REDACTED]

From: [REDACTED] <[REDACTED]@aemc.gov.au>
Sent: Thursday, 16 March 2023 8:32 AM
To: [REDACTED] <[REDACTED]@industry.gov.au>
Cc: [REDACTED] <[REDACTED]@industry.gov.au>; [REDACTED] <[REDACTED]@industry.gov.au>; Danielle Beinart <Danielle.Beinart@aemc.gov.au>
Subject: RE: Feedback loop rule change request - AEMO's feedback [SEC=OFFICIAL]

Hi [REDACTED]

[REDACTED]

Happy to discuss.

Thanks

[REDACTED]

From: [REDACTED] <[REDACTED]@industry.gov.au>
Sent: Wednesday, 15 March 2023 2:42 PM
To: [REDACTED] <[REDACTED]@aemc.gov.au>
Cc: [REDACTED] <[REDACTED]@industry.gov.au>; [REDACTED] <[REDACTED]@industry.gov.au>; Danielle Beinart <Danielle.Beinart@aemc.gov.au>
Subject: RE: Feedback loop rule change request - AEMO's feedback [SEC=OFFICIAL]

Hi [REDACTED]

[REDACTED]

Kind regards,

[REDACTED]

From: [REDACTED] [mailto:[REDACTED]@aemc.gov.au]
Sent: Wednesday, 15 March 2023 12:14 PM
To: [REDACTED] <[REDACTED]@industry.gov.au>
Cc: [REDACTED] <[REDACTED]@industry.gov.au>; [REDACTED] <[REDACTED]@industry.gov.au>; [REDACTED] <[REDACTED]@aemc.gov.au>
Subject: RE: Feedback loop rule change request - AEMO's feedback [SEC=OFFICIAL]

Hi [REDACTED]

I hope you are well too.

[REDACTED]

kind regards,

[REDACTED]

From: [REDACTED] <[REDACTED]@industry.gov.au>
Sent: Wednesday, 15 March 2023 11:38 AM
To: [REDACTED] <[REDACTED]@acmc.gov.au>
Cc: [REDACTED] <[REDACTED]@industry.gov.au>; [REDACTED] <[REDACTED]@industry.gov.au>
Subject: Feedback loop rule change request - AEMO's feedback [SEC=OFFICIAL]

Hi [REDACTED]

I hope you're well.

[REDACTED]



Kind regards,

[Redacted]

[Redacted]

Senior Policy Officer

Electricity Division | Networks Reforms and Projects |

Turrbal and Jagera Land, L13 100 Creek Street, Brisbane 4000

Department of Climate Change, Energy, the Environment and Water

P [Redacted] | E [Redacted]@industry.gov.au

DCCEEW.gov.au ABN 63 573 932 849

Acknowledgement of Country

Our department recognises the First Peoples of this nation and their ongoing connection to culture and country. We acknowledge First Nations Peoples as the Traditional Owners, Custodians and Lore Keepers of the world's oldest living culture and pay respects to their Elders past, present and emerging.

OFFICIAL

From: [REDACTED]
Sent: Monday, March 20, 2023 6:11 PM
To: Danielle Beinart; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
CC: [REDACTED]; [REDACTED]
Subject: Transmission rule changes- concessional finance, financeability and social licence update from DCCEEW

Hi All

DCCEEW called me this afternoon and we spoke about the rule change requests.

A **package** of rule changes has been prepared (with separate cover letters for each) covering:

- Concessional finance
- Financeability and
- Social licence

These are with [REDACTED] for approval and they are hoping for them to then go to the **Minister's Office this week**. The Minister has been briefed and is expecting them.

They could be with us this week, or early next week (fingers crossed). I have added some details on each of the rule change request below to help us prepare.

Concessional finance – no significant changes from the rule change request the team has already seen.

Financeability- some changes- I have asked for a copy of the latest version. Once [REDACTED] has approved we should get one. Updates are:

- NSW wanted consideration of depreciation of biodiversity assets. This has been incorporated in the rule change request asking us to give consideration to the depreciation of different asset classes, with a specific call out on biodiversity assets.
 - [REDACTED]
 - The CEFC has done some modelling on financeability and thinks a lot of TG's financeability concerns could be resolved by allowing for depreciation of biodiversity assets- currently treated as land which is not depreciated? The CEFC thinks that if this is allowed the rest of the depreciation profile would not be touched. I indicated that it would be important for CEFC to put in a submission on this. It would be good for us to consider the implications of allowing depreciation of biodiversity offsets.

Social licence- AEIC wanted to change TNSP to proponent everywhere as it was concerned that it may not cover AEMO in Vic. We agreed a sentence in the rule change request asking us to consider the application to Vic be included in the rule change request.

Let me know if you have any questions.

[REDACTED]

[REDACTED] Director

Australian Energy Market Commission

D [REDACTED]

[REDACTED] [@aemc.gov.au](mailto:[REDACTED]@aemc.gov.au) | www.aemc.gov.au

Level 15, 60 Castlereagh St, Sydney NSW 2000.

The Gadigal people of the Eora nation are the traditional owners of the land on which AEMC's office is located.

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Please consider the environment before printing.

From: [REDACTED]
Sent: Tuesday, March 21, 2023 3:38 PM
To: [REDACTED]; [REDACTED]; [REDACTED]
CC: [REDACTED]; [REDACTED]
Subject: Rule change requests [SEC=OFFICIAL]
Attachments: For Ministerial Approval - Concessional finance rule change request (final).docx; For Ministerial Approval - Social licence rule change request (final).docx; For Ministerial Approval - Financeability rule change request (final).docx

Hi All

[REDACTED] has cleared the package of three rule changes and this will go up to the MO shortly.

While I cannot guarantee the wording will not change through the offices clearance process, I think it would be unlikely.

The three rule changes are attached.

Cheers

[REDACTED] (he/him)

A/g Director

Electricity | Transmission Branch | Networks Reform Section

Ngunnawal Country, 51 Allara St, Canberra ACT 2601 Australia

Department of Climate Change, Energy, the Environment and Water

P [REDACTED] | E [REDACTED]@industry.gov.au



Acknowledgement of Country

Our department recognises the First Peoples of this nation and their ongoing connection to culture and country. We acknowledge First Nations Peoples as the Traditional Owners, Custodians and Lore Keepers of the world's oldest living culture and pay respects to their Elders past, present and emerging.

OFFICIAL



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Rule Change Request

Ensuring consistent stakeholder engagement for ISP projects

March 2023

1. Request to make a Rule

1.1. Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

2. Background

2.1. AEMC Transmission Planning and Investment Review

The AEMC's Transmission Planning and Investment Review (the Review) considers how to ensure the regulatory framework supports the timely and efficient delivery of major transmission projects, while ensuring investment in these projects are in the long-term interests of consumers.

Stage 2 of the review, which focused on near term solutions and reducing uncertainty for Transmission Network Service Providers (TNSPs), included recommendations to provide greater clarity around social licence activities in the Regulatory Investment Test for Transmission (RIT-T) for actionable and future Integrated System Plan (ISP) projects.

The Review recommended that the National Electricity Rules (NER) be amended to ensure that expectations on TNSPs to engage and consult communities and other affected stakeholders at key points in the planning process are consistent and clear for all ISP projects.

Following discussions between the Commonwealth and AEMC, the Commonwealth has agreed to submit a rule change request and associated draft rule to implement the AEMC's recommended social licence reforms.

The Commonwealth proposes the AEMC consider this rule change as having been adequately publicly consulted on through the Transmission Planning and Investment Review.

3. Statement of Issue

3.1. Improve social licence outcomes by clarifying expectations for TNSP engagement with communities and other stakeholders affected by ISP transmission projects

Social licence, for these purposes, refers to the activities undertaken by TNSPs¹ for the RIT-T to build and maintain broad community acceptance of the development and operation of major transmission projects. Obtaining and maintaining social licence is critical to the timely and efficient delivery of projects identified in the ISP.

This rule change request seeks to improve social licence outcomes by clarifying who TNSPs should consult and when. It also seeks to specify a set of minimum community engagement expectations in the National Electricity Rules (NER) with which TNSPs must comply.

Ineffective community engagement by TNSPs can result in failure to obtain a 'social licence', risking timely and efficient delivery of transmission projects. Effective engagement ensures issues around transmission route selection are identified and managed early before key decisions are made, and that

¹ Including the Australian Energy Market Operator - Victorian Planning
Social licence rule change request dcceeww.gov.au

more accurate costs are reflected in a RIT-T's cost assessment of an actionable ISP project. Currently, there are inconsistencies in the NER in relation to requirements for TNSPs to engage with local communities and other affected stakeholders at key points in the planning process for major transmission projects.

The Review acknowledged that:

- TNSPs, local communities and other stakeholders affected by major transmission projects are critical partners in the delivery of those projects.
- Building and maintaining trust between stakeholders is critical if TNSPs are to deliver projects efficiently and on time.

Local communities and other stakeholders include local councils, local community members and other relevant community stakeholders wishing to express their views about the development of a major transmission project identified through the ISP.

The Review also recognised that:

- The NER provides many opportunities for community stakeholders to engage in the planning and regulatory processes but does not explicitly recognise the value of early engagement with these stakeholders in the planning process for ISP projects, other than for Renewable Energy Zones (REZs).
- There is misalignment in and between the NER and the Australian Energy Regulator's (AER) various guidelines regarding whether and when TNSPs should engage with stakeholders.

4. Description of the proposed rule change

This is a request to amend the NER to implement recommendations in the Review's Stage 2 Final Report. The proposed amendments, which were prepared by the AEMC and accompanied the Stage 2 Final Report, are attached to this request (Attachment A).

The proposed amendments will:

- Expand the definition of 'preparatory activities' to include engagement and consultation with local councils, local community members, members of the public and any other relevant stakeholders wishing to express their views (proposed paragraph (e) in the definition of 'preparatory activities' in cl 5.10.2).
- Expand the definition of 'interested party' as it applies to the existing RIT-T consultation procedures for actionable ISP projects to include local councils, local community members, members of the public and any other relevant stakeholders wishing to express their views about the development of the project (proposed cl 5.15.1(b)).
- Require TNSPs to comply with a set of 'community engagement expectations' when preparing a RIT-T for an actionable ISP project and engaging with local communities and other stakeholders as part of preparatory activities for future and actionable ISP projects (proposed cl 5.10.2, cl 5.16A.4(r), 5.24.1(e)).
- Insert a definition of 'community engagement expectations' into the NER that is comparable to the existing expectations placed on jurisdictional planning bodies for REZs (proposed cl 5.10.2))

In addition to the changes proposed in the AEMC's stage 2 final report, the following amendments will also support more consistent community and stakeholder engagement:

- Expand the reference to 'council and stakeholder engagement' to include local council, local community members, members of the public and any other relevant stakeholders. This maintains consistency between the rules and the proposed new definition of 'preparatory activities' (proposed cl 5.24.1(d)(3)(c), 5.24.1(e)).
- Extending the new definition of interested party (proposed cl 5.15.1(b)) to the RIT-T dispute process (Cl 5.16B).

To ensure smooth implementation of these amendments, there will be transitional arrangements that:

- Allow a TNSP that has commenced preparatory activities for an actionable ISP project or future ISP project to choose whether the proposed social licence amendments to the definition of 'preparatory activities' apply to the project (proposed cl 11.[xxx].2.4)
- Allow a TNSP that has commenced community consultation for an actionable ISP project or future ISP project to choose whether the proposed social licence amendments to cl 5.16A.4 apply to the project (proposed cl 11.[xxx].2.5)

5. How the proposed rule change will address the issue

The proposed amendments are expected to improve TNSP and community engagement and give communities more confidence and trust in the consultation process through the following:

- Making clear the information a TNSP must provide communities and stakeholders
- Making clear the expectations for a TNSP's engagement with communities and stakeholders
- Requiring TNSPs to better articulate the benefits and costs of ISP projects
- Improving the transparency of a TNSP's engagement with communities and stakeholders
- Ensuring consistency between the NER and the AER's various stakeholder engagement guidelines
- Ensuring TNSP community and stakeholder engagement is consistent for all actionable and future ISP projects.

Sections 6 and 7 give further detail.

6. How the proposed rule will or is likely to contribute to the achievement of the National Electricity Objective

The National Electricity Objective (NEO), set out in section 7 of the National Electricity Law, is:

"to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system."

The relevant aspect of the NEO is the promotion of efficient investment in electricity services for the long term interests of consumers of electricity with respect to price, quality, safety, reliability and security of the supply of electricity.

The proposed social licence amendments advance the NEO through supporting efficient and robust decision-making for all parties. Decision-making will be improved through the provision of clear guidance and increased transparency as to when engagement with local communities will occur, and who will be consulted.

Clear guidance on social licence activities in the NER will help to support the efficient and timely delivery of actionable and future ISP transmission projects. This will, alongside additional guidance from the AER, increase transparency for affected parties. An aim of the AER and NER's additional guidance is to reduce uncertainty for local communities and other affected stakeholders. Making TNSP social licence activities consistent for all ISP projects:

- Removes confusion around engagement for the TNSPs, the AER, communities, and other stakeholders
- Supports efficient decision-making by TNSPs
- Improves regulatory certainty.

7. Expected costs, benefits and impacts

7.1. Expected benefits

As noted in the Review, meaningful, early, high quality engagement with local communities and other stakeholders has several benefits including:

- Improves stakeholder and community understanding of the costs and risks of a major transmission project.
- Facilitates understanding of any community concerns, including around route selection by affected stakeholders, which can inform the identification and management of risk.
- Provides opportunities to identify and assess whether project options (including credible options for assessment in the RIT-T) are likely to be able to be delivered in time to meet the need, particularly where there are community concerns.
- Provides opportunities for the preferred option to be designed with the benefit of local community input.
- Provides TNSPs with opportunities to address or manage concerns raised and demonstrate to communities how it has taken their concerns and feedback into account.
- Community acceptance will help a TNSP deliver a project on time and within budget.

7.2. Expected costs

The proposed amendments are not expected to impose any significant new costs on TNSPs or consumers.

It is understood that many TNSPs are already engaging with local communities. The purpose of this rule change request is to ensure consistency in the nature, timing and comprehensiveness of this engagement. Any additional costs in engagement should be offset by improved timeliness of delivery of ISP projects.

7.3. Expected impacts

A TNSP's community engagement activities may be impacted by the expanded definitions of 'preparatory activities' and 'interested party'. Additionally, TNSPs will be impacted by needing to comply with a set of 'community engagement expectations' specified in the NER.

Local communities and other stakeholders affected by a major ISP transmission project will be positively impacted through better TNSP consultation.

The AER will have greater clarity for developing associated guidance and assessing the efficiency of a TNSP's costs for social licence activities.

Attachment A

Social Licence

...

5.10.2 Definitions

In this Part D and schedules 5.8, 5.9 and 5.4A:

...

preparatory activities means activities to design and to investigate the costs and benefits of *actionable ISP projects, future ISP projects* and REZ stages (as applicable), including:

- (a) detailed engineering design;
- (b) route selection and easement assessment work;
- (c) cost estimation based on engineering design and route selection;
- (d) preliminary assessment of environmental and planning approvals; and
- (e) ~~council and stakeholder engagement,~~

~~which are undertaken prior to the identification of the preferred option for the relevant project or stage.~~

- (e) engagement with local council, local community members, members of the public and any other relevant stakeholders wishing to express their views about the development of the *actionable ISP project, future ISP project, or project* within a REZ stage, in accordance with the *community engagement expectations*.

...

community engagement expectations means ensuring that:

- (a) stakeholders receive information that is clear, accurate, relevant and timely;
- (b) stakeholders have sufficient opportunity to consider and respond to the information provided;
- (c) consultation materials and methods of communication tailored to the needs of different stakeholders are used; and
- (d) the stakeholders' role in the engagement process is clearly explained to them, including how their input will be taken into account.

...

10. Glossary

...

community engagement expectations

Has the meaning given to it in clause 5.10.2.

...

5.15.1 Interested parties

- (a) In clauses 5.16.4, 5.16A.4, rule 5.16B and clauses 5.17.4 and 5.17.5, *interested party* means a person including an end user or its representative who, in the AER's opinion, has the potential to suffer a material and adverse NEM impact from the investment identified as the preferred option in the project assessment conclusions report or the final project assessment report (as the case may be).
- (b) For the purpose of the regulatory investment test for transmission for an actionable ISP project, an interested party includes a local council, local community member, member of the public and any other relevant stakeholder wishing to express their views about the development of the actionable ISP project.

5.16A.4 Regulatory investment test for transmission procedures

Project assessment draft report

- (a) If a *Transmission Network Service Provider* is identified as a *RIT-T proponent* in an *Integrated System Plan* for an *actionable ISP project*, then that *Transmission Network Service Provider* is the *RIT-T proponent* for that *RIT-T project* and must apply the *regulatory investment test for transmission* to, and consult all *Registered Participants*, *AEMO* and *interested parties* on, that *RIT-T project* in accordance with this clause 5.16A.4.
- ...
- (c) The *RIT-T proponent* must prepare a report in accordance with paragraphs (d) to (h) (*project assessment draft report*) and publish it by the date specified in the *Integrated System Plan* for that *RIT-T project* or such longer time period as is agreed in writing by the *AER* and make that report available to all *Registered Participants*, *AEMO* and *interested parties*.
- ...
- (f) The *RIT-T proponent* must seek submissions from *Registered Participants*, *AEMO* and *interested parties* on the proposed *preferred option* presented, and the issues addressed, in the *project assessment draft report*.
- ...
- (h) Within 4 weeks after the end of the consultation period required under paragraph (g), at the request of an *interested party*, a *Registered Participant* or *AEMO* (each being a relevant party for the purposes of this paragraph), the *RIT-T proponent* must meet with the relevant party if a meeting is requested by two or more relevant parties and may meet with a relevant party if after having considered all submissions, the *RIT-T proponent*, acting reasonably, considers that the meeting is necessary.

Project assessment conclusions report

- (i) As soon as practicable after the end of the consultation period on the *project assessment draft report* referred to in paragraph (g), the *RIT-T proponent* must, having regard to the submissions received, if any, under paragraph (f) and the

matters discussed at any meetings held, if any, under paragraph (h), prepare and make available to all *Registered Participants*, *AEMO* and *interested parties* and *publish* a report (the *project assessment conclusions report*).

...

Consultation with communities

(r) To the extent that consultations under paragraphs (a) and (f) include engagement with interested parties as defined in clause 5.15.1(b), that engagement must be undertaken in accordance with the community engagement expectations.

5.22.6 Content of Integrated System Plan

...

Preparatory activities

- (c) An *Integrated System Plan* may specify whether preparatory activities must be carried out for *future ISP projects* and the timeframes for carrying out preparatory activities.
- (d) A *Transmission Network Service Provider* must:
 - (1) in the case of an *actionable ISP project* for which preparatory activities have not yet commenced, commence preparatory activities as soon as practicable; and
 - (2) in the case of a *future ISP project*, if the *Integrated System Plan* provides that preparatory activities must be undertaken for that project, commence preparatory activities in accordance with the timeframes specified in the *Integrated System Plan* for that project, provided that where preparatory activities are required to be undertaken pursuant to clause 5.24.1(b)(2), a *jurisdictional planning body* must ensure that preparatory activities are commenced in accordance with the timeframes described in subparagraph (1) or (2) (as applicable).

5.24.1 REZ design reports

- (d) Subject to paragraph (e), in preparing a *REZ design report*, the relevant *jurisdictional planning body* must:
 - (1) ensure that a public consultation is conducted with the following stakeholders:
 - (A) interested parties wishing to register their interest in developing on or more projects in the REZ; and
 - (B) local council, local community members, members of the public and any other relevant stakeholders wishing to express their views about the development of projects within the REZ; and
 - (2) prepare a draft of the *REZ design report* and, over a period of no less than six weeks; invite the stakeholders described at subparagraph (1) to make written submission on the draft *REZ design report*;
 - (3) take into account the following, a summary of which must be included

in the *REZ design report*:

- (A) the results of the public consultation undertaken in accordance with subparagraph (1);
 - (B) any written submissions received under subparagraph (2);
 - (C) the results of any ~~council and stakeholder~~ engagement with local council, local community members, members of the public and any other relevant stakeholders undertaken as part of preparatory activities pursuant to paragraph (b)(2)(i);
- (e) In undertaking any public consultation pursuant to paragraph (d)(1), seeking written submissions in accordance with paragraph (d)(2) and undertaking ~~the council and stakeholder~~ engagement with local council, local community members, members of the public and any other relevant stakeholders as part of preparatory activities pursuant to paragraph (b)(2)(i), the *jurisdictional planning body* must ~~ensure that: do so in accordance with the community engagement expectations.~~
- (1) ~~stakeholders receive information that is clear, accurate, relevant and timely;~~
 - (2) ~~stakeholders have sufficient opportunity to consider and respond to the information provided;~~
 - (3) ~~targeted consultation materials, and methods of communication tailored to the needs of different stakeholders, are used; and~~
 - (4) ~~stakeholders' role in the engagement process is clearly explained to them, including how their input will be taken into account~~

4 Transitional provisions

11.[xxx].1.1 Definitions

For the purposes of this Part [XX]:

Amending Rule means the National Electricity Amendment ([TPIR Stage 2]) Rule.

commencement date means the date on which the Amending Rule commences operation.

11.[xxx].2.2 Existing actionable ISP projects prior to the clause 5.16A.5 stage

- (a) This clause 11.[xxx].2 applies if, at the commencement date, for an existing *actionable ISP project* the *RIT-T proponent* has requested written confirmation from AEMO under clause 5.16A.5(b).
- (b) For an existing *actionable ISP project* referred to in clause 11.xxx.2.2(a),

rule

5.16A continues to apply as if the Amending Rule had not been made.

11.[xxx].2.3 Cost Benefit Analysis Guidelines

- (a) Within 12 months after the commencement date, the AER must update and publish on its website the *Cost Benefit Analysis Guidelines* required under clause 5.22.5 to comply with the requirements set out in clause 5.16A.2(c)(4), and in doing so must comply with the *Rules consultation procedures*.
- (b) If, prior to the commencement date, and for the purposes of updating the *Cost Benefit Analysis Guidelines* in anticipation of the Amending Rule, the AER undertook consultation or steps equivalent to that as required in the *Rules consultation procedures*, then that consultation or steps undertaken is taken to satisfy the equivalent consultation or steps under the *Rules consultation procedures*.

11.[xxx].2.4 Preparatory activities

- (a) This clause 11.[xxx].2.4 applies if, at the commencement date, for an existing *actionable ISP project* or a *future ISP project*, the *Transmission Network Service Provider* has commenced the *preparatory activities* referred to in clause 5.22.6(d).
- (b) For an existing *actionable ISP project* or *future ISP project* referred to in clause 11.xxx.2.4(a), the definition of *preparatory activities* continues to apply as if the Amending Rule had not been made, unless the *Transmission Network Service Provider* elects for the Amending Rule to apply.

11.[xxx].2.5 Community engagement expectations

- (a) This clause 11.[xxx].2.5 applies if, at the commencement date, for an existing *actionable ISP project* the *Transmission Network Service Provider* has commenced the consultation referred to in clauses 5.16A.4(a) and (f).
- (b) For an existing *actionable ISP project* referred to in clause 11.xxx.2.5(a), clauses 5.16A.4(a) and (f) continue to apply as if the Amending Rule had not been made, unless the *Transmission Network Service Provider* elects for the Amending Rule to apply.
- (c) If the *Transmission Network Service Provider* makes this election then it must confirm this in the *project assessment draft report* or *project assessment conclusions report* as relevant.



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Rule Change Proposal

Treatment of financeability for Transmission Network Service
Providers

March 2023

1. Request to make a Rule

1.1. Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

2. Relevant background

2.1. Energy Ministers Meeting

On 28 October 2022, Energy Ministers agreed that the Commonwealth submit a rule change request to the Australian Energy Market Commission (AEMC) seeking to mitigate the foreseeable risk that financeability concerns may arise for Integrated System Plan (ISP) projects.

2.2. AEMC Transmission Planning and Investment Review

The AEMC established the Transmission Planning and Investment Review (the Review) to ensure that the regulatory framework can support the timely and efficient delivery of major transmission projects, while ensuring investments in these projects are in the long-term interests of consumers.

On 27 October 2022, the AEMC published the Review's Stage 2 Final Report. This report focused on developing recommendations to manage uncertainty in the near-term. A recommendation in the Stage 2 Final Report was to address foreseeable financeability issues.

The Commonwealth agrees with the AEMC's final position outlined in Stage 2 of the Review and considers that changing a Transmission Network Service Provider's (TNSP) cash flow profile through a net present value (NPV) neutral adjustment to depreciation is an appropriate solution to address financeability issues, should they arise.

2.3. Alleviating financeability concerns

Prior to the proposal of this reform, TNSPs have sought alternative methods to address their financeability concerns, such as sourcing appropriate financing from the Commonwealth, including through the Rewiring the Nation program.

Following the implementation of this proposed rule change, the Commonwealth expects the Australian Energy Regulator's (AER) ability to vary depreciation profiles to be the primary mechanism that TNSPs will need to pursue to address any financeability concerns they may have.

3. Statement of Issue

3.1. There is a risk that financeability challenges could arise in relation to actionable ISP projects

This rule change request seeks to introduce greater flexibility in the revenue-setting framework for actionable ISP projects within the National Electricity Rules (NER), to address the risk of financeability issues faced by TNSPs.

Financeability refers to the ability of TNSPs to efficiently raise capital to finance their activities. The AEMC in the Stage 2 Final Report of the Review noted that financeability concerns for a TNSP may

arise from the way that cash flow is impacted by major investments.¹ Successive ISP iterations will likely see major transmission works brought forward and/or delivered concurrently in a way that creates a risk of financeability issues arising for affected TNSPs.

As noted in the Review, when a network business invests in a project, it starts receiving a return on the investment based on a forecast capital expenditure.² The network business also starts receiving a return of the investment (depreciation), from consumers, when the investment is commissioned.

- The total allowed revenue from this 'depreciation' is determined by the depreciation profile of assets (typically a straight-line basis), and an adjustment for inflation indexation.

Depending on the financing and capital structures that have been adopted by the TNSP, the business' cash flow profile may not match its financing requirements.

This has the potential to have short-term negative impacts on some of the financial metrics that are used to assess the creditworthiness of a business. The ratio of funds from operations (FFO) to net debt (or FFO/net debt) is one such metric.

In the ordinary course of investment, new transmission assets (or augmentations) would be unlikely to have significant impact on these financial metrics as TNSPs' Regulatory Asset Bases (RAB) have a diversity of assets with different durations to expiry.

Typically, a TNSP could absorb large one-off investments with appropriate changes to its capital structure without adverse impact to financial metrics. Shareholders supporting cashflows through contributing equity in early years and receiving higher cash flows in later years is one example of this. In practice, however, TNSPs may be constrained from adapting their capital structures to finance the size and scale of sequential ISP projects.

Given that successive ISPs could see major transmission works moved forward or delivered concurrently, there is a risk financeability issues will arise for TNSPs, placing pressure on cash-flows and by extension credit metrics.

The Review found that this risk was material where successive ISPs result in a large amount of new investment for a TNSP relative to its existing RAB. The Commonwealth agrees with the Review, that the existing revenue framework is not sufficiently flexible to address potential financeability challenges.

While the AER has some flexibility under current arrangements to adjust the profile, and timing of regulatory allowances:

- Further clarity is required on how the AER should assess and, if necessary, adjust depreciation profiles for ISP projects to address cash flow concerns.
- The AER should be given flexibility to address the risk of financeability challenges on a case-by-case basis, having regard to a set of principles specified in the NER.
 - Changing a TNSP's cash flow profile through a NPV neutral adjustment to depreciation is an appropriate solution to address the issue.

¹ Australian Energy Market Commission, Transmission Planning and Investment Review Stage 2 Final Report, Sydney, 27 October 2022, p. 8.

² Australian Energy Market Commission, Transmission Planning and Investment Review Stage 2 Final Report, Sydney, 27 October 2022, p. 8.

- The AER should explicitly outline how and when depreciation is expected to be applied to different types of asset classes in guidelines.
 - This rule change request outlines guidance on how market participant (TNSPs and market bodies) will look to depreciate biodiversity offset costs on an as-incurred basis, where doing so promotes the achievement of the National Electricity Objective (NEO).

4. Description of the proposed rule

The proposed financeability rule would amend the NER to implement the rule change recommendations contained in the Review's Stage 2 Final Report, dated 27 October 2022. The proposed amendments, which were prepared by the AEMC and accompanied the Stage 2 Final Report, are attached to this request.

The Commonwealth proposes:

- The AER should have explicit discretion to vary the depreciation profile for an actionable ISP project on a case-by-case basis following a request for amendment from a TNSP.
 - This is to support the capacity of TNSPs to finance efficient capital expenditure associated with such major projects. It is proposed that a TNSP can make an application to amend the depreciation profile for a specific project when submitting a contingent project application (CPA).
- The rules should include a set of principles to guide the AER in determining whether or not to amend the depreciation profile for a specific actionable ISP project.
- The AER should explicitly outline how and when depreciation is expected to be applied to different types of asset classes in guidelines.

The proposed amendments would promote the timely and efficient delivery of ISP projects by introducing greater flexibility into the revenue-setting framework mitigating the foreseeable risk of financeability for TNSPs.

4.1. AER explicit discretion to vary the depreciation profile

The AER should have explicit flexibility to vary the depreciation profile for actionable ISP projects if financeability issues arise. The majority of stakeholders engaged in the Review supported varying depreciation as the appropriate solution to these challenges.

The Review concluded:

"...it is important to ensure that the AER has sufficient flexibility to address the risk of financeability challenges on a case-by-case basis, including the ability to shape cash flows for specific projects in a manner that is appropriate to compensate a business for its efficient costs over time, as well as incentivise timely and efficient new transmission investment. Further, the Commission considers it is important that the overall regulatory framework is flexible enough to address financeability issues if they arise, regardless of whether concessional financing is available or not."³

³ Australian Energy Market Commission, *Transmission Planning and Investment Review Stage 2 final report*, Sydney, 27 October 2022, p. 10.

This rule change request and proposed draft rule seeks to:

- Allow the TNSP for an actionable ISP project, to make an initial request to the AER to develop and publish an issues paper. This issues paper must provide an indication of the AER's thinking on a proposed depreciation change, prior to the TNSP submitting a request to vary the depreciation profile for the project. The request for an issues paper would be made by the TNSP to the AER between six to four months before submission of a CPA, and the issues paper would be published within two months of receiving the request (unless the AER requires additional information from the TNSP, in which case the time limit would be extended by the period of time it takes the TNSP to provide the additional information) (proposed cl 6A.6.3(h)-(l)).
- Allow the TNSP for an actionable ISP project to request the AER vary the depreciation profile for said project. The request for the AER to vary the depreciation profile for the project would be made when the TNSP submits the CPA (proposed cl 6A.6.3(d) and (e)).
- Exempt the evaluation of actionable ISP projects from existing depreciation requirements in the Rules to explicitly allow the AER to depreciate ISP assets over a life different to their economic lives and natures (proposed clause (6A.6.3(d)).
- Insert a set of principles to guide the AER's approach to considering requests to vary depreciation profiles (proposed cl 6A.6.3(f)), in particular, by requiring the AER to have regard to:
 - the relative consumer benefits from the provision of network services over time
 - the capacity of the TNSP to efficiently finance its overall regulatory asset base including efficient capital expenditure
 - any other factors the AER considers relevant.
- Empower the AER to prepare guidelines relating to the making and determination of requests to vary depreciation (proposed cl 6A.6.3(g)).
- Require a revenue proposal to include the TNSP's nominated depreciation schedules and information about whether the relevant assets form part of an actionable ISP project (proposed amendments to cl S6A.1.3(7)).
- Insert a definition of 'initial request' into Ch 10 of the NER.

4.2. The AER's application of depreciation to different asset classes

The AER should be required to explicitly outline how depreciation is expected to be applied to different types of asset classes including biodiversity offsets.

This rule change request proposes that the AER:

- Outline how depreciation is expected to be applied to different types of asset classes for actionable ISP projects, in circumstances where financeability concerns are and are not present.
 - In jurisdictions it is applicable, this will promote transparency and provider greater certainty of revenues to regulated businesses and costs for consumers.

4.2.1 Biodiversity offsets

The asset class of most concern is biodiversity offsets. For major ISP projects, biodiversity offset costs are expected to account for a material proportion of overall project costs. They are also expected to materially impact on financeability in the absence of being depreciable. For major ISP projects there is

a stronger public policy justification to commence depreciation during construction compared to other asset classes as the utility of biodiversity offsets begins when construction—which disturbs the natural environment—commences and the biodiversity offset ensures a degree of protection for the impacted species. This early public utility as compared to other asset classes gives merit to commencing depreciation of biodiverse offsets during construction, but only where doing so contributes the achievement of the NEO.

There have been cases, where biodiversity offsets have not been treated as a depreciating asset class. Treating biodiversity offsets as non-depreciable results in a lower cash flow for TNSP's in the initial stages of a project, potentially resulting in financeability issues.

Depreciating biodiversity offsets on an as incurred basis could promote the NEO in a number of ways, for example:

- It could be used to overcome or mitigate TNSPs financeability concerns in a NPV neutral manner, particularly in the period before the changes subject to this rule change request can be applied to major ISP projects.
- Reduce (both upfront and retrospectively) the amount of Rewiring the Nation funding used to address TNSPs' financeability concerns.
 - The use of Rewiring the Nation funding to address financeability concerns is not NPV neutral; it provides a financial benefit to the TNSP. This financial benefit, however, could have otherwise been used to lower electricity consumers' costs had it not been needed to address financeability.

The AEMC should consider whether giving the AER explicit discretion to begin depreciating of biodiversity offset costs from the time the costs are incurred, rather than waiting for the project to be complete and operational. This would reduce the need for the AER to adjust the future depreciation profiles and improve consumer outcomes. If this discretion is granted to the AER, the ability to change the depreciation profile specifically for biodiversity offsets (where it will promote the NEO), should also be granted. Given this discretion is to directly promote the NEO, varying the depreciation profile, of biodiversity assets would not require an application from the TNSP to the AER as would be the case for other assets as outlined in this rule change request.

4.3. The AER's approach to assessing requests to vary depreciation should be guided by a set of principles in the rules

This rule change request and associated proposed rule, seek amendments to the NER to insert a set of principles to guide the AER in developing its approach and assessing requests to amend depreciation in relation to actionable ISP projects (proposed cl 6A.6.3(f)). The three principles are:

Principle 1: The relative consumer benefits (having regard to the reliability and price risk associated with transmission delivery delays) from the provision of network services over time (the inter-generational equity principle).

Principle 2: The capacity of the TNSP to efficiently finance its overall RAB, including efficient capital expenditure (which focuses on the capacity to finance a project at the network business level, rather than at the project level).

Principle 3: Any other factors the AER considers relevant, having regard to Principles 1 and 2.

The proposed NER amendments also seek to allow the AER to develop guidelines relating to the making and the determination of such requests including;

- the approach the AER proposes to use
- the information the AER requires for the purpose of that determination
- the information the AER requires for developing and publishing the issues paper (proposed cl 6A.6.3(g)) for which the TNSP must have regard to when making the request for varied depreciation for an actionable ISP project; and
- any other matters the AER considers appropriate (proposed cl 6A.6.3(g)(4)).

The AEMC in its deliberations should consider the use of a principles versus a prescriptive test for the assessment of whether to vary the depreciation profile of an actionable ISP project, as well as whether this assessment is conducted at the regulated business level or project level.

4.3.1 Principle 1

Principle 1: *The relative consumer benefits (having regard to the reliability and price risk associated with transmission delivery delays) from the provision of network services over time (the inter-generational equity principle).*

Principle 1 requires the AER to consider whether the impact of varying depreciation on the benefits/costs borne by present and future customers is appropriate. If variations are made to depreciation by accelerating depreciation in the early years of an investment, and slowing it down in later years, the intergenerational impact on customers must be considered.

The Commonwealth agrees with the Review's conclusion that:⁴

"...the appropriate way of assessing inter-generational equity trade-offs is from the perspective of overall consumer benefits. A shift in depreciation will be net present value neutral from the perspective of the TNSP. This means that consumers overall will pay the same over the life of the asset. Near-term consumers will pay a larger share than later consumers, but in [sic] this in turn allows the project to proceed. If shifting of the depreciation profile allows the project to proceed in a timely manner then [the] these [sic] consumer benefits from the delivery of the project can be unlocked. We expect the AER will have regard to this perspective when assessing requests to amend depreciation profiles."

4.3.2 Principle 2

Principle 2: *The capacity of the TNSP to efficiently finance its overall RAB, including efficient capital expenditure (which focuses on the capacity to finance a project at the network business level, rather than at the project level).*

Principle 2 requires the AER to have regard to the network business as a whole (the regulated network service provider), rather than individual projects, when assessing whether to vary the depreciation profile for an actionable ISP project. This is in line with the AER's requirements to have regard to the network business as a whole when setting the revenue TNSPs can recover from their customers.⁵

⁴ Australian Energy Market Commission, Transmission Planning and Investment Review Stage 2 Final Report, Sydney, 27 October 2022, p. 10.

⁵ NER clause 6A.1.1.

The Review notes that the core parts of the regulatory framework reflect economic assessment at a network business level. For example, the allowed rate of return is set for regulated network service providers and not individual projects.⁶ The revenue and pricing principles also make it clear that it is the “regulated network service provider” that “should be provided with a reasonable opportunity to recover at least efficient costs”.⁷

As stated in the Review:⁸

“The Commission considers that ... adopting specific metrics as the sole measure of businesses’ financeability may not be appropriate. Moody’s and other credit rating agencies combine an assessment of both qualitative and quantitative metrics to arrive at an overall rating. For example, while FFO/Net Debt is a key factor considered by Moody’s, it is not appropriate for assessment of financeability to rely so strongly on a single metric. Such an approach would also present the key issue of how an appropriate threshold for this credit metric should be determined. Further, there are a range of company-specific factors that contribute to credit ratings and credit metric thresholds, such as how a company has structured their balance sheet, [the company policy of target credit rating] and the risks associated with non-regulated revenues. These factors may lead to a narrowly defined approach to assessing financeability producing unintended consequences.

A more targeted approach to considering financeability, only where this is raised by a business with respect to a specific actionable ISP project, would be more appropriate given the issue is likely only to arise in limited circumstances.

The Commission considers it appropriate that the AER will consider the capacity to finance the ISP investment at the network business level and not at the project level. As part of this assessment, consideration should also be given to how an investment in a particular project may impact the overall position of the business (including in relation to financial metrics) and where the TNSP will sit after the inclusion of the project.”

4.3.3 Principle 3

Principle 3: *Any other factors the AER considers relevant, having regard to Principles 1 and 2.*

Principle 3 aids the intent that the regulatory framework has a proportionate and flexible mechanism for addressing financeability concerns if they arise. Sufficient flexibility can be achieved by providing the AER with an appropriate level of discretion to incorporate other relevant factors into its assessment of a request to accelerate depreciation.

Principle 3 will enable the AER to factor in a broader range of factors that may impact its assessment or decision for a particular project, such as emissions reduction targets if included in the NEO. This is necessary, given that Principles 1 and 2 are not exhaustive.

5. How the proposed rule will address the issue

Including flexibility within the revenue setting framework to address potential financeability challenges will enable TNSPs to effectively finance the projects, allowing actionable ISP projects to progress in a timely manner.

⁶ AER (2018), Rate of Return instrument.

⁷ Clause 7A(2) of the NEL.

⁸ Australian Energy Market Commission, Transmission Planning and Investment Review Stage 2 final report, Sydney, 27 October 2022, p. 13.

These recommendations will assist in alleviating financeability concerns in the near-term as:

- The AER will be able to make decisions to vary depreciation profiles based on the depreciation principles in the NER as soon as the rule is made. The new rule can subsequently be supplemented with more detailed information in guidelines.
- TNSPs will be able to submit a request for the development of an issues paper about accelerated depreciation prior to the CPA stage to facilitate investment certainty.

The amendments outlined above will help to ensure timely investment decisions to enable critical transmission infrastructure to be delivered on time.

6. How the proposed rule will or is likely to contribute to the achievement of the National Electricity Objective

The NEO, as set out in section 7 of the National Electricity Law, is:

“to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.”

The relevant aspect of the NEO, with respect to this rule change request, is the promotion of efficient investment in electricity services for the long-term interests of consumers of electricity with respect to price, quality, safety, reliability and security of the supply of electricity.

Timely and efficient investment in actionable ISP projects is required to ensure reliability and security of the supply of electricity, and to reduce adverse impacts on price as the electricity system transitions to net zero.

The proposed amendments advance the NEO in the following ways:

- Empowering the AER to vary the depreciation profile for actionable ISP projects is a flexible solution that addresses financeability challenges that may arise in the future.
 - Making the power explicit provides certainty for TNSPs as to how future financeability issues will be addressed.
 - Allowing the AER to exercise the power on a case-by-case basis enables the AER to shape cash flows for specific projects in a manner that is appropriate to compensate a business for its efficient costs over time, as well as incentivise timely and efficient new transmission investment.
- Inserting a set of principles that the AER must have regard to when exercising the power:
 - Provides certainty for TNSPs, by providing them with better information to develop their project plans and funding arrangements ahead of the AER’s decision.
 - Enables the reform to be implemented more rapidly (than if the AER were first required to formulate guidance about how it will exercise the power).
- Principle 1 acts as a consumer protection, by requiring the AER to consider the inter-generational equity of a depreciation change, by balancing the increased costs borne by near-term consumers with the benefits of projects proceeding in a timely manner.

- Principle 2 promotes economic efficiency by providing TNSPs with a reasonable opportunity to recover at least their efficient costs, and is consistent with the regulatory approach to setting revenues.
 - The revenue and pricing principles outlined in the NEL make it clear that the “regulated network service provider... should be provided with a reasonable opportunity to recover at least efficient costs”.⁹
- Principle 3 promotes flexibility and enables relevant issues that may arise in the future to be considered.
- Facilitating TNSPs to make timely investment decisions through introducing the ability for a TNSP to submit an initial (pre-CPA) request to the AER to develop an issues paper dealing with the depreciation change.
- Enhancing transparency around the AER’s decision-making through the requirement of publication of the issues paper.

7. Expected costs, benefits and impacts of the proposed rule

7.1. Expected benefits

The proposed financeability amendments provide a flexible solution to address potential future financeability issues that could threaten the timely delivery of major transmission projects.

These amendments assist in placing downward pressure on electricity prices by better ensuring the timely delivery of transmission infrastructure for consumers.

7.2. Expected costs

Varying depreciation profiles for specific actionable ISP projects will not increase the total costs borne by consumers over the life of an asset. If the variation results in an acceleration of depreciation it could shift more of the burden to near-term consumers. However, the principles would require this to be balanced against the benefits of timely delivery of major projects and the corresponding impact on price, reliability and security.

There will be administrative and compliance costs associated with the proposed rule, but these are not expected to be material. The proposed rule would only require an assessment if requested by the TNSP, it would not be a requirement for every actionable ISP project, which reduces administrative burden for the AER and TNSPs.

7.3. Impacts of the change on those likely to be affected.

The intent of this rule change request is to introduce greater flexibility in the revenue setting framework to enable the AER to address the risk of financeability challenges for actionable ISP projects and improve the timelines of investment decisions for these projects.

The timely investment in and delivery of actionable ISP projects is key in the transition to net zero.

TNSPs may be impacted by:

- Being able to apply to receive an adjusted depreciation profile for actionable ISP projects through the life of an asset to finance efficient capital expenditure associated with such major projects.
- The AER’s assessment of their need for a change in the depreciation profile of an actionable ISP project.

⁹ Clause 7A(2) of the NEL.

- Being able to request the AER to develop and publish an issues paper that provides an indication of the AER's thinking on the proposed depreciation change.

Consumers may be impacted by:

- The shifting costs over the life of an asset which could increase the burden to near-term consumers, however, the principles in the rules will require the AER to explicitly consider whether more timely investment decisions offset this cost shifting.
- Minimising bill costs by ensuring the timely delivery of transmission infrastructure by reducing barriers to TNSPs investment decisions.

The reform may also impact the AER through:

- Requirements to follow the principles for assessment outlined in the NER.
- Conducting analysis to vary the depreciation profile for an actionable ISP project on a case-by-case basis.
- The development of guidelines and issues papers.

Attachment A

1 Financeability

6A.2.3 Guidelines

(a) The *AER*:

- (1) must make and *publish* the *Shared Asset Guidelines*, the *Capital Expenditure Incentive Guidelines*, the *Expenditure Forecast Assessment Guidelines*, the *Transmission Confidentiality Guidelines*, the *Cost Allocation Guidelines*, the *information guidelines* and the *pricing methodology guidelines* in accordance with the *Rules*; and
- (2) may, in accordance with the *transmission consultation procedures*, make and publish guidelines as to any other matters relevant to this Chapter.
 - (b) A guideline may relate to a specified *Transmission Network Service Provider* or *Transmission Network Service Providers* of a specified class.
 - (c) Except as otherwise provided in this Chapter, a guideline is not mandatory (and so does not bind the *AER* or anyone else) but, if the *AER* makes a *transmission determination* that is not in accordance with the guideline, the *AER* must state, in its reasons for the *transmission determination*, the reasons for departing from the guideline.
 - (d) If a guideline indicates that there may be a change of regulatory approach in future *transmission determinations*, the guideline should also (if practicable) indicate how transitional issues are to be dealt with.
 - (e) Subject to paragraph (f), the *AER* may, from time to time and in accordance with the *transmission consultation procedures*, amend or replace a guideline.
 - (f) The *AER* may make administrative or minor amendments to any guideline without complying with the *transmission consultation procedures*.
 - (g) This clause 6A.2.3 does not apply to the *Transmission Ring-Fencing Guidelines*.

...

6A.4.2 Contents of revenue determination

(a) A *revenue determination* for a *Transmission Network Service Provider* is to specify, for a *regulatory control period*, the following matters:

- (1) the amount of the estimated *total revenue cap* for the *regulatory control period* or the method of calculating that amount;
- (2) the *annual building block revenue requirement* for each *regulatory year* of the *regulatory control period*;
- (3) the amount of the *maximum allowed revenue* for each *regulatory year* of the *regulatory control period* or the method of calculating that amount;
 - (3A) the regulatory asset base as at the commencement of the *regulatory control period*;

- (4) appropriate methodologies for the indexation of the regulatory asset base;
- (5) the values that are to be attributed to the *performance incentive scheme parameters* for the purposes of the application to the *Transmission Network Service Provider* of any *service target performance incentive scheme* that applies in respect of the *regulatory control period*;
- (6) the values that are to be attributed to the *efficiency benefit sharing scheme parameters* for the purposes of the application to the *Transmission Network Service Provider* of any *efficiency benefit sharing scheme* that applies in respect of the *regulatory control period*;
 - (6A) how any *capital expenditure sharing scheme, small-scale incentive scheme or demand management innovation allowance mechanism* is to apply to the *Transmission Network Service Provider*; and
- (7) the commencement and length of the *regulatory control period*.
- (8) [Deleted]
 - (a1) A *revenue determination* for a *Transmission Network Service Provider* is also to specify whether depreciation for establishing the regulatory asset base as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure.
 - (b) Unless otherwise determined by the *AER*:
 - (1) the *total revenue cap* may not relate to more than one *transmission system* that is owned, controlled or operated by a *Transmission Network Service Provider*; and
 - (2) there is to be a separate *total revenue cap* for each such *transmission system*.
 - (c) A *regulatory control period* in respect of a *Transmission Network Service Provider* must be not less than 5 *regulatory years*.

...

6A.5A Capital expenditure incentive mechanisms

- (a) The *capital expenditure incentive objective* is to ensure that, where the value of a regulatory asset base is subject to adjustment in accordance with the *Rules*, then the only capital expenditure that is included in an adjustment that increases the value of that regulatory asset base is capital expenditure that reasonably reflects the *capital expenditure criteria*.
- (b) The *AER* must, in accordance with the *transmission consultation procedures*, make and *publish* guidelines (the *Capital Expenditure Incentive Guidelines*) that set out:
 - (1) any *capital expenditure sharing schemes* developed by the *AER* in accordance with clause 6A.6.5A, and how the *AER* has taken into account the *capital expenditure sharing scheme principles* in developing those schemes;
 - (2) the manner in which it proposes to make determinations under clause S6A.2.2A(a) if the *overspending requirement* is satisfied;

- (3) the manner in which it proposes to determine whether depreciation for establishing a regulatory asset base as at the commencement of a *regulatory control period* is to be based on actual or forecast capital expenditure;
- (4) the manner in which it proposed to make determinations under clause S6A.2.2A(i) if the *margin requirement* is satisfied;
- (5) the manner in which it proposes to make determinations under clause S6A.2.2A(j) if the *capitalisation requirement* is satisfied; and
- (6) how each scheme and proposal referred to in subparagraphs (1) to (5), and all of them taken together, are consistent with the *capital expenditure incentive objective*.
 - (c) There must be *Capital Expenditure Incentive Guidelines* in force at all times after the date on which the *AER* first publishes the *Capital Expenditure Incentive Guidelines* under the *Rules*.

...

6A.6.3 Depreciation

- (a) The depreciation for each *regulatory year*:
 - (1) must be calculated on the value of the assets as included in the regulatory asset base, as at the beginning of that *regulatory year*, for the relevant *transmission system*; and
 - (2) must be calculated:
 - (i) providing such depreciation schedules conform with the requirements set out in paragraph (b), using the depreciation schedules for each asset or category of assets that are nominated in the relevant *Transmission Network Service Provider's Revenue Proposal*; or
 - (ii) to the extent the depreciation schedules nominated in the provider's Revenue Proposal do not so conform, using the depreciation schedules determined for that purpose by the *AER* in its final decision on the *Transmission Network Service Provider's Revenue Proposal*.
- (b) The depreciation schedules referred to in paragraph (a) must conform to the following requirements:
 - (1) except as provided in paragraph (c), the schedules must depreciate using a profile that reflects the nature of the assets or category of assets over the economic life of that asset or category of assets;
 - (2) the sum of the real value of the depreciation that is attributable to any asset or category of assets over the economic life of that asset or category of assets (such real value being calculated as at the time the value of that asset or category of assets was first included in the regulatory asset base for the relevant *transmission system*) must be equivalent to the value at which that asset or category of assets was first included in the regulatory asset base for the relevant *transmission system*; and

(3) the economic life of the relevant assets and the depreciation methodologies and rates underpinning the calculation of depreciation for a given *regulatory control period* must be consistent with those determined for the same assets on a prospective basis in the *transmission determination* for that period.

(c) To the extent that:

- (1) an asset (or group of assets) the value of which forms part of the regulatory asset base for a *transmission system* is dedicated to one *Transmission Network User* (not being a *Distribution Network Service Provider*) or a small group of *Transmission Network Users*; and
- (2) the value of the assets (or group of assets), as included in the value of that regulatory asset base as at the beginning of the first *regulatory year* of the current *regulatory control period*, exceeds the *indexed amount*, as at the commencement of that *regulatory control period*, of \$20 million,

that asset (or group of assets) must be depreciated on a straight line basis over the life at which that asset (or group of assets) was first included in the regulatory asset base for that *transmission system*.

(d) Where an asset (or group of assets) forms part of an actionable ISP project, a Transmission Network Service Provider may submit a request to the AER to approve that the asset (or group of assets) is depreciated on a basis other than on a straight line basis.

(e) A request under paragraph (d) must be made at the same time as submitting an application under clause 6A.8.2(a) in relation to that asset (or group of assets).

(f) In making a determination under paragraph (d), the AER must have regard to:

- (1) the relative consumer benefits from the provision of network services over time;
- (2) the capacity of the network service provider to efficiently finance its overall regulatory asset base, including efficient capital expenditure; and
- (3) any other factors the AER considers relevant, having regard to subparagraphs (1) and (2) above.

(g) The AER may, in accordance with the transmission consultation procedures, develop and publish guidelines that set out:

- (1) the approach the AER proposes to use to make a determination under paragraph (d);
- (2) the information the AER requires for the purposes of that determination;
- (3) the information the AER requires for the purposes of developing and publishing the issues paper in accordance with paragraph (h); and
- (4) any other matters the AER considers appropriate.

(h) A Transmission Network Service Provider may, prior to submitting a request under paragraph (d), submit a request (an initial request) to the AER to develop and publish an issues paper that:

- (1) provides an indication on whether the asset (or group of assets) should be depreciated on a basis other than on a straight line basis and, if so, may indicate a range of depreciation profiles; and
- (2) identifies key matters that the AER considers necessary to have regard to in making a determination under paragraph (d) for the asset (or group of assets).
 - (i) An initial request must be made no earlier than 6 months, and no later than 4 months, prior to the Transmission Network Service Provider submitting an application under clause 6A.8.2(a) in relation to the relevant asset (or group of assets).
 - (j) If a Transmission Network Service Provider makes an initial request under paragraph (h), then, subject to paragraph (l), the AER must develop and publish an issues paper on the initial request within 2 months of receiving the initial request.
 - (k) The AER may request from the Transmission Network Service Provider additional information or analysis that the AER considers reasonably necessary to assist it in publishing an issues paper under paragraph (j).
 - (l) If the AER requests additional information or analysis under paragraph (k), then the period of time for publishing an issues paper under paragraph (j) is automatically extended by the period of time it takes the Transmission Network Service Provider to provide the additional information or analysis to the AER.

...

6A.10.1A AER's framework and approach paper

- (a) The AER must make and publish a document (*a framework and approach paper*) that applies in respect of a *revenue determination* for a matter listed in paragraph (b) in accordance with this clause if:
 - (1) there is no *framework and approach paper* that applies in respect of that *revenue determination* for that matter; or
 - (2) there is a *framework and approach paper* that would apply in respect of that *revenue determination* for that matter, but the AER has *published* a notice under paragraph (c)(3) stating that it will make an amended or replacement *framework and approach paper* with respect to that matter.
- (b) A *framework and approach paper* that applies in respect of a *revenue determination* must set out the AER's proposed approach (together with its reasons for the proposed approach), in the forthcoming *revenue determination*, to the following matters:
 - (1) the application to the *Transmission Network Service Provider* of any *service target performance incentive scheme*;
 - (2) the application to the *Transmission Network Service Provider* of any *efficiency benefit sharing scheme*;

- (3) the application to the *Transmission Network Service Provider* of any *capital expenditure sharing scheme*;
- (4) the application to the *Transmission Network Service Provider* of any *small-scale incentive scheme*;
- (5) the application to the *Transmission Network Service Provider* of the *Expenditure Forecast Assessment Guidelines*;
- (6) whether depreciation for establishing the regulatory asset base for the relevant *transmission system* as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure in accordance with clause S6A.2.2B; and
- (7) the application to the *Transmission Network Service Provider* of any *demand management innovation allowance mechanism*.

...

6A.14 Requirements relating to draft and final

decisions 6A.14.1 Contents of decisions

A draft decision under rule 6A.12 or a final decision under rule 6A.13 is a decision by the *AER*:

- (1) on the *Transmission Network Service Provider's* current *Revenue Proposal* in which the *AER* either approves or refuses to approve:
 - (i) the *total revenue cap* for the provider for the *regulatory control period*;
 - (ii) the *maximum allowed revenue* for the provider for each *regulatory year* of the *regulatory control period*;
 - (iii) the values that are to be attributed to the *performance incentive scheme parameters* for any *service target performance incentive scheme* that is to apply to the provider in respect of the *regulatory control period*;
 - (iv) the values that are to be attributed to the *efficiency benefit sharing scheme parameters* for any *efficiency benefit sharing scheme* that is to apply to the provider in respect of the *regulatory control period*; and
 - (v) the commencement and length of the *regulatory control period* that has been proposed by the provider,
 as set out in the *Revenue Proposal*, setting out the reasons for the decision;
- (2) in which the *AER* either:
 - (i) acting in accordance with clause 6A.6.7(c), accepts the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *Revenue Proposal*; or
 - (ii) acting in accordance with clause 6A.6.7(d), does not accept the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *Revenue Proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the *Transmission Network Service Provider's* required capital expenditure for the *regulatory control period* that the *AER* is satisfied reasonably reflects

OFFICIAL

the *capital expenditure criteria*, taking into account the *capital expenditure factors*;

- (3) in which the *AER* either:
- (i) acting in accordance with clause 6A.6.6(c) or clause 6A.6.6(c1), accepts the total of the forecast operating expenditure for the *regulatory control period* that is included in the current *Revenue Proposal*; or
 - (ii) acting in accordance with clause 6A.6.6(d), does not accept the total of the forecast operating expenditure for the *regulatory control period* that is included in the current *Revenue Proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period* that the *AER* is satisfied reasonably reflects the *operating expenditure criteria*, taking into account the *operating expenditure factors*;
- (4) in which the *AER* determines:
- (i) whether each of the *proposed contingent projects* (if any) described in the current *Revenue Proposal* are *contingent projects* for the purposes of the *revenue determination* in which case the decision must clearly identify each of those *contingent projects*;
 - (ii) the capital expenditure that it is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*, in the context of each *contingent project* as described in the current *Revenue Proposal*;
 - (iii) the *trigger events* in relation to each *contingent project* (in which case the decision must clearly specify those *trigger events*); and
 - (iv) if the *AER* determines that such a *proposed contingent project* is not a *contingent project* for the purposes of the *revenue determination*, its reasons for that conclusion, having regard to the requirements of clause 6A.8.1(b);
- (5) **[Deleted]**
- (5A) in which the *AER* determines how any applicable *capital expenditure sharing scheme*, *small-scale incentive scheme* or *demand management innovation allowance mechanism* is to apply to the *Transmission Network Service Provider*;
- (5B) on the *allowed rate of return* for each *regulatory year* of the *regulatory control period*;
- (5C) on the *allowed imputation credits* for each *regulatory year* of the *regulatory control period*;
- (5D) on the regulatory asset base as at the commencement of the *regulatory control period* in accordance with clause 6A.6.1 and Schedule 6A.2;

(5E) on whether depreciation for establishing the regulatory asset base as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure;

Note: See clause S6A.2.2B.

From: [REDACTED]
Sent: Thursday, May 4, 2023 2:49 PM
To: [REDACTED]; [REDACTED]
CC: [REDACTED]
Subject: RE: Financeability rule change

Thanks [REDACTED]

Hi [REDACTED]

That sounds great.

I've copied in [REDACTED] who is the project sponsor on the financeability rule change. We'll reach out to you and [REDACTED] in the coming weeks as we further progress this rule change.

Regards

[REDACTED]

[REDACTED] Senior Adviser

Australian Energy Market Commission

D [REDACTED]

[REDACTED] [@aemc.gov.au](mailto:[REDACTED]@aemc.gov.au) | www.aemc.gov.au

The Australian Energy Market Commission office is located on land traditionally owned by the Gadigal people of the Eora nation.

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Please consider the environment before printing.

From: [REDACTED] <[REDACTED]@aemo.com.au>
Sent: Tuesday, 2 May 2023 9:14 AM
To: [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aemo.com.au>
Cc: [REDACTED] <[REDACTED]@aemc.gov.au>
Subject: RE: Financeability rule change

Morning [REDACTED] and [REDACTED]

Yes – happy for [REDACTED] to reach out to [REDACTED] and I on that rule change.

Regards,

[REDACTED]

Manager - Transmission Reform, Reform Development & Insights



Australian Energy Market Operator

M [REDACTED] | E [REDACTED][@aemo.com.au](mailto:[REDACTED]@aemo.com.au)

L1/25 Grenfell Street, Adelaide 5000

aemo.com.au

Disclaimer

This email, including all attachments, is confidential and for the sole use of the intended recipient(s). If you are not the intended recipient, you are prohibited from disclosing, copying, distributing, or in any other way using it. If you have received this email in error, please notify me by return email, or contact the AEMO Client Services Team on 1300 236 600, and then delete this email from your system.

From: [REDACTED] <[REDACTED][@aemc.gov.au](mailto:[REDACTED]@aemc.gov.au)>
Sent: Friday, 28 April 2023 12:07 PM
To: [REDACTED] <[REDACTED][@aemo.com.au](mailto:[REDACTED]@aemo.com.au)>; [REDACTED]
<[REDACTED][@aemo.com.au](mailto:[REDACTED]@aemo.com.au)>
Cc: [REDACTED] <[REDACTED][@aemc.gov.au](mailto:[REDACTED]@aemc.gov.au)>
Subject: Financeability rule change

Hi [REDACTED] and [REDACTED]

I hope you are both well, and [REDACTED] I hope you had a great holiday!

I wanted to connect you with [REDACTED]. Andrew is the project lead for the financeability rule change. Would you two be the best AEMO contact for discussions on the financeability rule change?

Kind regards,

[REDACTED]

[REDACTED] Director

Australian Energy Market Commission

D [REDACTED] | T +61 2 8296 7800

[REDACTED][@aemc.gov.au](mailto:[REDACTED]@aemc.gov.au) | www.aemc.gov.au

Level 15, 60 Castlereagh St, Sydney NSW 2000.

The Gadigal people of the Eora nation are the traditional owners of the land on which AEMC's office is located.

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Please consider the environment before printing.

This email, including all attachments, is confidential and for the sole use of the intended recipient(s). If you are not the intended recipient, you are prohibited from disclosing, copying, distributing, or in any other way using it. If you have received this email in error, please notify me by return email, or contact the AEMO Client Services Team on 1300 236 600, and then delete this email from your system.

From: [REDACTED]
Sent: Thursday, May 25, 2023 3:36 PM
To: [REDACTED]
CC: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
 [REDACTED]; Kris Funston; Danielle Beinart
Subject: RE: CONFIDENTIAL - For your red flag review - Financeability and Concessional finance consultation papers [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Hi [REDACTED]

[REDACTED]

Let me know if you have any further questions.

Kind regards, [REDACTED]

[REDACTED]

From: [REDACTED] <[REDACTED]@aemc.gov.au>
Sent: Thursday, 25 May 2023 11:39 AM
To: [REDACTED] <[REDACTED]@aer.gov.au>
Cc: [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>; Kris Funston <Kris.Funston@aer.gov.au>; Danielle Beinart <Danielle.Beinart@aemc.gov.au>
Subject: RE: CONFIDENTIAL - For your red flag review - Financeability and Concessional finance consultation papers [SEC=OFFICIAL:Sensitive]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi [REDACTED]

Thank you very much for your response below.

[Redacted]

[Redacted]

Regards

[Redacted]

From: [Redacted] <[Redacted]@aer.gov.au>
Sent: Thursday, May 25, 2023 10:01 AM
To: [Redacted] <[Redacted]@aemc.gov.au>
Cc: [Redacted] <[Redacted]@aemc.gov.au>; [Redacted] <[Redacted]@aer.gov.au>; [Redacted] <[Redacted]@aemc.gov.au>; [Redacted] <[Redacted]@aer.gov.au>; [Redacted] <[Redacted]@aer.gov.au>; [Redacted] <[Redacted]@aer.gov.au>; [Redacted] <[Redacted]@aer.gov.au>; [Redacted] <[Redacted]@aer.gov.au>; Kris Funston <Kris.Funston@aer.gov.au>
Subject: RE: CONFIDENTIAL - For your red flag review - Financeability and Concessional finance consultation papers [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Hi [Redacted]

[Redacted]

Please feel free to give me a call me if you have any further questions.

Kind regards, [REDACTED]

[REDACTED]
Senior Financial Advisor
Australian Energy Regulator
[REDACTED]@aer.gov.au
[REDACTED]

From: [REDACTED] <[REDACTED]@aemc.gov.au>
Sent: Wednesday, 24 May 2023 5:11 PM
To: [REDACTED] <[REDACTED]@aer.gov.au>
Cc: [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>; [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>
Subject: RE: CONFIDENTIAL - For your red flag review - Financeability and Concessional finance consultation papers [SEC=OFFICIAL:Sensitive]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi [REDACTED]

Great – thanks so much!

Regard

[REDACTED]
[REDACTED]

From: [REDACTED] <[REDACTED]@aer.gov.au>
Sent: Wednesday, May 24, 2023 4:48 PM
To: [REDACTED] <[REDACTED]@aemc.gov.au>
Cc: [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>; [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>
Subject: RE: CONFIDENTIAL - For your red flag review - Financeability and Concessional finance consultation papers [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Hi [REDACTED]

We'll aim to get back to you tomorrow. I'll let you know if there are any issues responding by then, or if we need to chat, after I speak to my colleagues.

Kind regards, [REDACTED]

[REDACTED]

From: [REDACTED] <[REDACTED]@aemc.gov.au>

Sent: Wednesday, 24 May 2023 4:44 PM

To: [REDACTED] <[REDACTED]@aer.gov.au>

Cc: [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED]

<[REDACTED]@aemc.gov.au>

Subject: RE: CONFIDENTIAL - For your red flag review - Financeability and Concessional finance consultation papers [SEC=OFFICIAL:Sensitive]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi [REDACTED]

[REDACTED]



Thanks and regards

[Redacted signature]

From: [Redacted]
Sent: Wednesday, May 24, 2023 4:32 PM
To: [Redacted] <[Redacted]@aer.gov.au>; Kris Funston <Kris.Funston@aer.gov.au>; [Redacted] <[Redacted]@aer.gov.au>
Cc: Danielle Beinart <Danielle.Beinart@aemc.gov.au>; [Redacted] <[Redacted]@aemc.gov.au>; [Redacted] <[Redacted]@aemc.gov.au>; [Redacted] <[Redacted]@aemc.gov.au>; [Redacted] <[Redacted]@aemc.gov.au>; [Redacted] <[Redacted]@aer.gov.au>
Subject: RE: CONFIDENTIAL - For your red flag review - Financeability and Concessional finance consultation papers [SEC=OFFICIAL:Sensitive]

Hi [Redacted]

Thank you and your colleagues for your red flag review of the Financeability and Concessional finance consultation papers – this is much appreciated.

[Redacted signature]

Regards

[REDACTED]

From: [REDACTED] <[REDACTED]@aer.gov.au>
Sent: Wednesday, May 17, 2023 1:55 PM
To: [REDACTED] <[REDACTED]@aemc.gov.au>; Kris Funston <Kris.Funston@aer.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>
Cc: Danielle Beinart <Danielle.Beinart@aemc.gov.au>; [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>
Subject: RE: CONFIDENTIAL - For your red flag review - Financeability and Concessional finance consultation papers [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Hi [REDACTED]

Thanks for allowing us the opportunity to review these draft papers.

[REDACTED]

[REDACTED] Thanks to you and your team for all the work on these.

Kind regards, [REDACTED]

[REDACTED]
Senior Financial Advisor
Australian Energy Regulator
[REDACTED]@aer.gov.au
[REDACTED]

From: [REDACTED] <[REDACTED]@aemc.gov.au>
Sent: Friday, 12 May 2023 10:23 AM
To: Kris Funston <Kris.Funston@aer.gov.au>; [REDACTED] <[REDACTED]@aer.gov.au>;
[REDACTED] <[REDACTED]@aer.gov.au>
Cc: Danielle Beinart <Danielle.Beinart@aemc.gov.au>; [REDACTED]
<[REDACTED]@aemc.gov.au>; [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED]
<[REDACTED]@aemc.gov.au>
Subject: CONFIDENTIAL - For your red flag review - Financeability and Concessional finance consultation papers

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Kris, [REDACTED] and [REDACTED]

As Danielle and Kris discussed yesterday, we would really appreciate it if you're able to review our attached confidential consultation papers for the Financeability (ERC0348) and Concessional finance (ERC0349) rule changes.

We are only asking that you identify any red flags that we should consider amending. We are not seeking a drafting review.

If you're able to get back to us with any red flags by COB Wednesday 17 May, that would be really appreciated.

Thanks and regards

[REDACTED]

[REDACTED] Senior Adviser

Australian Energy Market Commission

D [REDACTED]

[REDACTED] <[REDACTED]@aemc.gov.au | www.aemc.gov.au

The Australian Energy Market Commission office is located on land traditionally owned by the Gadigal people of the Eora nation.

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Please consider the environment before printing.

IMPORTANT: This email from the Australian Energy Regulator (AER), and any attachments to it, may contain information that is confidential and may also be the subject of legal, professional or other privilege. If you are not the intended recipient, you must not review, copy, disseminate, disclose to others or take action in reliance on, any material contained within this email. If you have received this email in error, please let the AER know by reply email to the sender informing them of the mistake and delete all copies from your computer system. For the purposes of the Spam Act 2003, this email is authorised by the AER www.aer.gov.au

IMPORTANT: This email from the Australian Energy Regulator (AER), and any attachments to it, may contain information that is confidential and may also be the subject of legal, professional or other privilege. If you are not the intended recipient, you must not review, copy, disseminate, disclose to others or take action in reliance on, any material contained within this email. If you have received this email in error, please let the AER know by reply email to the sender informing them of the mistake and delete all copies from your computer system. For the purposes of the Spam Act 2003, this email is authorised by the AER www.aer.gov.au

IMPORTANT: This email from the Australian Energy Regulator (AER), and any attachments to it, may contain information that is confidential and may also be the subject of legal, professional or other privilege. If you are not the intended recipient, you must not review, copy, disseminate, disclose to others or take action in reliance on, any material contained within this email. If you have received this email in error, please let the AER know by reply email to the sender informing them of the mistake and delete all copies from your computer system. For the purposes of the Spam Act 2003, this email is authorised by the AER www.aer.gov.au

IMPORTANT: This email from the Australian Energy Regulator (AER), and any attachments to it, may contain information that is confidential and may also be the subject of legal, professional or other privilege. If you are not the intended recipient, you must not review, copy, disseminate, disclose to others or take action in reliance on, any material contained within this email. If you have received this email in error, please let the AER know by reply email to the sender informing them of the mistake and delete all copies from your computer system. For the purposes of the Spam Act 2003, this email is authorised by the AER www.aer.gov.au

From: [REDACTED]
Sent: Tuesday, May 30, 2023 7:34 AM
Subject: AEMC updates this week and next



Good morning,

The AEMC will publish new versions of the national electricity rules this Thursday, 1 June 2023:

- **NER v200**
- **NER (NT) v105**

There are no reports scheduled for publication by the AEMC this week.

Next week, the AEMC plans to initiate the following rule change requests from Federal Minister for Climate Change and Energy, Chris Bowen:

- **Consultation paper – Concessional finance for transmission network service providers (TNSPs). Project code: [ERC0349](#)**
- **Consultation paper – Accommodating financeability in the regulatory framework. Project code: [ERC0348](#)**

The Let's Talk Tuesdays call will take place today as planned.

Regards,

[REDACTED]

[REDACTED]

Government Relations and Stakeholder Engagement Manager

Australian Energy Market Commission

D [REDACTED] | [REDACTED]
[REDACTED] [@aemc.gov.au](mailto:[REDACTED]@aemc.gov.au) | www.aemc.gov.au

Level 15, 60 Castlereagh St, Sydney NSW 2000

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Please consider the environment before printing.

From: [REDACTED]
Sent: Tuesday, June 6, 2023 1:52 PM
CC: [REDACTED]
Subject: EMBARGOED - Consultation papers - Concessional finance/ Financeability
Attachments: EMBARGOED - ERC0348 Info sheet - Accommodating financeability in the regulatory framework.pdf; EMBARGOED - ERC0348 Consultation paper - Accommodating financeability in the regulatory framework.pdf; EMBARGOED - ERC0349 Info sheet - Concessional finance for TNSPs.pdf; EMBARGOED - ERC0349 Consultation paper - Concessional finance for TNSPs.pdf

Documents attached to this email are embargoed until 8am, Thursday 8 June 2023

Good afternoon,

Please find attached embargoed copies of the consultation papers and information sheets for the following projects. All documents are under embargo until 8am this **Thursday, 8 June 2023**:

- **Consultation paper – Concessional finance for transmission network service providers (TNSPs). Project code: [ERC0349](#)**
- **Consultation paper – Accommodating financeability in the regulatory framework. Project code: [ERC0348](#)**

If you have any questions please be in touch with me, or Andrew Pirie and Chirine Dada from the project teams, both copied into this email.

Regards,

[REDACTED]

[REDACTED]

Government Relations and Stakeholder Engagement Manager

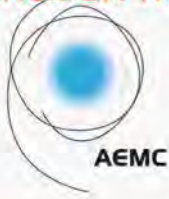
Australian Energy Market Commission

[REDACTED] | [REDACTED]
[REDACTED]@aemc.gov.au | www.aemc.gov.au

Level 15, 60 Castlereagh St, Sydney NSW 2000

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Please consider the environment before printing.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

These documents remain under embargo until 8am on Thursday 8 June 2023. Please note that these documents may include inside information, within the meaning of the Corporations Act 2001 (Cth), in relation to tradable securities. The Corporations Act contains prohibitions on various activities while a person is in possession of inside information. The prohibited activities include trading in the relevant securities and communicating the information to someone who the person knows, or should know, is likely to trade in the relevant securities.

Accommodating financeability in the regulatory framework

We have published a consultation paper seeking your feedback

On 8 June 2023, the Australian Energy Market Commission (AEMC) published a consultation paper in response to a rule change request from the Honourable Chris Bowen MP, Commonwealth Minister for Climate Change and Energy (the Minister). The rule change seeks to address financeability challenges for Transmission Network Service Providers (TNSPs) in relation to actionable Integrates System Plan (ISP) projects.

We are seeking stakeholder submissions on the consultation paper, by **14 July 2023**.

Context

Australia is undergoing a transformational shift to net zero. A key feature of this transformation is the replacement of centralised thermal generation with decentralised renewable generation.

There is broad consensus that transmission is a critical enabler for the transition to net zero, both in the National Electricity Market (NEM) and the economy more broadly. This transition will require an unprecedented level of investment in, and build of, transmission infrastructure to deliver power from renewable generation and energy storage to consumers, and to deliver infrastructure quickly.

The scale of transmission investment required, coupled with the speed of the energy transition, presents unique opportunities and challenges for the existing regulatory framework. This framework was developed and has evolved over a period of incremental growth of the grid where the framework was weighted to minimise the risk of overbuilding, rather than the current required pace of step-change growth set out in the Australian Energy Market Operator's (AEMO) ISP.

The scale and pace of investment required for the transition to net-zero raises questions as to whether actionable ISP projects will be financeable, and this is the topic of the rule change request. In this context, financeability refers to the ability of TNSPs to efficiently raise capital to finance their activities.

Overview of the Ministers' rule change request

The Minister considers that there is a foreseeable risk that financeability challenges could arise for actionable ISP projects, which may impact the timely and efficient delivery of these major transmission projects. This is because:

- TNSPs may face challenges in raising capital to proceed with ISP projects
- the existing revenue framework is not sufficiently flexible to address financeability challenges that may arise in future.

The Minister's view reflects the conclusions set out recently by the Commission in Stage 2 of its Transmission Planning and Investment Review (TPIR).

To address the risk faced by TNSPs, the Minister submitted a rule change request on 11 April 2023 that seeks to do the following.

- Introduce greater flexibility in the revenue-setting framework in the National Electricity Rules (NER) to vary the depreciation profile of assets that form part of an actionable ISP project. This reflects our recommended solution in TPIR.
- Allow TNSPs to recover depreciation of biodiversity offset costs on an as incurred basis. We did not raise this solution in TPIR.

INFORMATION

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

- Clarify the treatment of depreciation for asset classes, including biodiversity offsets. We did not raise this solution in TPIR.

The Minister expects that, if the proposed solution is implemented to allow depreciation profiles for assets that form part of actionable ISP projects to be varied, it would be the primary mechanism that TNSPs use to address their financeability concerns. Up until recently, TNSPs have sought alternative methods to address their financeability concerns. These methods have included sourcing concessional finance from the Commonwealth Government, for example through the Rewiring the Nation (RTN) program.

Related rule change process

The Commission is separately considering a rule change request from the Minister on *Concessional Finance for Transmission Network Service Providers*. That rule change request relates to amending the NER to enable the AER to take into account how any financial benefits that may arise from concessional financing of transmission infrastructure are shared between consumers and TNSPs.

Background on financeability of actionable ISP projects

Financeability challenges for TNSPs may arise from the way that cash flow is impacted by large investments in ISP projects relative to their existing Regulatory Asset Bases (RABs), over a short period. If TNSPs are unable to adapt their capital structures sufficiently quickly, this could negatively impact some financial metrics that are used to assess their creditworthiness.

In our TPIR Stage 2 final report, we concluded that there was currently no clear evidence of financeability issues with specific projects or TNSPs. However, we recognised that successive ISP iterations could see the timing of major transmission projects moved forward or bunched in a way that creates a risk of financeability issues arising in the future.

For information contact:

Senior Adviser, **Andrew Pirie** 02 8296 7800

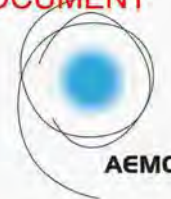
Adviser, **Patrick Loughrey** 02 8296 0659

Media enquiries: media@aemc.gov.au

8 June 2023

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

These documents remain under embargo until 8am on Thursday 8 June 2023. Please note that these documents may include inside information, within the meaning of the Corporations Act 2001 (Cth), in relation to tradable securities. The Corporations Act contains prohibitions on various activities while a person is in possession of inside information. The prohibited activities include trading in the relevant securities and communicating the information to someone who the person knows, or should know, is likely to trade in the relevant securities.



Australian Energy Market Commission

CONSULTATION PAPER**NATIONAL ELECTRICITY AMENDMENT
(ACCOMMODATING FINANCEABILITY
IN THE REGULATORY FRAMEWORK)
RULE****PROPONENT**

Commonwealth Minister for Climate Change and Energy

8 JUNE 2023

RULE

~~INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT~~

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

INQUIRIES

Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

E aemc@aemc.gov.au
T (02) 8296 7800

Reference: ERC0348

ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

COPYRIGHT

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. You may reproduce selected passages, tables or diagrams for these purposes provided you acknowledge the source.

CITATION

To cite this document, please use the following:

AEMC, Accommodating financeability in the regulatory framework, Consultation paper, 8 June 2023

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

SUMMARY

- 1 Australia is undergoing a transformational shift to net zero. A key feature of this transformation is the replacement of centralised thermal generation with decentralised renewable generation.
- 2 There is broad consensus that transmission is a critical enabler for the transition to net zero, both in the National Electricity Market (NEM) and the economy more broadly. This transition will require an unprecedented level of investment in, and build of, transmission infrastructure to deliver power from renewable generation and energy storage to consumers, and to deliver infrastructure quickly.
- 3 The scale of transmission investment required, coupled with the speed of the energy transition, presents unique opportunities and challenges for the existing regulatory framework. This framework was developed and has evolved over a period of incremental growth of the grid where the framework was weighted to minimise the risk of overbuilding, rather than the current required pace of step-change growth set out in the Australian Energy Market Operator's (AEMO) Integrated System Plan (ISP).
- 4 The scale and pace of investment required for the transition to net-zero raises questions as to whether actionable ISP projects will be financeable, and this is the topic of this rule change request. In this context, financeability refers to the ability of Transmission Network Service Providers (TNSPs) to efficiently raise capital to finance their activities.
- 5 In our review of Stage 2 of the Transmission Planning and Investment Review (TPIR or review) we recognised that as part of the revenue setting framework, the regulatory depreciation revenue building block consists of straight line depreciation less the forecast indexation of capital. This feature contributes to financeability challenges because it can reduce cash flow early in the life of significant ISP projects. Providing flexibility in the revenue setting framework to alter the profile of revenue recovery can address cash flow issues without increasing the cost to customers over the life of the investment.

We are seeking your views on financeability issues for actionable ISP projects

- 6 The Honourable Chris Bowen MP, Commonwealth Minister for Climate Change and Energy (Minister or proponent) considers that there is a foreseeable risk that financeability challenges could arise for actionable ISP projects, which may impact the timely and efficient delivery of these major transmission projects. This is because:
 - TNSPs may face challenges in raising capital to proceed with ISP projects
 - the existing revenue framework is not sufficiently flexible to address financeability challenges that may arise in future.
- 7 The Minister's view reflects the conclusions set out recently by the Commission in Stage 2 of TPIR.
- 8 To address the risk faced by TNSPs, the Minister submitted a rule change request on 11 April

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

2023 that seeks to do the following.

- Introduce greater flexibility in the revenue-setting framework in the National Electricity Rules (NER) to vary the depreciation profile of assets that form part of an actionable ISP project. This reflects our recommended solution in TPIR.
- Allow TNSPs to recover depreciation of biodiversity offset costs on an as incurred basis. We did not raise this solution in TPIR.
- Clarify the treatment of depreciation for asset classes, including biodiversity offsets. We did not raise this solution in TPIR.

9 The Minister expects that, if the proposed solution is implemented to allow depreciation profiles for assets that form part of actionable ISP projects to be varied, it would be the primary mechanism that TNSPs use to address their financeability concerns. Up until recently, TNSPs have sought alternative methods to address their financeability concerns. These methods have included sourcing concessional finance from the Commonwealth Government, for example through the Rewiring the Nation (RTN) program.¹

10 Considering the NEO² and the issues raised in the rule change request, the Commission proposes to assess the rule change request against five assessment criteria outlined below.

- Outcomes for consumers.
- Principles of good regulatory practice.
- Principles of market efficiency.
- Decarbonisation.
- Safety, security and reliability.

Submissions are due by 14 July 2023 with other engagement opportunities to follow

11 Written submissions responding to this consultation paper must be lodged with Commission by 14 July 2023 through the AEMC website, www.aemc.gov.au.

12 There will be opportunities for you to engage with the AEMC throughout this process, such as one-on-one discussions or industry briefing sessions. See the section of this paper about "How to engage with us" for further information.

Related rule change process

13 The Commission is separately considering a rule change request from the Minister on *Concessional Finance for Transmission Network Service Providers*.

14 That rule change request relates to amending the NER to enable the AER to take into account how any financial benefits that may arise from concessional financing of transmission infrastructure are shared between consumers and TNSPs.

¹ Rule change request, p. 1.

² Section 7 of the National Electricity Law (NEL)

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

Full list of consultation questions

QUESTION 1: IDENTIFYING THE PROBLEM

Do stakeholders have any new information or views on the problem raised in this rule change request, having regard to what has already been consulted on and established in TPIR?

QUESTION 2: HOW TO ASSESS FINANCEABILITY APPLICATIONS

(a) Should TNSPs have to submit an application to the AER to vary the depreciation profile of actionable ISP projects? If so, what information should this include?

(b) Should the AER vary the depreciation profile of actionable ISP projects using principles or a prescriptive approach?

(c) What level of AER discretion is appropriate?

(d) Do you consider that the proposed principles are appropriate? Should any other assessment factors be taken into account?

QUESTION 3: LEVEL OF FINANCEABILITY ASSESSMENT

(a) Should the financeability assessment be at the TNSP RAB level or the ISP project level?

QUESTION 4: FINANCEABILITY ASSESSMENT PROCESS AND TIMING

Is the proposed process and timing to assess requests to vary depreciation for actionable ISP projects practical and efficient? If not, what alternative processes and timings do you suggest be specified in the NER?

QUESTION 5: WILL THE PROPOSAL RESOLVE THE PROBLEM?

(a) Will the proposed solution to vary depreciation profiles resolve the problem raised in the rule change request? Would it reduce or eliminate the need for concessional finance from governments for ISP projects?

(c) Are there any alternative solutions that would resolve the problem and be more preferable and aligned with the long-term interests of consumers?

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

QUESTION 6: AER GUIDANCE

Should the AER be required to publish guidance on how it may vary the depreciation profile for assets that form part of an actionable ISP projects?

QUESTION 7: TRANSITIONAL ARRANGEMENTS

(a) If the proposed rule is made, should the AER be required to develop any guidance, or amend any AER models, before or after the commencement of the rule? If so, what level of prescription should be included in the NER?

(b) If the proposed rule is made, should it provide a transitional period to enable market participants to prepare? If so, how long should such a transitional period be?

(c) Is there a need for any transitional arrangements to assist with managing interactions other NER amendments or other market reforms? If so, what?

QUESTION 8: BIODIVERSITY OFFSET ARRANGEMENTS ACROSS NEM JURISDICTIONS

Are the costs of meeting biodiversity obligations material? Are they likely to impact financeability of actionable ISP projects?

QUESTION 9: RECOGNISING AND MANAGING BIODIVERSITY OFFSET COSTS

(a) Does the AER already have discretion to do what the rule change request is proposing (i.e. applying depreciation as incurred for transmission assets)?

(b) Should land purchased specifically for the purpose of meeting biodiversity offset obligations be depreciable? Should other costs of meeting biodiversity offset obligations be depreciable?

(c) Do you agree or disagree that recovering depreciation of biodiversity offset costs as incurred (as opposed to as commissioned), would be an appropriate solution to the financeability problem? Does this re-allocate completion risk from TNSP's to consumers?

(d) Are the nature of biodiversity offsets different from other assets that comprise a specific actionable ISP project, such that biodiversity offsets should be depreciated on a different basis to other assets?

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

QUESTION 10: APPLICATION OF PROPOSED SOLUTION TO INTENDING TNSPS

If TNSPs are able to recover depreciation of biodiversity offsets on an as incurred basis, should this be extended to intending TNSPs?

QUESTION 11: CLARIFYING DEPRECIATION TREATMENT OF ASSET CLASSES

(a) Do you agree with the proposal to require the AER to explicitly outline how depreciation would apply to all asset classes in actionable ISP projects? Should this include biodiversity assets?

(b) If you agree that the depreciation treatment of asset classes should be documented, how should it be implemented — through the NER, AER guidelines and/or other methods?

QUESTION 12: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework? Are there additional principles that the Commission should take into account or are there principles that are not relevant?

How to make a submission

We encourage you to make a submission

Stakeholders can help shape the solutions by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and, in so doing, contributes to well-informed, high quality rule changes.

We have included consultation questions in this paper, however, you are welcome to provide feedback on any additional matters that may assist the Commission in making its decision.

How to make a written submission

Due date: Written submissions responding to this consultation paper must be lodged with Commission by 14 July 2023.

How to make a submission: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code ERC0348.³

You may, but are not required to, use the stakeholder submission form published with this consultation paper. Tips for making submissions are available on our website.⁴

³ If you are not able to lodge a submission online, please contact us .

⁴ See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/our-work-3>

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

You can find more information on the rule change process in *The Rule change process – a guide for stakeholders*.⁵

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).⁶

For more information, you can contact us

Please contact the project leader with questions or feedback at any stage.

Project leader: Andrew Pirie
Email: andrew.pirie@aemc.gov.au

⁵ *The rule change process: a guide for stakeholders*, June 2017, available here: <https://www.aemc.gov.au/sites/default/files/2018-09/A-guide-to-the-rule-change-process-200617.PDF>

⁶ Further information is available here: <https://www.aemc.gov.au/contact-us/lodge-submission>

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

CONTENTS

1	The context for this rule change request	1
1.1	The Commonwealth Minister has proposed the rules be changed to address financeability risks for actionable ISP projects	1
1.2	Commencing the rule change process	2
1.3	Related rule change process	3
2	The problem raised in the rule change request	4
2.1	There is a foreseeable risk that financeability challenges could arise in relation to actionable ISP projects	4
2.2	The problem is material in relation to financeability challenges for ISP projects	6
3	Proposed solution to vary depreciation that we recommended in TPIR	8
3.1	Allowing depreciation to be varied for actionable ISP projects	8
3.2	Suitability of the proposed solution?	14
3.3	What implementation issues might there be?	15
4	Proposed solutions on biodiversity offsets that we did not raise in TPIR	18
4.1	Recognising and managing biodiversity offset costs	18
4.2	Clarifying the treatment of depreciation for asset classes	24
5	Making our decision	26
5.1	The Commission must act in the long term interests of consumers	26
5.2	We must also take these factors into account	26
5.3	We have three options when making our decision	27
5.4	Proposed assessment framework	27
5.5	The proposed rule would not apply in the Northern Territory	28
5.6	Costs and benefits of the proposed solution	29
	Abbreviations	31
	APPENDICES	
A	Previous AEMC engagements on financeability of ISP projects	32
A.1	We considered financeability of ISP projects in two participant derogation rule changes	32
A.2	We considered stakeholder views and provided recommendations on financeability in TPIR Stage 2	32
B	AEMO's 2022 ISP and estimated cost of ISP projects	36
C	Detailed description of regulatory depreciation and the financeability challenge	40
C.1	Purpose and objective of regulatory depreciation	40
C.2	Selecting the form of regulatory depreciation	41
C.3	Current approach to depreciation in the NEM	43
C.4	Financeability and ISP Projects	44
	TABLES	
Table 1.1:	Current and proposed arrangements to depreciate actionable ISP projects	2
Table 4.1:	Current, proposed and alternative depreciation arrangements for TNSPs and ITNSPs	23
Table B.1:	Estimated cost of ISP projects that may need finance	38

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

FIGURES

Figure 1.1:	Key dates for this rule change process	3
Figure C.1:	How regulatory depreciation approaches impact the RAB and after-tax allowance for capital costs over time	43
Figure C.2:	FFO/Debt under different depreciation methods	46

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

1

THE CONTEXT FOR THIS RULE CHANGE REQUEST

This consultation paper seeks stakeholder feedback on the rule change request submitted by the Commonwealth Minister for Climate Change and Energy (the Minister) to address the risk that financeability challenges could arise for actionable ISP projects.⁷

1.1

The Commonwealth Minister has proposed the rules be changed to address financeability risks for actionable ISP projects

On 28 October 2022, Energy Ministers agreed that the Commonwealth Minister submit a rule change request to the AEMC seeking to mitigate the foreseeable risk that financeability challenges could arise in relation to actionable ISP projects.⁸

The Commonwealth Minister considers that there is a foreseeable risk that financeability challenges could arise in relation to actionable ISP projects, as explained in chapter 2 of this consultation paper.⁹

To address this risk, the rule change request proposes the following solutions.

- A proposal to introduce greater flexibility for the AER to vary depreciation profiles of ISP projects. This reflects the AEMC's recommendation on financeability in the TPIR Stage 2 Final report, as explained in Appendix A.¹⁰
- A proposal to allow TNSPs to start recovering depreciation for biodiversity offset costs, as incurred, during construction of an ISP project. This proposal was not considered by the AEMC in TPIR Stage 2.
- A proposal that the AER must explicitly outline how depreciation is expected to be applied to different types of asset classes, including biodiversity offset.¹¹ This proposal was not considered by the AEMC in TPIR Stage 2.

Table 1.1 below summarises the rule change proposal against the current arrangements. More detail on the rule change proposal is set out in chapters 3 and 4 of this consultation paper.

⁷ AEMO, *2022 Integrated System Plan for the National Electricity Market*, June 2022.

⁸ Commonwealth Minister for Climate change and Energy, *Treatment of financeability for Transmission Network Service Providers – Rule change request*, 11 April 2023, p. 1.

⁹ Rule change request, pp. 1-2.

¹⁰ AEMC, *Transmission Planning and Investment Review – Stage 2 Final report*, 27 October 2022.

¹¹ *ibid.*

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

Table 1.1: Current and proposed arrangements to depreciate actionable ISP projects

	ISP PROJECT UNDER CONSTRUCTION	ISP PROJECT COMPLETE AND PROVIDING PRESCRIBED TRANSMISSION SERVICES
Current arrangements	TNSPs have not historically recovered depreciation (return of capital). The NER is silent on recovery of depreciation as incurred.	TNSPs can recover depreciation, as the asset is operational and providing prescribed transmission services to customers. The AER sets depreciation under clause 6A.6.3 of the NER, as explained in Box 1.
Proposed rule	TNSPs can recover depreciation as incurred for biodiversity offset costs, but not other assets under construction.	<ul style="list-style-type: none"> TNSPs can request to vary depreciation for any asset classes of an ISP project. Clarify treatment of depreciation for different asset classes, including biodiversity offsets.

Source: AEMC.

1.2

Commencing the rule change process

Previous stakeholder engagement on the financeability of ISP projects through TPPIR is outlined in Appendix A. This engagement has informed the rule change request.

This paper is the first stage of this rule change process. A standard rule change process is proposed. The remaining stages are:

- stakeholders lodge submissions on the consultation paper and engage through other channels to assist the Commission in making its decision
- the Commission publishes a draft determination and draft rule (if relevant)
- stakeholders lodge submissions on the draft determination and engage through other channels to assist the Commission in making its decision
- the Commission publishes a final determination and final rule (if relevant).

The key dates for this process are outlined below.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

Figure 1.1: Key dates for this rule change process

Timeline for rule change



Source: AEMC.

1.3

Related rule change process

The Commission is separately considering a rule change request from the Minister on *Concessional Finance for Transmission Network Service Providers*.¹²

That rule change request relates to amending the NER to enable the AER to take into account how any financial benefits that may arise from concessional financing of transmission infrastructure are shared between consumers and TNSPs.

Information on how to provide your submission and other opportunities for engagement on this related rule change are set out in the consultation paper available on the AEMC rule change page (ERC0349).

¹² Commonwealth Minister for Climate Change and Energy, *Treatment of Concessional Finance for Transmission Network Service Providers - Rule change request*, 11 April 2023.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

2 THE PROBLEM RAISED IN THE RULE CHANGE REQUEST

This section sets out the problem identified in the rule change request, and the materiality of this problem. The Minister's explanation of the financeability problem in the rule change request is consistent with the financeability issues identified and assessed by the Commission in TPIR Stage 2.

2.1 There is a foreseeable risk that financeability challenges could arise in relation to actionable ISP projects

In the context of TPIR and this rule change process, the term 'financeability' refers to the ability of TNSPs to efficiently (that is, without unnecessary costs) raise capital to finance their activities in the context of the framework used to determine regulated revenue.

Financeability challenges for TNSPs may arise from the way that cash flow is impacted by large investments in ISP projects relative to their existing RABs, over a short period. If TNSPs are unable to adapt their capital structures sufficiently quickly, this could negatively impact some financial metrics that are used to assess their creditworthiness.¹³

The Minister considers that there is a foreseeable risk that TNSPs may face financeability challenges in relation to actionable ISP projects. This is because:

- TNSPs may face challenges in raising capital to proceed with ISP projects
- the existing revenue framework is not sufficiently flexible to address financeability challenges that may arise in the future.

These issues are explained below and reflect the conclusions from the TPIR Stage 2 Final report.¹⁴ Additional information is available in the rule change request.¹⁵

2.1.1 TNSPs may face challenges in raising capital to proceed with ISP projects

In our review of Stage 2 of TPIR we recognised that as part of the revenue setting framework, the regulatory depreciation revenue building block consists of straight line depreciation less the forecast indexation of capital. This feature contributes to financeability challenges because it can reduce cash flow early in the life of significant ISP projects. Providing flexibility in the revenue setting framework to alter the profile of revenue recovery can address cash flow issues without increasing the cost to customers over the life of the investment.

The TPIR Stage 2 final report concluded that there was currently no clear evidence of financeability issues with specific projects or TNSPs. However, we recognised that successive

¹³ AEMC, *Transmission Planning and Investment Review — Stage 2 Final Report*, 27 October 2023, p. 8.

¹⁴ AEMC, *Transmission Planning and Investment Review - Stage 2 Final Report*, 27 October 2023, pp. 8-9

¹⁵ Rule change request, pp. 1-3.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

ISP iterations could see the timing of major transmission projects moved forward or bunched in a way that creates a risk of financeability issues arising in the future.¹⁶

A detailed description of the financeability challenge facing TNSPs in relation to ISP projects is explained in Appendix C.

2.1.2

The existing regulatory framework is not sufficiently flexible to address financeability challenges that may arise in future

The Minister agrees with the Commission's view from the TPIR Stage 2 Final report that the current regulatory framework in the NER is not sufficiently flexible to enable the AER to address potential financeability challenges when making revenue determinations.¹⁷

The AER has some flexibility under the current arrangements to adjust the profile of regulatory allowances, including through depreciation. However, further clarity is required on how the AER should assess and, if necessary, adjust depreciation profiles for ISP projects to address cash-flow concerns to support financeability.¹⁸ For this reason, the TPIR Stage 2 final report recommended that the rules regarding depreciation for TNSPs be amended to provide the AER with the explicit discretion to vary the depreciation profile for an actionable ISP project, on a case-by-case basis, following a request for amendment from a TNSP.

The current framework for the return of capital through depreciation of transmission assets is set out in Box 1 below.

BOX 1: CURRENT RULES FOR DEPRECIATION OF TRANSMISSION ASSETS

Under the current framework, the return of capital through depreciation is set by the AER under clause 6A.6.3 of the NER. This requires the AER to:

- set depreciation profiles that reflect the nature of the assets or category of assets over their economic life, under clause 6A.6.3(b)(1)
- set economic lives, depreciation methodologies and rates underpinning the calculation of depreciation for a given regulatory control period consistently for the same type of assets, under clause 6A.6.3(b)(3)
- depreciate an asset (or group of assets) on a straight-line basis over the life of which that asset (or group of assets) was first included in the RAB where:
 - they are dedicated to one transmission network user (not being a distribution network service provider) or a small group of transmission network users, under clause 6A.6.3(c)(1)
 - the value of the assets (or group of assets), as included in the value of that RAB at the beginning of the first regulatory year of the current regulatory control period,

¹⁶ AEMC, *Transmission Planning and Investment Review — Stage 2 Final report*, 27 October 2023, p. 8.

¹⁷ Rule change request, p. 2.

¹⁸ AEMC, *Transmission Planning and Investment Review — Stage 2 Final report*, 27 October 2023, p. 9.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

exceeds the indexed amount, at the commencement of that regulatory control period, of \$20 million, under clause 6A.6.3(c)(2)

Where the requirements under clause 6A.6.3(c) to use straight-line depreciation do not apply, the AER may adopt a different approach. For example, where assets (or groups of assets) are not dedicated to one transmission network user and are valued at less than \$20 million.

Based on the current list of ISP projects set out in Appendix B, this exception is unlikely to be relevant for most ISP projects. This is because the projects are expected to be major transmission projects that cost more than \$20 million, and so would need to be depreciated on a straight-line basis under current clause 6A.6.3(c).

Where clause 6A.6.3(c) does not apply, the AER's view provided to the AEMC during the TPIR review was that it was unclear whether the AER's discretion extends to resolving financeability concerns by adjusting depreciation timing, even when this would best achieve the NEO.*

While clause 6A.6.3 refers to depreciation on a straight-line basis, the impact of inflation indexation can result in a negative depreciation allowance in the early years of an assets' life, negatively impacting cash flows for TNSP.

Source: AEMC.

Note: *AEMC, *Transmission Planning and Investment Review - Stage 2 Draft report*, 2 June 2022, p. 14.

2.2

The problem is material in relation to financeability challenges for ISP projects

The Minister's explanation of the financeability problem in the rule change request is consistent with the Commission's assessment in TPIR. The Minister considers that there is a material risk that successive ISPs result in a large amount of new investment for TNSPs, relative to their existing RABs.¹⁹ The Minister suggests that this could place pressure on TNSPs cash flows and by extension their credit metrics, in the absence of alternative methods to address financeability challenges, such as sourcing financing from the Commonwealth, including through the RTN program.²⁰

There is a material risk that successive ISPs result in a large amount of new investment for TNSPs, relative to their existing RABs. Appendix B shows that the order of magnitude of potential costs for ISP projects in AEMO's 2022 ISP Optimal development path (ODP), that may need to be financed in the future, could result in an approximate doubling of the existing RABs for some TNSPs. There are uncertainties regarding the magnitude of ISP costs that may need to be financed in the future, including (but not limited to) the reasons outlined below:

- some committed ISP projects have already been financed to some extent

¹⁹ Rule change request, p. 2.

²⁰ Rule change request, p. 1.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

- it is unknown whether decisions will be made to invest in actionable and future ISP projects in the future
- it is unknown whether future ISP projects will become actionable ISP projects
- the estimated range of costs for ISP projects are subject to refinement, for example due to a change in transmission route selection.

Given that the potential order of magnitude of ISP costs that may need to be financed in future is material, there is a foreseeable risk that TNSPs may face financeability challenges relating to actionable ISP projects. This may delay decisions to invest in actionable ISP projects.²¹ If this occurs, it may:

- delay investment in new renewable generation and battery storage
- delay the transition to net zero
- impact the reliability and security of the power system, compared to more timely investment in ISP projects.

QUESTION 1: IDENTIFYING THE PROBLEM

Do stakeholders have any new information or views on the problem raised in this rule change request, having regard to what has already been consulted on and established in TPIR?

²¹ While the rule change request relates specifically to actionable ISP projects, there is the potential for projects that were classified as 'future ISP projects' in AEMO's 2022 ISP ODP to be re-classified as 'actionable ISP projects' in future versions of AEMO's ISP.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

3 PROPOSED SOLUTION TO VARY DEPRECIATION THAT WE RECOMMENDED IN TPIR

This chapter sets out and seeks feedback on:

- the proposed solution in the rule change request, that we recommended in TPIR, to allow depreciation to be varied for actionable ISP projects
- the suitability of the proposed solution to resolve the problem raised in the rule change request
- the costs and benefits of the proposed solution
- how the proposed solution may be implemented.

3.1 Allowing depreciation to be varied for actionable ISP projects

The proposed solution is to amend the NER to enable the depreciation profile of assets that form part of an actionable ISP project to vary from the current approach under clause 6A.6.3 of the NER. We recommended this solution in TPIR.²²

This section explains this proposed solution and following design matters related to it.

- How to assess financeability applications, including through the use of principles or a prescriptive test, and the appropriate level of AER discretion?
- Whether the financeability assessment should be at the TNSP RAB level or the ISP project level?
- How may the proposed solution apply in Victoria?
- What process and timing should apply to the assessment of a TNSP's request to vary depreciation?

3.1.1 Overview of the proposed solution to vary depreciation

To address the foreseeable risk that financeability challenges arise for TNSPs in relation to actionable ISP projects, the Minister proposes the following.²³

- A TNSP may submit a request to the AER to vary the depreciation profile of an actionable ISP project.²⁴
- The AER is provided with explicit discretion to vary the depreciation profile for actionable ISP projects.²⁵ The AER would assess TNSPs requests to vary the depreciation profile of ISP projects, on a case by case basis, and in doing so must have regard to a set of principles set out in the NER.²⁶

²² AEMC, *TPIR Stage 2 – Final report*, 27 October 2022, p. 7.

²³ These proposed changes reflect the recommendations in AEMC, *TPIR Stage 2 – Final report*, 27 October 2022, p. 7.

²⁴ Rule change request, p. 4.

²⁵ Rule change request, p. 3.

²⁶ Rule change request, proposed rule 6A.6.3(f), p.13.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

Further detail on design matters relating to the proposed solution are set out in sections 3.1.2 to 3.1.5 below.²⁷

3.1.2

How to assess financeability applications

There are three aspects related to the AER's assessment of financeability applications from TNSPs for actionable ISP projects:

- whether the assessment should be based on principles or a prescriptive approach
- what level of discretion should be provided to the AER
- what factors should be taken into account in the assessment.

For context, Box 2 below provides an overview of the level of flexibility provided to the AER to depreciate electricity transmission and distribution assets, and gas pipeline assets, under the current provisions of the NER and National Gas Rules.

BOX 2: CURRENT ARRANGEMENTS FOR DEPRECIATION OF GAS AND ELECTRICITY ASSETS

In relation to gas pipeline assets, in 2019 the AEMC made a rule to provide full discretion to the AER in relation to depreciation, when assessing access arrangement proposals from pipeline service providers. The final determination noted that regulatory decision-making would be improved through the removal of limitations on regulatory discretion applied to certain elements of an access arrangement.^(a)

In relation to electricity transmission assets, the current regulatory framework is not sufficiently flexible to address financeability challenges that may arise in future. For more information, see section 2.1.2 of this consultation paper.

The current regulatory framework for depreciation of electricity distribution assets is similar to that for depreciation of electricity transmission, with some differences. NER clause 6.5.5 requires the AER to set depreciation profiles that reflect the nature of the asset or category of assets over their economic life. The AER has to set the economic life, depreciation methods and rates of depreciation consistently for the same type of assets. While the AER must depreciate transmission assets on a straight-line basis under clause 6A.6.3(b) (and take into account inflation indexation which can result in a negative regulatory depreciation allowance), assets that have been included in a TNSP's RAB that are valued at more than \$20 million, there is no such requirement in relation to assets that have been included in DNSP's RABs.

Source: AEMC.

Note: (a) AEMC, *Regulation of covered pipelines*, Final determination, 14 March 2019, p. ii.

²⁷ We note that the proposed rule does not include three amendments to the NER that were included in the recommended rule drafting accompanying the TPIR Stage 2 draft report. These are amendments to NER clauses S6A.1.3(7)(ii), S6A.1.3(7)(iv) and to insert a definition of 'initial request' in Chapter 10 of the NER, as outlined in: AEMC, *Proposed Rule changes - TPIR Stage 2*, p.8. The Minister has confirmed that these amendments were intended to be included in the proposed rule so it was the same as that recommended in TPIR Stage 2 draft report.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

Should the assessment be based on principles or a prescriptive approach?

The rule change request seeks to implement a process where a TNSP planning to carry out an actionable ISP project may apply to the AER to vary the depreciation profile of for assets related to that specific project. This creates a decision-making process for the AER who must consider the application.

The Minister considers that the AER should assess financeability applications from TNSPs to vary the depreciation profile for actionable ISP projects using a principles-based approach, as this would provide flexibility to address the financeability challenges on a case-by-case basis.²⁸

However, the Minister also notes that, in this rule change process, the Commission should consider the use of principles vs a prescriptive test for assessing whether to vary the depreciation profile for an actionable ISP project.²⁹ This question has previously been considered during TPIR.³⁰ However, further consideration of whether to apply a principles-based approach or a prescriptive test will be part of this rule change process with reference to the rule drafting philosophy.

What level of discretion should be provided to the AER?

The issue of using a principles or prescriptive approach for the AER's assessment of a TNSP's depreciation application, is related to the issue of the appropriate balance between providing flexibility for the AER through a principles-based approach and providing greater certainty for TNSPs and their investors through a prescriptive test. The implications of applying each of these approaches may be as follows:

- Greater AER discretion: The AER has discretion to assess financeability applications based on a set of principles. For example, these principles could include qualitative and quantitative factors that the AER may take into account.
- Limited or no discretion for the AER:
 - For example where a prescriptive financeability test is set out in the NER that must be applied by the AER. A prescriptive approach could direct the AER to consider either or both qualitative and quantitative factors. This type of approach may not provide any discretion for the AER to take into account other factors, such as other decisions on building blocks that impact overall revenue for TNSPs and overall transmission prices that form part of consumer's electricity prices.
 - Alternatively, some discretion may be provided to the AER by specifying certain factors that must be considered and others that may be taken into account when making a decision. For example, these factors could include any one of the principles proposed in this rule change request and/or any other factors, such as whether a TNSP has received concessional finance for an actionable ISP project.

²⁸ Rule change request, pp. 2; 5.

²⁹ *ibid.*, p. 6.

³⁰ See Appendix A for an outline of previous stakeholder views on this issue.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

What factors should be taken into account in the assessment?

The Minister proposes that the AER should assess financeability applications from TNSPs to vary the depreciation profile of actionable ISP projects using three principles to be set out in an amended clause 6A.6.3(f) of the NER. These principles are outlined in Box 3 below.³¹

BOX 3: PROPOSED PRINCIPLES TO ASSESS FINANCEABILITY

Principle 1: The relative consumer benefits (having regard to the reliability and price risk associated with transmission delivery delays) from the provision of network services over time (the inter-generational equity principle).

Principle 2: The capacity of the TNSP to efficiently finance its overall RAB, including efficient capital expenditure (which focuses on the capacity to finance a project at the network business level, rather than at the project level).

Principle 3: Any other factors the AER considers relevant, having regard to Principles 1 and 2.

Source: Rule change request, p. 5.

These principles are similar to, but slightly different from, the principles recommended in the TPIR Stage 2 Final report. The rule drafting for Principle 1 in clause 6A.6.3(f)(1) of the proposed rule³² is the same as the rule drafting for clause 6A.6.3(f)(1) recommended in TPIR.³³

However, the rule change request also links Principle 1 to the reliability and price risk associated with transmission delivery delays.³⁴ In the TPIR Stage 2 Final report, Principle 1 related to allowing a project to proceed in a timely manner so that consumer benefits could be unlocked however it did not refer to reliability and price risk.³⁵

There are a range of other factors that could be used by the AER to assess financeability applications which may include (but not be limited to):

- funds from operations (FFO)/net debt
- FFO/RAB
- FFO interest coverage
- net debt/RAB
- whether any concessional finance has been provided to the TNSP for that ISP project.

We note that, the concept of a 'benchmark efficient entity' is used by the AER to derive the Weighted average cost of capital (WACC) for an efficient service provider. For the efficient

³¹ Rule change request, pp. 6-7.

³² Rule change request, p. 14.

³³ AEMC, *Proposed rule change – TPIR Stage 2*, 27 October 2022, pp. 4.

³⁴ Rule change request, p. 6.

³⁵ AEMC, *TPIR Stage 2 – Final report*, 27 October 2023, p. 12.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

cost of capital to be achieved, it should be based on the benchmark efficient entity's capital structure, which is currently assumed to be 60 per cent debt and 40 per cent equity.

Section 3.1.3 below provides further information and questions in relation to principle 2, which proposes that the financeability assessment is at the TNSP RAB level and not at the ISP project level.

QUESTION 2: HOW TO ASSESS FINANCEABILITY APPLICATIONS

- (a) Should TNSPs have to submit an application to the AER to vary the depreciation profile of actionable ISP projects? If so, what information should this include?
- (b) Should the AER vary the depreciation profile of actionable ISP projects using principles or a prescriptive approach?
- (c) What level of AER discretion is appropriate?
- (d) Do you consider that the proposed principles are appropriate? Should any other assessment factors be taken into account?

3.1.3

Should the financeability assessment be at the TNSP RAB level or project level?

The proposed rule specifies that the AER's financeability assessment is undertaken at the TNSP RAB level and not the ISP project level and notes:

- This approach is in line with the AER's requirements to have regard to the regulated network business as a whole when setting the regulated revenue TNSPs can recover, under NER clause 6A.1.1³⁶
- It reflects the TPIR Stage 2 Final report which notes that the core parts of the regulatory framework reflect economic assessment at the regulated network business level. For example, the allowed rate of return is set for regulated network service providers and not individual projects. The revenue and pricing principles also make it clear that it is the "regulated network service provider" that "should be provided with a reasonable opportunity to recover at least efficient costs".³⁷

The Minister notes that, in this rule change process, the Commission should consider whether the assessment of an application to vary the depreciation profile for an actionable ISP project is at the regulated business level or the project level.³⁸

QUESTION 3: LEVEL OF FINANCEABILITY ASSESSMENT

- (a) Should the financeability assessment be at the TNSP RAB level or the ISP project level?

³⁶ Rule change request, p. 6.

³⁷ Rule change request, p. 7.

³⁸ *ibid*, p. 6.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

3.1.4

Application of the proposed solution in Victoria

The rule change request proposes to provide greater flexibility to vary depreciation for actionable ISP projects in the NEM.

Transmission arrangements are different in Victoria from other jurisdictions in the NEM. Victoria is the only jurisdiction in the NEM where AEMO has declared network functions. Under the contestable framework in Victoria, transmission network planning functions are separated from network ownership and operation so that the functions undertaken by TNSPs elsewhere are split between AEMO and Victorian declared transmission system operators:

- AEMO is responsible for planning and procuring the augmentation of the Victorian shared transmission network.
- Declared transmission system operators (DTSOs) own and operate transmission infrastructure. AusNet is the principal DTSO in Victoria.³⁹

The rule change request does not comment on whether there may be a need for different arrangements to apply in Victoria. However, this may be relevant in relation to the application of the rule (if made) for Victoria, including whether the rules should clarify any functions or responsibilities between AEMO and DTSOs in Victoria.

3.1.5

What process should apply for the financeability assessment?

The process proposed by the Minister to apply for a financeability assessment is based on the process we proposed in TPIR.

Clause 6A.6.3 of the proposed rule sets out the following steps related to the assessment of a financeability application:

- A TNSP may, prior to submitting a request to vary the depreciation profile of assets that form part of an actionable ISP project, submit a request (an initial request) to the AER to develop and publish an issues paper that:
 - provides an indication on whether to vary the depreciation profile of an asset (or group of assets)⁴⁰ and, if so, may indicate a range of depreciation profiles; and
 - identifies key matters that the AER considers necessary to have regard to in making a determination under proposed new clause 6A.6.3(d) for the asset (or group of assets).
- An initial request must be made no earlier than six months, and no later than four months, prior to the TNSP submitting an application under clause 6A.8.2(a) in relation to the relevant asset (or group of assets).
- If a TNSP makes an initial request under proposed new clause 6A.6.3(h), the AER must develop and publish an issues paper on the initial request within two months of receiving the initial request:

³⁹ In 2021, AusNet owned and operated 99 per cent of Victorian shared transmission network assets. AusNet Services, *Submission to Draft Determination: Efficient management of system strength on the power system rule change*, 17 June 2021. As of 17 December 2020, the DTSOs owning, controlling or operating sections of the Victorian declared transmission system included AusNet Services, TransGrid (operating as NSW Electricity Networks Operations Pty Ltd), TransGrid Services, Rowville Transmission Facility Pty Ltd, Transmission Operations (Australia) Pty Ltd and Transmission Operations (Australia) 2 Pty Ltd.

⁴⁰ Rule change request, proposed clause 6A.6.3(d)

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

- The AER may request from the TNSP additional information or analysis that the AER considers reasonably necessary to assist it in publishing an issues paper under proposed new clause 6A.6.3(j)
- If the AER requests additional information or analysis under proposed new clause 6A.6.3(k), then the period of time for publishing an issues paper under proposed new clause 6A.6.3(j) is automatically extended by the period of time it takes the TNSP to provide the additional information or analysis to the AER.
- A request to vary the depreciation profile of assets that form part of an actionable ISP project under proposed new clause 6A.6.3(d), must be made at the same time as submitting a contingent project application (CPA) under clause 6A.8.2(a)

QUESTION 4: FINANCEABILITY ASSESSMENT PROCESS AND TIMING

Is the proposed process and timing to assess requests to vary depreciation for actionable ISP projects practical and efficient? If not, what alternative processes and timings do you suggest be specified in the NER?

3.2

Suitability of the proposed solution?

The Minister suggests that the proposed solution will resolve the problem raised in the rule change request.

To date TNSPs have sought alternative methods to address their financeability challenges, such as sourcing financing from the Commonwealth, including through the Rewiring the National program.⁴¹

The Minister expects that, if this rule is made, the AER's ability to vary the depreciation profiles for actionable ISP projects inside the regulated revenue framework would be the primary mechanism that TNSPs could use to address any financeability issues they may have.⁴²

If the rule was made, it would provide the AER with greater flexibility to address financeability challenges related to actionable ISP projects, if they exist, by varying the profile and timing of regulatory allowances, to address cash flow concerns.⁴³

While the Commission has considered the issue of financeability challenges arising for TNSPs in relation to building actionable ISP projects, there may be alternatives to the solution set out by the Minister in the rule change request. These alternative solutions could be outside the NER.

⁴¹ *Rule change request*, p.1.

⁴² *ibid.*

⁴³ *ibid.*, p. 2.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

QUESTION 5: WILL THE PROPOSAL RESOLVE THE PROBLEM?

- (a) Will the proposed solution to vary depreciation profiles resolve the problem raised in the rule change request? Would it reduce or eliminate the need for concessional finance from governments for ISP projects?
- (c) Are there any alternative solutions that would resolve the problem and be more preferable and aligned with the long-term interests of consumers?

3.3

What implementation issues might there be?

If the Commission were to make a rule change based on one or more of the proposed solutions in the rule change request, as described in sections 3.1, 3.2 and 3.3 of this consultation paper, it must then consider how that rule is to be implemented. These considerations include:

- whether the AER should prepare guidance material on the new rule
- if transitional arrangements are needed.

3.3.1

Should the AER be required to develop guidelines about the rule?

The Minister proposes that the AER develop guidelines that could provide further information in the rules change request. The proposed rules state that the AER may develop guidelines on:⁴⁴

- the approach the AER proposes to use to make a determination under clause 6A.6.3(d) for a TNSP to vary the depreciation profile of an asset (or group of assets) that form part of an actionable ISP project;
- the information the AER requires for the purposes of that determination
- the information the AER requires for the purposes of developing and publishing the issues paper in accordance with clause 6A.6.3(h)
- any other matters the AER considers appropriate.

In TPIR Stage 2, our final recommendation was to introduce depreciation principles in the rules and that it was not necessary to include a rule obligation for the AER to issue a guideline. However, given the complexity of this issue and considerable stakeholder interest, we indicated that the AER may make such guidelines.⁴⁵

QUESTION 6: AER GUIDANCE

Should the AER be required to publish guidance on how it may vary the depreciation profile

⁴⁴ Rule change request, p. 4; proposed clause 6A.6.3(g), p. 14.

⁴⁵ AEMC, TPIR Stage 2 — Final report, p. 14.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

for assets that form part of an actionable ISP projects?

3.3.2

Are any transitional arrangements needed?

Transitional arrangements may be needed to support the effective implementation of a rule. Such arrangements may be needed for the AER, TNSPs or any other stakeholder, to support predictable and stable management of the economic regulatory framework.

Time to develop AER guidance

The solution proposed in the rule change request is to include principles in the NER to enable the AER to assess applications to vary the depreciation profile of assets used in an actionable ISP project. The AER can make an assessment based on these principles and as soon as the rule is made.⁴⁶ The rule can then be supplemented by any guidance developed by the AER. This approach would enable the reform to be implemented more rapidly than if such AER guidance had to be developed first.

In TPIR Stage 2, we noted that we expected that the AER would publish any depreciation guideline approximately nine months after the relevant changes to the NER. This would provide stakeholders with the opportunity to engage in the process of developing this guideline. This would not prevent TNSPs from requesting a change in depreciation as soon as the new rules are published. This approach to implementation is consistent with stakeholder views, which emphasised the importance of giving effect to the reform quickly and the potential costs associated with delaying transmission projects.⁴⁷

The rule change request does not specify when the rule proponent considers that AER should publish its guidance document.

Amending AER models

The rule change request does not comment on the need to amend any AER models to implement this proposed solution. However, the proposed solutions may require amendments to the AER's models, such as the PTRM and/or the Roll forward model (RFM), which are used for TNSP revenue determinations. These amendments may be:

- temporary to enable a rule (if made) to commence operation as soon as possible after this rule change process, and/or
- permanent to support the ongoing implementation of a rule (if made).

Interactions with other reforms

The proposed solution may interact with other NER changes or reforms, such as the any rule made as a result of the Concessional finance rule change request that the AEMC is currently considering.

⁴⁶ Rule change request, p. 8.

⁴⁷ AEMC, TPIR — Stage 2 Final Report, p. 15.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

QUESTION 7: TRANSITIONAL ARRANGEMENTS

- (a) If the proposed rule is made, should the AER be required to develop any guidance, or amend any AER models, before or after the commencement of the rule? If so, what level of prescription should be included in the NER?
- (b) If the proposed rule is made, should it provide a transitional period to enable market participants to prepare? If so, how long should such a transitional period be?
- (c) Is there a need for any transitional arrangements to assist with managing interactions other NER amendments or other market reforms? If so, what?

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

4

PROPOSED SOLUTIONS ON BIODIVERSITY OFFSETS THAT WE DID NOT RAISE IN TPIR

This section discusses proposed solutions to address financeability issues that we did not raise in TPIR, but were raised by the Minister in the rule change request. These relate to:

- recognising and managing biodiversity offset costs
- clarifying the treatment of depreciation for asset classes, including biodiversity offsets.

4.1

Recognising and managing biodiversity offset costs

This section discusses:

- biodiversity offset arrangements across jurisdictions of the NEM
- allowing TNSPs to depreciate biodiversity offsets to be recovered on an as incurred basis
- whether the biodiversity offset depreciation should also apply to intending TNSPs (ITNSPs).

4.1.1

Biodiversity offset arrangements across jurisdictions of the NEM

A number of TNSPs may have incurred (or may incur in the future) biodiversity offset costs to meet their biodiversity conservation obligations under state legislation.

For example, the *Biodiversity Conservation Act 2016* in NSW establishes the Biodiversity Offset Scheme (BOS). Under the BOS, applications for development or clearing approvals must set out how impacts on biodiversity will be avoided and minimised. The remaining residual impacts can be offset by the purchase and/or retirement of biodiversity credits or payment to the Biodiversity Conservation Fund.⁴⁸

Transgrid has incurred biodiversity offset costs in relation to Project EnergyConnect and Humelink under this scheme, as explained in section 4.1.2 below.

The *Native Vegetation Act 1991 (SA)* and associated regulations in South Australia establishes a framework for preserving and enhancing native vegetation. Parties who modify native vegetation may be required to offset the impacts on biodiversity resulting from any clearance activity. As a result, ElectraNet has incurred biodiversity offset costs in relation to Project EnergyConnect, as explained in section 4.1.2 below.

QUESTION 8: BIODIVERSITY OFFSET ARRANGEMENTS ACROSS NEM JURISDICTIONS

Are the costs of meeting biodiversity obligations material? Are they likely to impact financeability of actionable ISP projects?

⁴⁸ Part 6 of the *Biodiversity Conservation Act 2016* (NSW).

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

4.1.2

Proposed solution

In the rule change request, the Minister suggests that TNSPs' costs of meeting biodiversity conservation obligations for ISP projects are expected to:⁴⁹

- account for a material proportion of overall ISP project costs
- materially impact the financeability of ISP projects, in the absence of being depreciable.

For these reasons, the Minister suggests that TNSPs should be able to commence recovery of depreciation for biodiversity offset costs, on an as incurred basis, during construction of an ISP project.⁵⁰

The Minister suggests that the NER should be amended so the AER has discretion to vary depreciation for biodiversity offsets (where it will promote the NEO). This would mean that TNSPs do not need to apply to vary depreciation for biodiversity offsets. This is different from the proposed approach for other assets of an actionable ISP project, for which TNSPs would need to apply to the AER to vary depreciation.⁵¹

The Minister suggests that depreciation of biodiversity offset costs for ISP projects should start to be recovered earlier than other asset classes that comprise an ISP project because:⁵²

The utility of biodiversity offsets begins when construction - which disturbs the natural environment - commences and the biodiversity offset ensures a degree of protection for the impacted species. This early public utility as compared to other asset classes gives merit to commencing depreciation of biodiverse offsets during construction, but only where doing so contributes to achievement of the NEO.

The Minister considers that depreciating biodiversity offsets on an as-incurred basis could promote the NEO on the basis that:⁵³

It could overcome or mitigate TNSPs financeability concerns in a Net present value (NPV) neutral manner, particularly in the period before the changes subject to this rule change can be applied to major ISP projects.

Depreciating biodiversity offsets on an as incurred basis could promote the NEO in a number of ways, for example:

- Reduce (both upfront and retrospectively) the amount of Rewiring the Nation funding used to address TNSPs' financeability concerns. The use of Rewiring the Nation funding to address financeability concerns is not NPV neutral; it provides a financial benefit to the TNSP. This financial benefit, however, could have otherwise been used to lower electricity consumers' costs had it not been needed to address financeability.

⁴⁹ Rule change request, p. 4.

⁵⁰ Rule change request, p. 5.

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ *ibid.*

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

The rule change request notes that there have been cases where biodiversity offsets have not been treated as a depreciating asset class. The Minister suggests that treating biodiversity as a non-depreciable asset class results in lower cash flow for TNSPs in the initial stages of a project, potentially resulting in financeability issues.⁵⁴

The Commission seeks feedback on the rule change proposal. In addition to the information provided in the rule change request, we note that TNSPs may have options to efficiently meet their biodiversity conservation obligations. For example in NSW, TNSPs may purchase land for biodiversity offsets or make payments to the Biodiversity Conservation Fund.⁵⁵

The following additional information is related to the proposed solution to allow TNSPs to recover depreciation of biodiversity offset costs on an as incurred basis.

- **Current requirements for depreciation schedules:** Under current clause 6A.6.3(b)(1) of the NER, depreciation schedules must depreciate using a profile that reflects the nature of the assets or category of assets over the economic life of that asset or category of assets.
- **Biodiversity conservation obligations on TNSPs:** Enabling biodiversity offset costs to flow through to consumers prior to the use of an asset needs to be considered with regard to the operation of the relevant biodiversity scheme. For example, in NSW, TNSPs undertaking development activities are required under state legislation to purchase Biodiversity Offset Credits where there are unavoidable biodiversity impacts arising from the development of infrastructure assets. Under such arrangements, development consent may not be granted and work cannot be progressed on these projects until such time as the TNSP has met all of its requirements under the scheme.⁵⁶ The implication of development consent not being granted on the regulatory framework has not been discussed in the rule change request.
- **Materiality of biodiversity offset costs:** There is uncertainty around biodiversity offset costs, which vary greatly between ISP projects. Some estimates of biodiversity offset costs for ISP projects are material:
 - **Humelink:** Transgrid's estimated environmental offset costs⁵⁷ of \$935m or around 28 per cent of the total estimated cost of \$3,317m for Humelink.⁵⁸
 - **Project EnergyConnect:**
 - Transgrid: the AER approved environmental offset costs⁵⁹ of \$125m or around 7 per cent of the AER's total forecast expenditure of \$1,818m for Project EnergyConnect.⁶⁰

54 Ibid.

55 Under Part 6 of the *Biodiversity Conservation Act 2016 (NSW)*.

56 Part 7 of the *Biodiversity Conservation Act 2016 (NSW)*.

57 In NSW, environmental offset costs relate to biodiversity offset costs.

58 Based on Option 3C. Transgrid's assessment in the Project Assessment Conclusions Report (PACR) was that Option 3C provides the greatest net benefits across all scenarios. These costs are estimated and are subject to change in the Humelink CPA stage two for construction, the process for which has not yet commenced. Transgrid, *Reinforcing the NSW Southern Shared Network to Increase transfer capacity to demand centres (HumeLink)*, Project Assessment Conclusions Report, 29 July 2021, pp. 5; 29.

59 In NSW, environmental offset costs relate to biodiversity offset costs.

60 AER, *Final decision - Transgrid Contingent Project - Project EnergyConnect*, May 2021, p. 1; 16.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

- ElectraNet: the AER approved environmental offset costs⁶¹ of \$3m or around 1 per cent of the AER's total forecast expenditure of \$457m for Project EnergyConnect

⁶²

- **Project completion risk:**
 - If TNSPs are allowed to start recovering depreciation for biodiversity offset costs before the ISP project has been completed, this would re-allocate ISP project completion risk from TNSPs to consumers. The rule change request does not set out any reasoning as to why this would be appropriate, nor does it consider how this risk could be managed in the regulatory framework.
 - We note that, in 2021, we decided not to make participant derogations to apply depreciation on an as incurred basis, as it would transfer completion risk from Transgrid and ElectraNet to consumers, who are not best placed to manage these risks. Our 2021 decisions were in relation to a broader application of depreciation on an as incurred basis, across all assets in an ISP project, whereas this rule change request only relates to biodiversity offsets and not other assets that form part of an ISP project.⁶³

Box 4 below sets out the current rules for recovery of depreciation as incurred for network service providers.

BOX 4: CURRENT RULES FOR RECOVERY OF DEPRECIATION AS INCURRED FOR NETWORK SERVICE PROVIDERS

TNSPs

Chapter 6A of the National Electricity Rules (NER) covers economic regulation of transmission services. This chapter is silent on recovery of depreciation as incurred for TNSPs.

However, we note the following provisions cover depreciation for TNSPs in the NER.

- Clauses 6A.4.2(a1), 6A.5A(b)(3), 6A.6.7, 6A.14.1(5E) and S6A.2.2B variously state that the revenue proposal and decision specify whether depreciation for establishing the RAB at the commencement of the following regulatory control period is to be based on actual or forecast capital expenditure.
- Clause 6A.6.3(a) states that depreciation for a regulatory year is calculated on the value of assets included in the RAB at the beginning of that regulatory year.
- Clause 6A.5.4(a)(3) states that depreciation is one of the 'building blocks' that forms the revenue allowance.
- Clause 6A.5.3 provides further details of how the building blocks are calculated and timing is specified in the AER's post-tax revenue model (PTRM).

⁶¹ In South Australia, environmental offset costs relate to biodiversity offset costs.

⁶² AER, *Final decision - ElectraNet Contingent Project - Project EnergyConnect*, May 2021, pp. 1; 12.

⁶³ For more detail, refer to Appendix A.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

The NER does not specifically prevent depreciation to be recovered from assets on an 'as incurred' basis. In practice, the AER may consider regulatory accounting methods to assist it in determining whether using as incurred would be appropriate for the particular circumstances.

DNSPs

Chapter 6 of the NER covers economic regulation of distribution services. This chapter is silent on recovery of depreciation as incurred for DNSPs.

Chapter 6 of the NER is the same as Chapter 6A of the NER in relation to key provisions on depreciation.

We note that the AER has allowed recovery of depreciation on an as incurred basis in relation to distribution assets. For example the AER's final decision on Ausgrid's RAB for the 2014-19 regulatory control period was based on as incurred capex.*

Source: AEMC

Note: AER, Final decision - 2019-24 Ausgrid Distribution Determination: Attachment 2 Regulatory Asset Base, Table 2.1, footnote c, p. 8.

QUESTION 9: RECOGNISING AND MANAGING BIODIVERSITY OFFSET COSTS

(a) Does the AER already have discretion to do what the rule change request is proposing (i.e. applying depreciation as incurred for transmission assets)?

(b) Should land purchased specifically for the purpose of meeting biodiversity offset obligations be depreciable? Should other costs of meeting biodiversity offset obligations be depreciable?

(c) Do you agree or disagree that recovering depreciation of biodiversity offset costs as incurred (as opposed to as commissioned), would be an appropriate solution to the financeability problem? Does this re-allocate completion risk from TNSP's to consumers?

(d) Are the nature of biodiversity offsets different from other assets that comprise a specific actionable ISP project, such that biodiversity offsets should be depreciated on a different basis to other assets?

4.1.3

Depreciating biodiversity offsets costs by intending TNSPs

In December 2022, the AEMC made a rule that clarified the ability of the AER to establish a revenue determination for an entity that is intending to become, but is not yet, a TNSP (an intending TNSP (ITNSP)).⁶⁴ The final rule:

⁶⁴ An ITNSP is an Intending Participant or Market Network Service Provider who intends to provide prescribed transmission services. AEMC, *Final determination — Establishing revenue determinations for Intending TNSPs*, 22 December 2022, p. 11.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

- allowed ITNSPs to capitalise the return on capital using the rate of return instrument (RORI) during the period before an ITNSP starts recovering revenue for the provision of prescribed transmission services
- did not allow ITNSPs to recover the return of capital (depreciation) during the period before an ITNSP starts recovering revenue for the provision of prescribed transmission services.

In this rule change, the proposed solution would allow depreciation of biodiversity offsets to be recovered on an as incurred basis for TNSPs, however it does not comment on whether this may also apply to ITNSPs. This is an issue that could be clarified in the NER.

To assist consideration of this issue, Table 4.1 sets out the arrangements for return on capital and return of capital (depreciation) as incurred during construction, and after prescribed transmission services start to be provided, for TNSPs and ITNSPs.

Table 4.1: Current, proposed and alternative depreciation arrangements for TNSPs and ITNSPs

	ISP PROJECT UNDER CONSTRUCTION	ISP PROJECT COMPLETE AND PROVIDING PRE-SCRIBED TRANSMISSION SERVICES
Current arrangements for ITNSPs	<ul style="list-style-type: none"> • May capitalise the return on capital into the RAB, but are not paid until start providing prescribed transmission services. • Can not recover depreciation. 	Can recover return on capital and depreciation, as the ITNSP is then a TNSP.
Minister's proposed solution to vary depreciation and allow TNSPs to recover depreciation of biodiversity offset costs as incurred.	Allow TNSPs to recover depreciation for biodiversity offsets costs as incurred.	Can recover return on capital and depreciation. Can vary the depreciation profile, if proposed rule is made.
If the Minister's proposed solution above was expanded to also allow ITNSPs to recover depreciation of biodiversity offset costs as incurred. This alternative arrangement was not raised in the rule change request.	<ul style="list-style-type: none"> • Allow TNSPs to recover depreciation for biodiversity offsets costs as incurred. • Allow ITNSPs to capitalise into the RAB the depreciation of biodiversity offsets costs as incurred, but not be paid until start providing 	TNSPs and ITNSPs (then TNSPs) can: <ul style="list-style-type: none"> • recover return on capital and depreciation; and • vary the depreciation profile.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

	ISP PROJECT UNDER CONSTRUCTION	ISP PROJECT COMPLETE AND PROVIDING PRESCRIBED TRANSMISSION SERVICES
	prescribed transmission services.	

Source: AEMC.

QUESTION 10: APPLICATION OF PROPOSED SOLUTION TO INTENDING TNSPS

If TNSPs are able to recover depreciation of biodiversity offsets on an as incurred basis, should this be extended to intending TNSPs?

4.2

Clarifying the treatment of depreciation for asset classes

The rule change request proposes that the AER should be required to explicitly outline how depreciation is expected to be applied for actionable ISP projects:⁶⁵

- for different types of assets, including biodiversity offsets
- in circumstances where financeability challenges are, and are not, present.

The rule change request suggests that if amendments to the NER regarding biodiversity offsets are also made, then the AER should explicitly outline in guidelines how and when depreciation is expected to be applied to different asset classes, including biodiversity offsets.⁶⁶ This is not included in the proposed rule.

Amendments to the NER to this effect are intended to promote transparency and provide greater certainty of revenues to TNSPs as well as costs to consumers.⁶⁷

The current arrangements are:

- TNSP's assets must be depreciated based on depreciation schedules that use a profile that reflects the nature of the assets or category of assets over the economic life of that asset or category of assets.⁶⁸
- TNSPs asset's are depreciated by asset classes, for each regulatory year, in the AER's post tax revenue model (PTRM).

⁶⁵ Rule change request, p. 4.
⁶⁶ Rule change request, pp. 3-4.
⁶⁷ Rule change request, p. 4.
⁶⁸ NER clause 6A.6.3

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

QUESTION 11: CLARIFYING DEPRECIATION TREATMENT OF ASSET CLASSES

(a) Do you agree with the proposal to require the AER to explicitly outline how depreciation would apply to all asset classes in actionable ISP projects? Should this include biodiversity assets?

(b) If you agree that the depreciation treatment of asset classes should be documented, how should it be implemented — through the NER, AER guidelines and/or other methods?

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

5 MAKING OUR DECISION

When considering a rule change proposal, the Commission considers a range of factors. This chapter outlines:

- issues the Commission must take into account
- the proposed assessment framework
- decisions the Commission can make
- rule-making for the Northern Territory.

5.1 The Commission must act in the long term interests of consumers

The Commission is bound by the National Electricity Law (NEL) to only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective.

The NEO is:⁶⁹

To promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system

5.2 We must also take these factors into account

The Commission must take into account the revenue and pricing principles set out in section 7A of the NEL in making certain rules.⁷⁰ Relevantly for this rule change request, we must take those principles into account in making rules with respect to the determination by the AER, for the purpose of making a transmission determination with respect to services that are the subject of such a determination, of allowances for depreciation.⁷¹

The Commission considers the following revenue and pricing principles are the most relevant to this rule change request:

- A regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in—(a) providing direct control network services; and (b) complying with a regulatory obligation or requirement or making a regulatory payment.⁷²
- A regulated network service provider should be provided with effective incentives in order to promote economic efficiency with respect to direct control network services the operator provides. The economic efficiency that should be promoted includes efficient

⁶⁹ Section 7 of the NEL

⁷⁰ Section 88B of the NEL refers to Items 15 to 24 of the NEL, which cover transmission system revenue and pricing.

⁷¹ NEL schedule 1 item 22.

⁷² Section 7A(2) of the NEL

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

investment in a distribution system or transmission system with which the operator provides direct control network services⁷³

- Regard should be had to the regulatory asset base with respect to a distribution system or transmission system adopted—(a) in any previous—(i) as the case requires, distribution determination or transmission determination; or (ii) determination or decision under the National Electricity Code or jurisdictional electricity legislation regulating the revenue earned, or prices charged, by a person providing services by means of that distribution system or transmission system; or (b) in the Rules.⁷⁴
- A price or charge for the provision of a direct control network service should allow for a return commensurate with the regulatory and commercial risks involved in providing the direct control network service to which that price or charge relates.⁷⁵
- Regard should be had to the economic costs and risks of the potential for under and over investment by a regulated network service provider in, as the case requires, a distribution system or transmission system with which the operator provides direct control network services.⁷⁶

5.3 We have three options when making our decision

After using the assessment framework to consider the rule change request, the Commission may decide:

- to make the rule as proposed by the proponent⁷⁷
- to make a rule that is different to the proposed rule (a more preferable rule), as discussed below, or
- not to make a rule.

The Commission may make a more preferable rule (which may be materially different to the proposed rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule is likely to better contribute to the achievement of the NEO.⁷⁸

5.4 Proposed assessment framework

The Commission has identified the following criteria to assess whether the proposed rule or a more preferable rule is likely to contribute to the achievement of the NEO. These are:

Outcomes for consumers:

- Does the proposal provide a reasonable balance between the benefits and costs borne by near-term and later-term consumers? Is the proposed inter-generational principle robust and practical?

⁷³ Section 7A(3) of the NEL.

⁷⁴ Section 7A(4) of the NEL.

⁷⁵ Section 7A(5) of the NEL.

⁷⁶ Section 7A(6) of the NEL.

⁷⁷ Rule change request, pp. 13-20.

⁷⁸ Section 91A of the NEL.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

Principles of good regulatory practice:

- Does the proposal provides a stable and predictable framework for TNSPs, investors, consumers and the AER?
- Whether the implementation of the proposed rule provides appropriate transitional arrangements for the AER, TNSPs and stakeholders, to support predictable and stable management of the economic regulatory framework?

Principles of market efficiency

- Risk allocation: Would allowing TNSPs to recover the cost of depreciation for biodiversity offsets, as incurred during construction, appropriately allocate risk between TNSPs and consumers?
- Incentives: Would requiring the AER to clarify how different asset classes are to be depreciated, including biodiversity offsets, support incentives for TNSPs to deliver actionable ISP projects and provide prescribed transmission services at the lowest possible cost for consumers?

Decarbonisation

- Does the proposal support the financeability of actionable ISP projects in a timely manner, enabling new renewable generation and energy storage to deliver power to consumers more quickly, supporting decarbonisation of the NEM?

Reliability and security

- Does the proposal support the timely delivery of actionable ISP projects at an efficient cost, to enable the reliable and secure provision of energy to consumers over the long term?

QUESTION 12: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework? Are there additional principles that the Commission should take into account or are there principles that are not relevant?

5.5

The proposed rule would not apply in the Northern Territory

Parts of the NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.⁷⁹

The proposed rule would not apply in the Northern Territory, as it amends provisions in NER Chapter 6A and Chapter 10 that do not apply in the Northern Territory.⁸⁰ Consequently, the

⁷⁹ National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT Act). The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016.

⁸⁰ Under the NT Act and its regulations, only certain parts of the NER have been adopted in the Northern Territory. The version of the NER that applies in the Northern Territory is available on the AEMC website at: <https://energy-rules.aemc.gov.au/ntner>.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

proposed rule will not be assessed against additional elements required by the Northern Territory legislation.

5.6 Costs and benefits of the proposed solution

The Minister considers that the proposed solution in the rule change request — which includes providing greater flexibility for the AER to vary depreciation, clarifying the treatment of depreciation for asset classes (including biodiversity offsets), and allowing depreciation of biodiversity offsets to be recovered on an as incurred basis — will have the impacts outlined below.

The benefits identified in the rule change request rest on developing a flexible solution to address potential future financeability issues for actionable ISP projects.⁸¹ In the Minister's view, this enables timely investment in transmission infrastructure for actionable ISP projects, which supports:

- placing downwards pressure on electricity prices⁸²
- reducing adverse impacts on electricity prices as the electricity system transitions⁸³
- the reliability and security of the supply of electricity⁸⁴
- the transition to net zero.⁸⁵

These potential benefits appear most relevant to electricity consumers (through electricity price impacts and the supply of electricity) and Australians more generally (through supporting the economy's transition to net zero). However, the potential impact on other participants in the electricity sector should also be considered.

The rule change request also sets out the following cost impacts:

- While varying depreciation of specific actionable ISP projects will not increase the total costs borne by consumers over the life of an asset, if the variation results in accelerated depreciation it could shift more of the costs to near-term consumers. However, in the Minister's view the proposed principles would require this to be balanced against the benefits of timely delivery of actionable ISP projects and the impacts on price, reliability and security.⁸⁶
- The Minister acknowledges that there would be administrative and compliance costs arising from making the proposed rule for the AER and TNSPs. However, he considers that these costs would not be material, and the AER would only need to assess the financeability of actionable ISP projects where this is requested by the TNSP.⁸⁷
- The AER:

81 *Rule change request*, p. 9.

82 *ibid.*

83 *Rule change request*, p. 8

84 *ibid.*

85 *Rule change request*, p. 9.

86 *Rule change request*, p. 9.

87 *ibid.*

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

- may incur costs in developing a guideline relating to varying depreciation profiles of actionable ISP projects⁸⁸
- would incur costs as it must develop guidelines that explicitly outline how and when depreciation is expected to be applied.

The potential benefits appear most relevant to electricity consumers (through electricity price impacts and the supply of electricity) and Australians more generally (through supporting the economy's transition to net zero). The cost identified impact the AER and relevant TNSPs. However, there may be other impacts that the rule change request has not identified. In addition, the potential impacts on other participants in the electricity sector should also be considered in assessing whether making the proposed rule is consistent with the NEO.

⁸⁸ *Rule change request*, p. 10.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
BOS	Biodiversity Offset Scheme
Commission	See AEMC
DTSO	Declared Transmission System Operator
ENA	Energy Networks Australia
FFO	Funds from operations
ITNSP	Intending TNSPs
ISP	Integrated System Plan
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NPV	Net present value
NSW EII Act	NSW Electricity Infrastructure Investment Act
NT	Northern Territory
ODP	Optimal development path
PACR	Project Assessment Conclusions Report
Proponent	The proponent of the rule change request
PTNSP	Primary TNSP
PTRM	Post tax revenue model
RAB	Regulatory asset base
REZ	Renewable Energy Zone
RFM	Roll forward model
RORI	Rate of Return Instrument
RTN	Rewiring the nation
TNSP	Transmission Network Service Provider
TPIR	Transmission Planning and Investment Review
WACC	Weighted average cost of capital

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

A PREVIOUS AEMC ENGAGEMENTS ON FINANCEABILITY OF ISP PROJECTS

This appendix provides background on:

- our consideration of financeability of ISP projects in two participant derogation rule changes
- our assessment of financeability in TPIR Stage 2 and our recommendation to provide the AER with explicit flexibility to vary depreciation to address financeability risk; and
- stakeholder views on financeability from TPIR Stage 2.

We note that, as outlined in section 3.1 of this consultation paper, we will further consider the appropriate level of discretion the AER should have to vary depreciation to address a financeability risk.

A.1 We considered financeability of ISP projects in two participant derogation rule changes

We considered related financeability issues in the Transgrid and ElectraNet participant derogation rule change requests.

In our final determinations on these rule change requests, published in 2021, we determined not to make Transgrid and ElectraNet's proposed participant derogation which would have allowed Transgrid and ElectraNet to bring forward revenue for its share of actionable ISP projects.⁸⁹

In our final determination, we considered the proposed participant derogations to apply depreciation on an as incurred basis, rather than on an as commissioned basis. We decided not to make either rule as it would transfer completion risk from Transgrid and ElectraNet to consumers, who are not best placed to manage these risks.⁹⁰

In these final determinations, we recognised that we could not be certain whether financeability issues would arise in the longer term. We decided that we would further consider financeability, among other issues relating to the timely and efficient delivery of ISP projects, in TPIR.⁹¹

A.2 We considered stakeholder views and provided recommendations on financeability in TPIR Stage 2

Transmission is a critical enabler for the transition to net zero, both in the NEM and for the economy more broadly. This transition will require an unprecedented level of investment in,

⁸⁹ AEMC, Final determination — Participant Derogation — Financeability of ISP Projects (TransGrid) and Participant Derogation — Financeability of ISP Projects (ElectraNet), 8 April 2021, pp.34-35

⁹⁰ AEMC, Final determination — Participant Derogation — Financeability of ISP Projects (TransGrid), 8 April 2021, p. v.; and AEMC, Final determination — Participant Derogation — Financeability of ISP Projects (ElectraNet), 8 April 2021, p. v.

⁹¹ AEMC, Final determination — Participant Derogation — Financeability of ISP Projects (TransGrid) and Participant Derogation — Financeability of ISP Projects (ElectraNet), 8 April 2021, pp.34-35

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

and build of, transmission infrastructure to deliver power from renewable generation and energy storage to consumers, and to deliver it quickly. TPIR was to recommend improvements to the regulatory frameworks for transmission investment and planning to support efficient investment in and timely delivery of major transmission projects.⁹² Financeability was an area of focus for Stage 2 of TPIR.

During our consultation with stakeholders in TPIR Stage 2, the issue of financeability was raised in relation to the concern that transmission investments could be delayed because incumbent TNSPs have an exclusive right to invest, but no clear corresponding obligation to invest.⁹³

Financeability presented an important issue in the context of a rapidly transitioning power system.⁹⁴

Given the complexity around the timing of major investments, we noted that cash-flow challenges may arise when a large amount of new investment relative to a TNSP's existing RAB occurs in a short period. In such circumstances, businesses may be unable to raise funds and adjust their capital structures within the required timeframe.

A.2.1

We recommended providing explicit flexibility to vary depreciation to address financeability risk

Our recommendation from the TPIR stage 2 final report was that the revenue-setting framework for TNSPs would benefit from increased flexibility to address the foreseeable risk that financeability challenges may prevent future actionable ISP projects from progressing in a timely manner.⁹⁵

Specifically, we proposed the following.⁹⁶

- The AER should have explicit discretion to vary the depreciation profile of an actionable ISP project through a NPV neutral adjustment. Such a change would be considered on a case-by-case basis following a request from a TNSP. This would support the capacity of TNSPs to finance efficient capital expenditure associated with such major projects.
- The NER should include a set of principles to guide the AER's approach when determining requests to vary the depreciation profile for a specific actionable ISP project.

The three principles recommended were:⁹⁷

- **Principle 1:** The relative consumer benefits from the provision of network services over time (inter-generational equity).
- **Principle 2:** The capacity of the network operator to efficiently finance its overall RAB, including efficient capital expenditure.

⁹² AEMC, *Final report – TPIR*, 4 May 2023, p. 1.

⁹³ AEMC, *TPIR – Stage 2 Draft report*, 2 June 2022, p. 9.

⁹⁴ AEMC, *TPIR – Stage 2 Draft report*, 2 June 2022, p. 10.

⁹⁵ AEMC, *TPIR – Stage 2 Final report*, 27 October 2022.

⁹⁶ *ibid*, p. 7 and p. 10.

⁹⁷ *ibid*, p. 11.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

- **Principle 3:** Any other factors the AER considers appropriate and which may not be captured by principles 1 and 2.

The principles seek to provide greater clarity regarding the criteria against which the AER would assess the need to vary depreciation. This would provide TNSPs with better information to develop their project plans and funding arrangements ahead of the AER's decision, supporting the timely delivery of transmission projects.⁹⁸

We considered that the development of principles in the rules, rather than requiring the AER to develop principles in guidelines, improves certainty and enables faster implementation.⁹⁹

- The AER should be able to make decisions to vary depreciation based on the depreciation principles in the NER without the need to first issue a guideline.
- The NER's principles could be supplemented with more detailed information in a guidance note at a later date. Enabling decisions to be made prior to finalising any sub-ordinate explanatory material regarding the new rules would allow the AER to undertake an assessment without having first issued a guideline, allowing these reforms to be implemented more quickly.

Additional information is set out in the AEMC's Stage 2 TPIR Final report.¹⁰⁰

A.2.2

Summary of stakeholder views on financeability

This section sets out a summary of stakeholder views from TPIR Stage 2 on whether financeability challenges are likely to arise for ISP projects, the recommended solution developed through the review and alternative solutions to this potential issue. These stakeholder views have been provided for information purposes only, and will not be treated as submissions to this rule change process.

Stakeholders had wide-ranging views on whether financeability challenges may arise, as outlined below.

- Transgrid and Energy Networks Australia (ENA) stated that financeability challenges are already evident with ISP projects, pointing to the experience of Project EnergyConnect.¹⁰¹ ENA rejected the AEMC TPIR Stage 2 draft report's characterisation that financeability concerns are only likely to occur in 'exceptional circumstances'.
- Some stakeholders agreed that financeability challenges may arise under future ISP scenarios given the scale, immediacy and/or sequencing of ISP investments.¹⁰²
- Other stakeholders did not consider that financeability challenges are likely to arise. In their view, the regulatory framework already adequately supports investment and there is insufficient evidence to conclude otherwise.¹⁰³ Another believed that caution should be taken before drawing definitive judgements around financeability, as in principle the RAB

⁹⁸ *ibid*, p. 11.

⁹⁹ *ibid*, p. 15.

¹⁰⁰ See: AEMC, TPIR Stage 2 — Final report, 27 October 2022: https://www.aemc.gov.au/sites/default/files/2022-10/stage_2_final_report.pdf

¹⁰¹ Submissions to the AEMC TPIR Stage 2 — Draft report: Transgrid p.1; ENA, p. 2.

¹⁰² Submissions to the AEMC TPIR Stage 2 — Draft report: Re-alliance, p. 2; Tilt p. 2; AEMO, p. 3; CEFC p. 2.

¹⁰³ Submissions to the AEMC TPIR Stage 2 — Draft report: AEC p.1; AGL p.1; EUAA p.4.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

should serve as a sufficient guarantee of cashflows to allow any project to be financed, provided a TNSP receives its cost of capital.¹⁰⁴

There were mixed views on whether depreciation should be varied to address financeability challenges, with the majority of stakeholders supporting this proposal.

- Of those stakeholders that considered financeability issues may arise in the future, the majority supported varying depreciation as the appropriate solution to address these challenges.¹⁰⁵
- Some stakeholders raised reasons why depreciation should not be varied. These included potential consequences for inter-generational equity¹⁰⁶ and the view that varying depreciation may be a narrow solution, given that financeability issues may relate to a broader range of factors such as the rate of return.¹⁰⁷

Stakeholders supported providing the AER with discretion to vary depreciation, as outlined below.

- The majority of stakeholders supported providing the AER with the ability to exercise discretion and have flexibility when considering requests to vary depreciation profiles.
- Transgrid considered that a prescriptive approach would be more appropriate. Transgrid suggested that the AER should have limited flexibility both in terms of determining whether a financeability issue exists and how this should be addressed.¹⁰⁸
- Stakeholders had mixed views on the principles proposed to be applied by the AER in assessing a request to vary depreciation. These principles have been reflected in this rule change proposal.¹⁰⁹

Other stakeholders pointed to alternatives to varying depreciation, including:

- contestable procurement,¹¹⁰
- government funding of transmission projects through RTN or government underwriting the costs of early works.¹¹¹

¹⁰⁴ ENGIE, submission to AEMC TPIR Stage 2 — Draft report, p.2.

¹⁰⁵ Submissions to the AEMC TPIR Stage 2 — Draft report: AEMO p. 3; CIEG p. 2; ENGIE p. 2; EUAA p. 3; CEFC p. 2; ENA p. 2; Origin p. 1; ReAlliance p. 3; TasNetworks p. 1; Transgrid p. 4.

¹⁰⁶ Submissions to the AEMC TPIR Stage 2 — Draft report: EUAA p. 4; NICE p. 10; PIAC p. 6.

¹⁰⁷ Transgrid, submission to the AEMC TPIR Stage 2 — Draft report, p. 4 and p. 27.

¹⁰⁸ Transgrid, submission to the AEMC TPIR stage 2 — Draft report, p. 4.

¹⁰⁹ For more information, see AEMC, TPIR Stage 2 — Final report, pp. 12-13.

¹¹⁰ Submissions to the AEMC TPIR Stage 2 — Draft report: CIEG p. 6; PIAC p. 6; AEC p. 2.

¹¹¹ Submissions to the AEMC TPIR Stage 2 — Draft report: CIEG p. 6, NICE p.2; PIAC p. 9; Snowy Hydro p. 3; TILT p. 2.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

B AEMO'S 2022 ISP AND ESTIMATED COST OF ISP PROJECTS

This appendix provides an outline of the following from AEMO's 2022 ISP ODP:

- a description of the categories of ISP projects
- projects that are actionable under the NSW EII Act framework and are not actionable under the ISP framework
- ISP projects that have been completed or are close to being completed
- ISP projects that may need to be financed to some extent in the future, including estimated costs.

AEMO's 2022 ISP ODP categorised and described ISP projects as outlined below.

- Committed and anticipated — these are the earliest projects in the ODP. They already have regulatory approval and are highly likely to proceed.¹¹²
- Actionable — urgent projects for which work should commence at the earliest possible time.¹¹³
- Future — projects which may include the need for the TNSP to undertake preparatory works or REZ design reports to enable more detailed consideration of the project in the next ISP.¹¹⁴

Projects that are actionable under the NSW EII Act

AEMO's 2022 ISP also included the following projects that are actionable under the NSW EII Act 2020, rather than actionable under the ISP framework.¹¹⁵

- Committed project — Central West Orana REZ transmission link¹¹⁶
- Actionable projects:
 - Sydney Ring — to reinforce Sydney, Newcastle and Wollongong supply
 - New England REZ transmission link.

ISP projects that have been completed or are close to completed

Outlined below are committed ISP projects in AEMO's 2022 ISP ODP that have been completed, or are close to completion. The costs of some of these projects have already been recovered from customers.

- **QNI Minor - Queensland – New South Wales Interconnector Minor upgrade:** In April 2020, the AER approved capital expenditure of \$218m for Transgrid to deliver VNI minor. Transgrid will recover this cost over 2021-22 and 2022-23.¹¹⁷

¹¹² AEMO, *2022 Integrated System Plan for the National Electricity Market*, June 2022 p. 66.

¹¹³ Ibid, p. 67.

¹¹⁴ AEMO, *2022 Integrated System Plan for the National Electricity Market*, June 2022, p. 12.

¹¹⁵ AEMO, *Integrated System Plan for the National Electricity Market*, June 2022, p. 13.

¹¹⁶ Government Gazette of the state of New South Wales, *Renewable Energy Zone (Central West Orana) Order 2021 - Number 569 - Electricity and Water*, 5 November 2021.

¹¹⁷ AER, *Final decision - Transgrid Contingent Project - QNI minor upgrade*, April 2020, p. 3.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

- **VNI minor - Victoria to NSW interconnector upgrade:** In April 2021, the AER approved capital expenditure of \$45m for Transgrid to deliver VNI minor. Transgrid has and will recover this cost over 2021-22 and 2022-23.¹¹⁸
- **Eyre Peninsula link:** This project was completed by ElectraNet and has been operational since February 2023.¹¹⁹
- **Northern QREZ Stage 1:** this project is expected to be delivered by late 2023.¹²⁰

ISP projects that may require financing in future

Table B.1 below provides a list of ISP projects in AEMO's 2022 ISP ODP that have not yet completed, and may require finance to some extent to enable completion. There are uncertainties regarding the magnitude of ISP costs that may need to be financed in the future for a range of reasons including (but not limited to):

- the fact that some of these committed ISP projects have already been financed to some extent
- it is unknown whether decisions will be made to invest in actionable and future ISP projects in future
- it is unknown whether all the future ISP projects will become actionable ISP projects
- the estimated range of costs for ISP projects are subject to change, for example due to refinement of transmission routes and other costs.

¹¹⁸ AER, *Final decision - Transgrid Contingent Project - Victoria-New South Wales (VNI) Interconnector minor upgrade*, April 2021, p.4.

¹¹⁹ ElectraNet, *Eyre Peninsula Link website*, accessed 19 April 2023: <https://www.electranet.com.au/projects/eyre-peninsula-link/>

¹²⁰ AEMO, *2022 Integrated System Plan for the National Electricity Market*, June 2023, p. 13.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

Table B.1: Estimated cost of ISP projects that may need finance

TNSP	ISP PROJECT IN AEMO'S 2022 ISP ODP	ISP PROJECT STATUS	RANGE OF ES- TIMATED COSTS	2023-24 OPENING RAB
Transgrid	Project EnergyConnect	Committed	\$1,818m	\$8,815m
	Humelink	Actionable	\$953 - \$3,315m	
	New England REZ extension	Future	\$891 - \$2,316m	
Total estimated range of Transgrid ISP costs			\$3,662 - \$7,449m	
Powerlink	QNI connect	Future	\$384 - \$3,125m	\$7,216m
	Central to Southern Qld	Future	\$55 - \$1,615m	
	Darling Downs REZ expansion	Future	\$43m + Battery Energy Storage System (BESS) costs.	
	Gladstone grid reinforcement	Future	\$408m	
	Far north Qld REZ expansion	Future	\$155 - \$1,893m	
	Facilitating power to Central Queensland	Future	\$37m	
Total estimated range of Powerlink ISP costs			\$1,082 - \$7,121m	
ElectraNet	Project EnergyConnect	Committed	\$457m	\$3,854m
	South East South Australia REZ expansion	Future	\$57 - \$571m	
	Mid north SA REZ expansion	Future	\$340 - \$582m	
Total estimated range of ElectraNet ISP costs			\$854 - \$1,610m	
AusNet	Western Renewable Link	Committed	\$152 - \$1,072m	\$3,631m
	VNI west (via Kerang)	Actionable	\$3,282 - \$3,685m	
	South west	Future	\$851 - \$930m	

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

TNSP	ISP PROJECT IN AEMO'S 2022 ISP ODP	ISP PROJECT STATUS	RANGE OF ES- TIMATED COSTS	2023-24 OPENING RAB
	Victoria REZ expansion			
Total estimated range of AusNet ISP costs			\$4,285 - \$5,687m	
Marinus Link	Marinus Link connecting Tasmania and Victoria	Actionable	\$2,270 - \$4,080m	No current RAB.

Note: The estimated range of ISP costs are based on: AEMO, *Final report — 2021 Transmission Cost Report for the Integrated System Plan — Final Report*, August 2021. The exceptions are the estimated range of ISP costs for VNI West, which are based on the more recent: AEMO-Transgrid, *VNI West Consultation Report – Options Assessment*, February 2023.

Transgrid and ElectraNet's costs for Project EnergyConnect are based on: AER, *Final decision - Transgrid contingent project — Project EnergyConnect*, May 2021, p. 1; AER, *Final decision - ElectraNet contingent project — Project EnergyConnect*, May 2021, p. 1.

AEMO selected AusNet to deliver the Western Renewables Link project following a competitive tender process in December 2019; AusNet, *Western Renewables Link - Project Overview*, August 2022, p. 3. This committed project is expected to be completed by July 2026 (see AEMO, *Integrated System Plan for the National Electricity Market*, June 2022, pp. 13; 94).

Marinus Link is not currently registered as a TNSP, but is registered as an Intending Participant. Marinus Link has a funding agreement in place from the Commonwealth, Victorian and Tasmanian Governments.

TasNetworks does not have any committed, anticipated, actionable or future ISP projects in AEMO's 2022 ISP ODP.

TNSP opening RABs for 2023-24 are based on: AER, *Final decision — AusNet Services Transmission Determination 2022 to 2027*, Overview, 28 January 2022, p. 24; AER, *Final decision — Powerlink Queensland Transmission Determination 2022 to 2027*, April 2022, p. 37; AER, *Final decision — Transgrid transmission determination 1 July 2023 to 30 June 2028*, Attachment 2 – Regulatory asset base, April 2023, p. 5; AER, *Final decision - ElectraNet transmission determination 1 July 2023 to 30 June 2028*, Attachment 2 – Regulatory asset base, April 2023, p. 5.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

C DETAILED DESCRIPTION OF REGULATORY DEPRECIATION AND THE FINANCEABILITY CHALLENGE

C.1 Purpose and objective of regulatory depreciation

Regulatory depreciation refers to the process through which part of the original cost of an asset is factored into prices – and through this process is returned to investors – over the life of the asset. Regulated revenues for any year include an allowance for capital costs. This allowance comprises a rate of return on the capital investment that is yet to be returned to investors, as well as a return of part of that unreturned capital investment. The return of capital component (regulatory depreciation) reduces the total amount of the capital base that earns a rate of return in the following year, which continues through time until the original cost of the asset has been fully recovered.¹²¹

Choosing the method of regulatory depreciation and other inputs (discussed further below) results in a choice as to how the return of an asset's costs should be spread over time. Importantly, the choice between potential regulatory depreciation methods will affect only the timing of cost recovery rather than the total value of cost recovery that is provided to investors. That is, a regulatory depreciation method that results in more regulatory depreciation earlier in the asset's life will result in higher regulated revenues in that early period; however, as this higher regulatory depreciation causes the RAB to decline more quickly, regulated revenues in future periods will be lower than otherwise, and vice versa where less regulatory depreciation is recovered early in the asset's life. That is, ultimately, an asset is depreciated once and to its exact value.

While regulatory depreciation does not affect the overall value of regulated revenue, it does have other impacts that are important to economic regulation. The principal impacts from the choice of regulatory depreciation are as follows:

- Time profile of prices – differences in the time path of regulated revenue caused by different depreciation methods impacts on the time path of prices to customers. Ensuring regulatory depreciation delivers an appropriate time path of customer prices has been the principal objective to date when deciding the regulatory depreciation method for electricity networks. Key considerations in this context have been encouraging the efficient use of electricity infrastructure and intergenerational equity.
- Avoiding stranded asset risk – the method of depreciation will affect the extent of investment that is at risk of being unrecovered due to technological and/or policy changes. While this is currently of less relevance to electricity transmission, it is a key current concern in relation to the gas pipeline sector.¹²²
- Timing of cash flows – the level of revenue that a regulated business earns in each period will also determine the cash flow that the business has available to meet its

¹²¹ The concept of regulatory depreciation is identical to the principal on a home loan: payments comprise both interest and a repayment of principal, and as the principal is repaid, the base upon which interest is payable falls, until the loan is finally repaid.

¹²² AER *Regulating Gas Pipelines Under Uncertainty - Information Paper* November 2021.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

interest commitments and repay debt. In this paper this is referred to as “financeability”. How the regulatory depreciation method impacts on financeability is the central topic of this rule change request and is discussed further below.

For completeness, while economic regulators typically draw upon concepts from the financial accounting or taxation fields in relation to regulatory depreciation, the objectives driving the choices between methods differ across these fields. Therefore, the fact that different choices may be made in each instance is not unexpected. As an example, the choice of how a firm represents the depreciation of an asset in their financial accounts cannot alter the time profile of customer prices, affect stranded asset risk, or influence financeability. As a result, these central considerations to an economic regulator are not mentioned in the accounting guidelines.¹²³

C.2 Selecting the form of regulatory depreciation

The determination of regulatory depreciation involves choices. These include:

- The overall method of depreciation to be applied. A number of depreciation functions have been applied in regulatory settings to date, and many more exist that could be applied, which include:
 - Straight line depreciation – where the recovery of the initial asset cost is evenly distributed over an asset’s lifespan.¹²⁴
 - Geometric depreciation (also known as declining or reducing balance) – whereby a constant rate of depreciation is applied to the written down value of an asset over an asset’s lifetime.¹²⁵ If this method is selected, a decision is also required about the rate of depreciation to be applied.
 - Tilted annuity – whereby depreciation is derived such that the sum of the return on assets and regulatory depreciation (often referred to as the “capital charge”) amounts grow or decline at a rate that is specified. The ability to specify the rate of growth or decline in the capital charge implies that this is a very flexible depreciation method that can be used to address a range of policy objectives.¹²⁶ If this method is selected, a decision about the tilt factor is also required.
- The asset life over which the cost recovery is to be spread. Ordinarily this is based on the expected life of the asset in question; however, applying a different life is an alternative means of changing how the asset costs are distributed over time.¹²⁷

123 The principal guidance for the method of depreciation for financial accounting purposes is that this reflects “the pattern in which the asset’s future economic benefits are expected to be consumed by the entity” (AASB 116, principle 60).

124 This could be in either nominal or real terms

125 Geometric depreciation never results in an asset becoming fully depreciated, and one solution to this is to switch to straight-line depreciation part way through the life of the asset so that the asset value does equal zero and its end of economic life.

126 Tilted annuity was first widely applied in the context of telecommunications regulation, under which prices were set (and reset) in line with the cost of replacement assets. The “tilt” factor in this context was set at the expected change in input costs. However, the method has since been used in regulatory contexts to generate a smooth time path in prices for an asset with growing demand (in which the tilt rate was set at the growth rate in demand, and implied depreciation that was back-ended relative to straight line depreciation), as well as to front-end the recovery of capital in order to pre-empt stranded asset risk.

127 Typically the technical life of the asset would be used in the first instance. Diverging from this and using the ‘economic life’ would likely be due changes in expected demand or supply drop off.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

- How inflation is to be treated when carrying-forward the RAB (this is expanded upon below)
- Deciding when depreciation of an “asset” should commence, with the choices being from when cash has been incurred in the creation of an asset (an “as incurred” basis) or only after the asset has been created and is used in providing a service (an “as commissioned” basis).

As noted above, an important determinant of the profile of capital recovery is how inflation is treated when carrying-forward the asset over time. The two choices are:

- To carry-forward the RAB in historical cost terms – in which depreciation is defined as the return of the original historical cost of the asset, and depreciation in any period is the change in the historical cost of the asset.
- To carry-forward the RAB in inflation-adjusted (real) terms – in which depreciation is defined as the return of the real value of the asset, and depreciation in any period is defined as the change in the real value of the asset.

The choice between carrying-forward the RAB in historical cost or inflation-adjusted terms also has an implication for the rate of return that is applied when setting prices.

- Under the historical cost approach, compensation for inflation is provided through the rate of return applied in the RAB.
- Under the inflation-adjusted approach, compensation for inflation is provided for by escalating the RAB for inflation. Thus, the regulated revenue in any year includes only a real (i.e., exclusive of expected inflation) return on the RAB.¹²⁸

The fact that the historical cost approach compensates for inflation through (cash) revenue in the relevant year, where the inflation-adjusted approach compensates for inflation by indexing the RAB for inflation means that the latter approach implies a more back-ended revenue stream, all else constant.

The following figures demonstrate how changes to regulatory depreciation – including the choice of whether a historical cost or real approach to the RAB is applied – may affect the time path of the RAB over time, as well as the capital charge (i.e., the after-tax allowance for capital costs).¹²⁹ The figures are presented in simple nominal terms (i.e. dollars of the day) and inflation-adjusted (i.e. real) terms.

¹²⁸ This outcome can be achieved by either (i) applying a real WACC directly when calculating the return on assets line item of the revenue requirement, or (ii) applying a nominal WACC when calculating the return on assets line item, but deducting the RAB inflation indexation to avoid double counting of inflation.

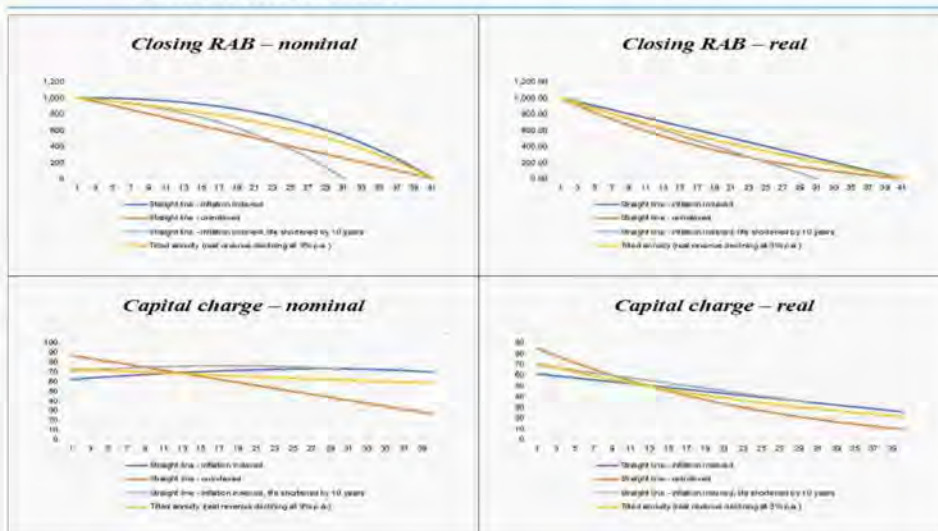
¹²⁹ These figures assume a single asset with a cost of \$1,000, a 40 year life (except where indicated otherwise), a forecast of inflation of 2.5 per cent and a vanilla WACC that is approximately consistent with current estimates.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

Figure C.1: How regulatory depreciation approaches impact the RAB and after-tax allowance for capital costs over time



Source: Incenta Economic Consulting

C.3 Current approach to depreciation in the NEM

The rules regarding depreciation for electricity transmission networks are set out in clause 6A.6.3 of the NER. These rules require:

- Each asset (or asset group) to be depreciated over its economic life¹³⁰
- Each asset is to be depreciated only once (this is the condition that results in changes to depreciation not affecting the value of the regulated revenue stream in present value terms).¹³¹

In addition, the rules require the RAB to be carried-forward on an inflation-indexed basis.¹³²

The AER applies a straight-line depreciation method in its PTRM, together with RAB indexation, and so this method is essentially mandated.¹³³

130 Clause 6A.6.3(b)(1)

131 Clause 6A.6.3(b)(2). The rules also require the depreciation method and inputs that were applied prospectively to determine revenue requirements for a regulatory period also to be applied when updating the RAB in preparation for the next review at the end of the period (clause 6A.5.4(a)(1)).

132 Clause 6A.5.4(a)(1).

133 Clause 6A.4.1(b)(1) requires a TNSP's revenue proposal to be prepared using the PTRM.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

In terms of the timing of recognition of assets, while the AER provides a return on investment from the date that cash flows are expended (i.e., during the construction of an asset), depreciation has historically commenced only after assets have entered into service.¹³⁴

C.4 Financeability and ISP Projects

TNSPs have a right to build, own and operate transmission solutions in the NEM but no obligation to deliver transmission projects under the national regulatory framework.¹³⁵ Given this, there is a risk that financeability issues may delay investment in transmission infrastructure, including actionable ISP projects.¹³⁶

Financeability is the ability of TNSPs to efficiently raise capital to finance their activities. Creating a regime that enables regulated businesses to be financeable will facilitate those firms attracting the flow of capital funds needed to finance investment. This is beneficial to customers as well as more broadly given the importance of transmission investment for decarbonisation of energy supply.

Rating agencies consider a range of factors when assigning credit ratings for businesses. This includes qualitative factors and benchmarking against other rated firms to assess the capacity of the firm to meet its interest payments and serve debt are central considerations. These measures of the capacity of firms to pay interest and serve debt are directly influenced by the choice of depreciation method and associated inputs.

- In broad terms, the measures of the capacity for a regulated business to meet its interest payments and serve debt that ratings agencies apply will be stronger whenever the annual revenue allowance for capital costs relative to the RAB is higher. Regulatory depreciation is part of this allowance.¹³⁷
- Where straight line depreciation is applied, the amount of depreciation as a proportion of the RAB will be directly related to the remaining life of the assets. Other factors that are important are:
 - whether the RAB will be indexed for inflation
 - during the period of construction, when the depreciation allowance is allowed to commence.

The particular issues that arise in relation to large scale actionable ISP projects are that:

- As the projects are new, the lives of the assets are those of new assets, compared to the TNSP's existing assets which are part-way through their lives. The average lives of the

¹³⁴ The NER does not specifically prevent depreciation to be recovered from assets on an 'as incurred' basis, as explained in section 4.1.2.

¹³⁵ The NEL and NER do not expressly provide that the primary TNSP (PTNSP) has the exclusive right to implement major transmission projects in its region. There are several examples of transmission projects in the NEM that have been undertaken by a person other than the PTNSP, such as BassLink, MurrayLink, DirectLink and the proposed CopperString 2.0 project. However, there is currently no national regulatory process to facilitate the contestable procurement of transmission projects, and the proponent of a contestable project would face considerable regulatory uncertainty.

¹³⁶ The exclusive right of a TNSP to undertake an actionable ISP project is time limited under the current NER. Under clause 6A.8.2(b)(5), if a TNSP makes an application to amend a revenue determination for a contingent project the TNSP is to set out the intended date for commencing the contingent project, which must be during the regulatory control period. Under clause 6A.8.2(a1) the application has to be made as soon as practicable after the trigger event occurs.

¹³⁷ An increase to the WACC would also improve financeability; however, this change would not have a neutral value.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

ISP projects are likely to be approximately twice the weighted average remaining life of the TNSP's existing assets.¹³⁸

- The cost of the ISP projects is significant such that adding them to the RAB has the potential to increase the weighted average remaining life of the assets in a TNSP's RAB materially, and so reduce materially the ratio of the TNSP's capital cost allowance to the RAB, and in turn threaten its financeability.

In addition, as depreciation does not commence until assets have been commissioned, an additional issue will exist during the construction of the assets, which for some of the ISP projects may extend over a number of years.¹³⁹

Given that the main issue with financeability associated with ISP projects arises from the fact that the cash flows associated with those assets are delayed (in turn a consequence of their long lives), a potential solution is to adjust the timing of cash flows in the opposite direction. One way to do this is by changing the depreciation method, or the other inputs to depreciation. Several options are available in the approach to depreciation to return cash faster, these include:

- Adjusting the profile of depreciation so that more of the cost is recovered in the early years and less in the later years
- Adjusting the economic life of the assets so that costs are returned sooner
- Switching to an un-indexed RAB approach, and/or
- Commencing the recovery of depreciation sooner, for instance, as costs are incurred rather than when assets are commissioned.

The figure below shows how one of the financial ratios preferred by the ratings agencies – the ratio of funds from operation to debt – would be expected to vary over the first 10 years under the different depreciation methods in the example that was provided above (noting that a 10 year life has been assumed for the asset).

138 Some of the ISP projects also have additional issues in that the requirement to purchase offsets for biodiversity will be a very significant part of the overall project, which would either not be depreciated (i.e., classified as land) or depreciated over a very long life (i.e., matching the life of transmission lines, which is typically 50 years).

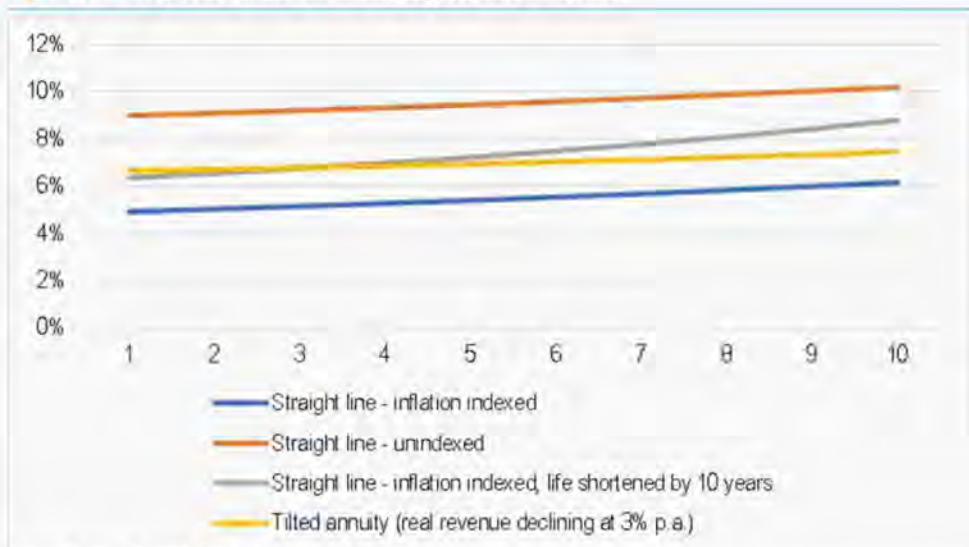
139 The NER does not specifically prevent depreciation to be recovered from assets on an 'as incurred' basis, as explained in section 4.1.2.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Accommodating financeability
8 June 2023

Figure C.2: FFO/Debt under different depreciation methods



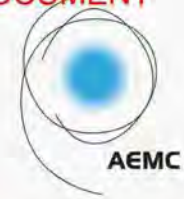
Source: Incenta Economic Consulting

As this figure illustrates, changing the depreciation method or the inputs to this can have a material effect on the financeability of the project. In broad terms, an FFO-to-debt ratio of greater than 7 per cent would be consistent with BBB credit rating, and a ratio of greater than 9 per cent would be consistent with a BBB+ rating, noting that the actual ratings process is a more complex task. It is important to note, however, that whether a financeability issue is deemed to exist, and the effectiveness of the response to this, will need to be assessed across the whole of the assets in the TNSP's RAB.

While there are likely to be long term benefits to customers from regulatory settings that promote financeability, the effect on the time path of customer prices also needs to be kept in mind. That is, the regulator will need to balance the needs of the regulated business with those of consumers as indicated by the NEO. This should imply that, where measures to facilitate financeability may cause a less preferable time path of prices to customers, that any response to financeability concerns be limited to what is necessary to address those concerns.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

These documents remain under embargo until 8am on Thursday 8 June 2023. Please note that these documents may include inside information, within the meaning of the Corporations Act 2001 (Cth), in relation to tradable securities. The Corporations Act contains prohibitions on various activities while a person is in possession of inside information. The prohibited activities include trading in the relevant securities and communicating the information to someone who the person knows, or should know, is likely to trade in the relevant securities.



Australian Energy Market Commission

CONSULTATION PAPER**NATIONAL ELECTRICITY AMENDMENT
(CONCESSIONAL FINANCE FOR
TRANSMISSION NETWORK SERVICE
PROVIDERS) RULE**

8 JUNE 2023

A vertical graphic element on the right side of the page. It consists of a solid blue horizontal bar at the top, followed by the word 'RULE' written vertically in a large, bold, grey, sans-serif font.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

INQUIRIES

Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

E aemc@aemc.gov.au
T (02) 8296 7800

Reference: ERC0349

ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

COPYRIGHT

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. You may reproduce selected passages, tables or diagrams for these purposes provided you acknowledge the source.

CITATION

To cite this document, please use the following:
AEMC, Concessional finance for Transmission Network Service Providers, Consultation paper, 8 June 2023

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

SUMMARY

- 1 Australia is undergoing a transformational shift to net zero. A key feature of this transformation is the replacement of centralised thermal generation with decentralised renewable generation.
- 2 There is broad consensus that transmission is a critical enabler for the transition to net zero, both in the National Electricity Market (NEM) and the economy more broadly. This transition will require an unprecedented level of investment in, and build of, transmission infrastructure to deliver power from renewable generation and energy storage to consumers, and to deliver infrastructure quickly.
- 3 The scale of transmission investment required, coupled with the speed of the energy transition, presents unique opportunities and challenges for the existing regulatory framework. This framework was developed and has evolved over a period of incremental growth of the grid where the framework was weighted to minimise the risk of overbuilding, rather than the current required pace of step-change growth set out in the Australian Energy Market Operator's (AEMO) Integrated System Plan (ISP).
- 4 The Honourable Chris Bowen MP, Commonwealth Minister for Climate Change and Energy (the Minister), submitted a rule change request on 11 April 2023 proposing that the National Electricity Rules (NER) be changed to include an approach to determining how the financial benefits that arise from concessional financing¹ of transmission infrastructure are shared between consumers and Transmission Network Service Providers (TNSPs). The rule change request notes that under the current rules concessional finance is not prohibited but, if it is provided, the benefits derived from the concession flow to TNSPs, not to consumers².
- 5 The Minister's rule change request is in the context of the Commonwealth Government's Rewiring the Nation Fund, which commits \$20 billion in concessional finance for the upgrade and expansion of Australia's electricity grids. This finance is intended to facilitate lower costs and delivery of critical transmission infrastructure.
- 6 The Commission is considering the request and this consultation paper is the first stage in the public consultation process.
- 7 We are also undertaking a related rule change to address the risk that financeability challenges could arise in relation to actionable ISP projects. The Commission intends to consider these two rule change requests in separate rule change processes. However, given they both relate to the financing of transmission projects in the ISP, we intend that the processes will run concurrently.
- 8 We are seeking your feedback on the rule change request, including how we propose to assess the request to determine whether it will promote the long-term interests of consumers.

¹ Concessional finance may be provided to a TNSP in the form of below-market rate finance as well as finance over a longer term, higher gearing and additional debt capacity, or possibly other forms for the same level of risk to below market rate loans.

² Under the current regulatory framework concessional financing will benefit TNSPs while consumer benefits, if intended, may not be realised other than through benefits associated with a project being built that otherwise would not be.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

We seek your views on how the NER can share the benefits of concessional finance with consumers

9 We are considering how concessional financing provided by government funding bodies, such as the Clean Energy Finance Corporation (CEFC), to TNSPs should be treated in the NER when some benefits may be intended to be shared with consumers.

10 As the NER does not explicitly recognise the treatment of concessional finance, additional guidance may be required to clarify the treatment of benefits from concessional finance. This view was shared by stakeholders who provided submissions to our TPIR Stage 3 Draft Report. A summary of these submissions is provided in Appendix A.

11 The rule change request details an approach to how the NER can be amended to allow sharing of concessional finance benefits with consumers, including:

- Enabling the AER to allow an agreed benefit, determined through negotiation by the TNSP and government funding body (GFB), to be passed onto consumers.
- Requiring TNSPs to provide the necessary information to the AER including the value of the benefit that the TNSP and GFB have agreed should be passed onto consumers.

12 The rule change request also outlines how concessional finance benefits can be shared with consumers in the Victorian Declared Shared Network for transmission assets procured through both contestable and non-contestable processes.

We consider that there are six assessment criteria that are most relevant to this rule change request

13 Considering the NEO and the issues raised in the rule change request,³ the Commission proposes to assess the rule change request against six assessment criteria.

14 We seek feedback on our proposal to assess the request against:

- Principles of market efficiency
 - Risk allocation — does the proposal consider the impacts of different approaches to risk allocation on stakeholder behaviours and outcomes, specifically TNSPs and the regulator?
- Outcomes for consumers
 - Incentives — does the proposal detail an appropriate regulatory treatment to capture the consumer benefit of concessional finance in the regulatory framework?
- Principles of good regulatory practice
 - Simplicity and transparency — does the proposal provide a simple and transparent mechanism for notification and capturing of consumer benefits from concessional finance in the regulatory framework?
 - Consider broader direction of reform — does the proposal give regard to complementary reforms being considered, including the AEMC's recommended

³ Section 7 of the NEL.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

reforms to transmission planning and investment and rule change request on providing flexibility in addressing TNSP financeability concerns?

- Decarbonisation — noting the proposal does not directly influence the assessment of a project's economic case, is the proposal consistent with the timely decarbonisation of the energy market?

Submissions are due by 14 July 2023 with other engagement opportunities to follow

- 15 Written submissions responding to this consultation paper must be lodged with Commission by 14 July 2023 via the Commission's website, www.aemc.gov.au.
- 16 There may be other opportunities for you to engage with us, such as round-table discussions or industry briefing sessions.
- 17 See the section of this paper about "How to engage with us" for further instructions and contact details for the project leader.
- 18 There will be also be an opportunity for you to provide feedback on the Commission's draft determination.

Full list of consultation questions

QUESTION 1: THE REGULATORY TREATMENT OF CONCESSIONAL FINANCE

Do you agree that the Rules need to recognise concessional finance to share benefits with consumers?

QUESTION 2: RESPONSIBILITY TO INFORM THE AER ABOUT THE EXISTENCE OF A CONCESSIONAL FINANCING ARRANGEMENT

Do you agree that the TNSP should notify the AER about the existence of a concessional finance arrangement?

QUESTION 3: WHAT TYPES OF INFORMATION ABOUT THE CONCESSIONAL FINANCE ARRANGEMENT SHOULD BE PROVIDED TO THE AER AND BY WHOM

Do you agree with the types of information that should be provided to the AER, as detailed in the rule change request, and that the TNSP be required to provide the information?

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

QUESTION 4: HOW THE AER CONFIRMS THE INTENT OF THE CONCESSIONAL FINANCE AND THE METHOD(S) THROUGH WHICH THE AER CAN TREAT THE CONCESSIONAL FINANCE BENEFITS

1. Do you agree that the AER should confirm the amount to be treated as a benefit to consumers and/or TNSPs with the TNSP and the GFB?
2. Do you agree that this amount should be treated as either a capital contribution and deducted from the RAB or as a MAR adjustment? Do you prefer one method over another? Why?
3. Do you see any issues with treating some or all of the benefits as either a capital contribution or as a revenue adjustment?
4. Do you agree the AER should be required to seek submissions from the government funding body:
 - to ensure benefits are passed on to customers and/or TNSPs as intended, and
 - to determine whether they intended that some or all of the benefit of the concessional finance be treated as a capital contribution or a MAR adjustment, if required?

If not, how should the AER confirm intent and treatment of consumer benefits?

QUESTION 5: PROPOSED SOLUTION

1. Do you think the proposed solution is the most appropriate way to share benefits of concessional finance with consumers, or is there another more effective solution that could be implemented (including non-rules based solutions)?
2. Do you think the proposed solution:
 - a. is targeted, fit for purpose and proportionate to the issues it is intended to address?
 - b. considers the broader direction of reforms in transmission infrastructure?
 - c. provides for simplicity and transparency in regulatory arrangements?

QUESTION 6: COSTS AND BENEFITS OF THE PROPOSED SOLUTION

What do you think the direct and indirect costs and benefits of the proposed solution are likely to be? Are the costs likely to be proportionate to the problem they are intended to address?

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

QUESTION 7: IMPLEMENTATION CONSIDERATIONS

1. Do you have any suggestions regarding the commencement timeframe?
2. Are there additional measures that should be considered that would support the effective implementation of the desired solution?

QUESTION 8: COMPLIANCE AND ENFORCEMENT

Do you have any feedback on the compliance and enforcement role proposed for the AER?

QUESTION 9: ARE THERE ALTERNATIVES SOLUTIONS THAT WOULD BE PREFERABLE?

Can you share any alternative solutions that you think would be preferable and more aligned with the long-term interests of consumers?

QUESTION 10: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework?

How to make a submission

We encourage you to make a submission

Stakeholders can help shape the solutions by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and, in so doing, contributes to well-informed, high quality rule changes.

We have included consultation questions in this paper, however, you are welcome to provide feedback on any additional matters that may assist the Commission in making its decision.

How to make a written submission

Due date: Written submissions responding to this consultation paper must be lodged with Commission by 14 July 2023.

How to make a submission: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

code ERC0349.⁴

You may, but are not required to, use the stakeholder submission form published with this consultation paper.

Tips for making submissions are available on our website.⁵

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).⁶

Other opportunities for engagement

There may be other opportunities for you to engage with the project team prior to, and following, your formal submission. Our [stakeholder guide to the rule change process](#) sets out the process stages for the rule change, and describes the AEMC's "stakeholder engagement toolkit".⁷

For more information, you can contact us

Please contact the project leader with questions or feedback at any stage.

Project leader: Chirine Dada
Email: chirine.dada@aemc.gov.au
Telephone: 02 8296 7829

4 If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission.

5 See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/our-work-3>

6 Further information is available here: <https://www.aemc.gov.au/contact-us/lodge-submission>

7 AEMC, *The rule change process, A guide for stakeholders*, 20 June 2017.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

CONTENTS

1	The context for this rule change request	1
1.1	The Commonwealth Minister has proposed the rules be changed to share benefits of concessional finance with consumers	1
1.2	We have engaged with stakeholders on this issue previously	1
1.3	We have started the rule change process	2
1.4	We are undertaking a related rule change on providing flexibility to address TNSP financeability challenges	3
2	The problem raised in the rule change request	5
2.1	The Rules need to recognise concessional finance to enable benefits to be shared with consumers	5
3	The proposed solution and implementation	6
3.1	Proposal to facilitate the sharing of concessional finance benefits between TNSPs and consumers	6
3.2	Will the proposed solution resolve the problem?	10
3.3	What are the costs and benefits of the proposed solution?	11
3.4	What implementation issues might there be?	11
3.5	How would the rule change apply in Victoria?	12
3.6	What are your views on compliance and enforcement in relation to the proposed solution?	12
3.7	Can the problem be resolved in a different or more efficient way?	13
4	Making our decision	14
4.1	The Commission must act in the long term interests of consumers	14
4.2	We must also take these factors into account	14
4.3	We have three options when making our decision	15
4.4	Proposed assessment framework	15
4.5	The proposed rule would not apply in the Northern Territory	16
	Abbreviations	17
	APPENDICES	
A	Summary of stakeholder submissions to TPIR Stage 3 Draft Report on concessional finance	18
	TABLES	
Table A.1:	Summary of stakeholder views on concessional finance in TPIR Stage 3 Draft Report	18
	FIGURES	
Figure 1.1:	ERC0349 Concessional Finance for TNSP's - Key Dates	3
Figure 3.1:	The proposed process for the treatment of concessional finance benefits	7

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

1

THE CONTEXT FOR THIS RULE CHANGE REQUEST

The rule change request is one of the priority actions that was agreed to by Energy Ministers on 28 October 2022.

The rule change request is seeking to facilitate the intent of the Commonwealth's 'Rewiring the Nation' Fund which commits \$20 billion in concessional finance for the upgrade and expansion of Australia's electricity grids. Announcements relating to the Rewiring the Nation Fund have been made for [Marinus Link](#), [VNI West \(via Kerang\)](#), [REZs and offshore wind development](#) and [Transmission and REZ projects in NSW](#). This finance is intended to facilitate lower costs and reduce bill impacts to consumers arising from significant infrastructure investment. It is also intended to facilitate new transmission infrastructure that will enable greater inter-regional electricity flows and increase the availability of lower-cost renewable generation and storage.

1.1

The Commonwealth Minister has proposed the rules be changed to share benefits of concessional finance with consumers

The rule change request notes that the NER does not explicitly recognise the treatment of concessional finance.

Under the National Electricity Law (NEL) the AER must apply a rate of return to network businesses in accordance with its Rate of Return Instrument (RORI). The AER set an allowed return on debt which is part of the rate of return formula. Under the current framework if a TNSP secures finance below the AER's allowed return on debt it retains the additional savings. As such, the benefits of concessional finance will flow to the TNSP under the current framework.

A change to the rules is required to enable funds such as Rewiring the Nation to be applied for the benefit of consumers when intended. It would also clarify the intended purpose of the concessional finance arrangement (between the TNSP and GFB) and provide clarity on the treatment of concessional financing to improve investor confidence and facilitate the timely delivery of transmission infrastructure.

The rule change request is seeking to only apply to TNSPs.

1.2

We have engaged with stakeholders on this issue previously

As part of the Stage 3 draft report of the Transmission Planning and Investment Review (TPIR) we identified that additional guidance is needed to clarify how the benefits from concessional finance are treated in the National Electricity Rules (NER).⁸

Stakeholders in their submissions to the TPIR Stage 3 report generally recognised and agreed that the objective of the concessional finance is to support the timely delivery of major

⁸ Australian Energy Market Commission, *Transmission Planning and Investment Review Stage 3 draft report*, Sydney, 21 September 2022, p. IV.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

projects and to benefit consumers. They were widely supportive of the need to develop additional guidance on the treatment of benefits from concessional finance in the NER.⁹

Some stakeholders agreed that the TNSP is best placed to provide the necessary information to the AER to enable the treatment of benefits from the concessional finance, whilst others suggested that the AER should be empowered to seek the required information from either party to the agreement.

We held a virtual public forum on concessional finance as part of the Stage 3 Draft Report¹⁰ and consulted with stakeholder groups following receipt of their submissions. We will continue to consult with stakeholders on these issues as part of this rule change request. Stakeholder submissions received in response to TPIR Stage 3 Draft Report will be considered and are not required to be resubmitted.

The Commission has also recently considered the treatment of concessional financing in the context of the National Gas Rules (NGR) as part of the *Review into extending the regulatory frameworks to hydrogen and renewable gases*. The final report recommended that the NGR be amended to provide the regulator with discretion to treat concessional finance in the same manner as user capital contributions and government grants, where appropriate. In practice, the regulator would treat concessional finance as a capital contribution by deducting an amount from the capital base when determining scheme pipeline revenue and prices.

The Commission notes the similarities in the policy considerations for the treatment of concessional finance benefits in the NGR and NER. However, while the policy intent is similar, this rule change request proposes that the consumer benefits of concessional finance be realised through a capital reduction or a revenue reduction and that the AER be notified of the adjustment mechanism that has been agreed to by the GFB and TNSP.

1.3

We have started the rule change process

This paper is the first stage of our consultation process.

A standard rule change request includes the following formal stages:

- a proponent submits a rule change request
- the Commission commences the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a draft determination and draft rule (if relevant)
- stakeholders lodge submissions on the draft determination and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

⁹ Submissions available [here](#). A summary of submissions is provided at appendix A.

¹⁰ A public forum was held on 4 October 2022 on the TPIR Stage 3 Draft Report (Longer-term reforms) including how concessional financing provided by governments and agencies such as the Clean Energy Finance Corporation (CEFC) should be treated for regulatory purposes when some of the benefits may be intended to flow to consumers.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

We will undertake this rule change request as a standard rule change and consistent with the timeframe of a standard rule change process the key dates for this process are outlined in the figure below.

Figure 1.1: ERC0349 Concessional Finance for TNSP's - Key Dates

Timeline for rule change



Source: AEMC

Information on how to provide your submission and other opportunities for engagement is set out at the front of this document in the Summary.

You can find more information on the rule change process in [The Rule change process – a guide for stakeholders](#).¹¹

We seek stakeholder feedback on how we propose to assess the request and how the Rules should be amended to share benefits of concessional finance with consumers.

1.4

We are undertaking a related rule change on providing flexibility to address TNSP financeability challenges

The Commission has received a rule change request from the Minister that seeks to address the risk that financeability challenges could arise in relation to actionable ISP projects.¹² To address the risk faced by TNSPs, it proposes to:

- introduce greater flexibility in the revenue-setting framework in the National Electricity Rules (NER) to vary the depreciation profile of assets that form part of an actionable ISP project
- allow TNSPs to recover depreciation of biodiversity offset costs on an as incurred basis
- clarify the treatment of depreciation for asset classes, including biodiversity offsets.

This rule change project may have regard to the availability and provision of concessional finance for transmission projects.

¹¹ AEMC, *The rule change process: a guide for stakeholders*, June 2017, available here: <https://www.aemc.gov.au/sites/default/files/2018-09/A-guide-to-the-rule-change-process-200617.PDF>

¹² Further information is available at: <https://www.aemc.gov.au/rule-changes/accommodating-financeability-regulatory-framework>.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

The Commission intends to consider these two rule change requests in separate rule change processes. However, given they both relate to the financing of transmission projects in the ISP, the processes will run concurrently. Information on how to provide your submission and other opportunities for engagement on this related rule change is set out in the consultation paper available on the rule change page [here](#).

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

2 THE PROBLEM RAISED IN THE RULE CHANGE REQUEST

This chapter seeks stakeholder feedback on the problem identified in the rule change request – whether it is or will soon become a problem and if so, the scale and impact of the problem.

2.1 The Rules need to recognise concessional finance to enable benefits to be shared with consumers

The NER currently does not explicitly recognise the treatment of concessional finance. Financing sourced through concessional means is not differentiated from other forms of debt. Under the current rules, the benefit of any concessional finance would be retained by a TNSP. The rule change request proposes instead that the rules explicitly recognise concessional finance, the intent of which will allow some or all of the benefit of concessional financing arrangements to be passed through to consumers.

The current framework does not facilitate sharing some or all of the benefits of concessional financing with consumers. While the current framework would ensure that consumers benefit from the delivery of specific assets, where the financier providing concessional finance intends for the finance to reduce the prices paid by consumers for the delivery of specific projects, the framework is unable to facilitate this. This presents an issue in the current context of the NEM and associated build-out of transmission infrastructure.

The Commonwealth Government has committed to providing low-cost finance through the Rewiring the Nation Policy which has the specific intention of reducing the bill impact of the associated significant transmission infrastructure investment. In order to be able to achieve this, the rules would need to be amended so that some or all of the benefits of concessional finance can be shared with consumers.

The Commission has previously consulted on this issue through its *Transmission Planning and Investment Review*. Stakeholder responses to this review widely supported the AEMC developing guidance on the treatments of the benefits of concessional finance. More detail on these stakeholder submissions is available in appendix A.

QUESTION 1: THE REGULATORY TREATMENT OF CONCESSIONAL FINANCE

Do you agree that the Rules need to recognise concessional finance to share benefits with consumers?

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

3 THE PROPOSED SOLUTION AND IMPLEMENTATION

The rule change request that has been submitted would allow the AER to treat contributions from non-users (such as a government funding body) and the benefit that a TNSP would receive from concessional finance, as either a capital contribution or an adjustment to the maximum allowed revenue (MAR adjustment). In order to facilitate this the rule change request also proposes information provisions to allow the AER to obtain the necessary information in order to make such a determination.

3.1 Proposal to facilitate the sharing of concessional finance benefits between TNSPs and consumers

The rule change request proposes an enduring change to the NER, in order to facilitate the sharing of concessional finance benefits between TNSPs and consumers.

The rule change request seeks to:

- Require TNSPs to inform the AER about the existence of a concessional financing arrangement.
- Require TNSPs to provide certain information to the AER about the value of the benefit that the TNSP and GFB have agreed should be passed onto consumers.
- Require the AER to seek and consider submissions from the GFB on whether it intended that some or all of the benefit of the concessional finance be passed through to consumers.
- Enable the AER to allow an agreed-upon quantum or proportion of benefit to pass to consumers and to enable the AER to treat the consumer benefits of the concessional finance as a capital contribution by adjusting the regulatory asset base (RAB) or through a MAR adjustment, determined through negotiation by the TNSP and GFB.

These are discussed further below.

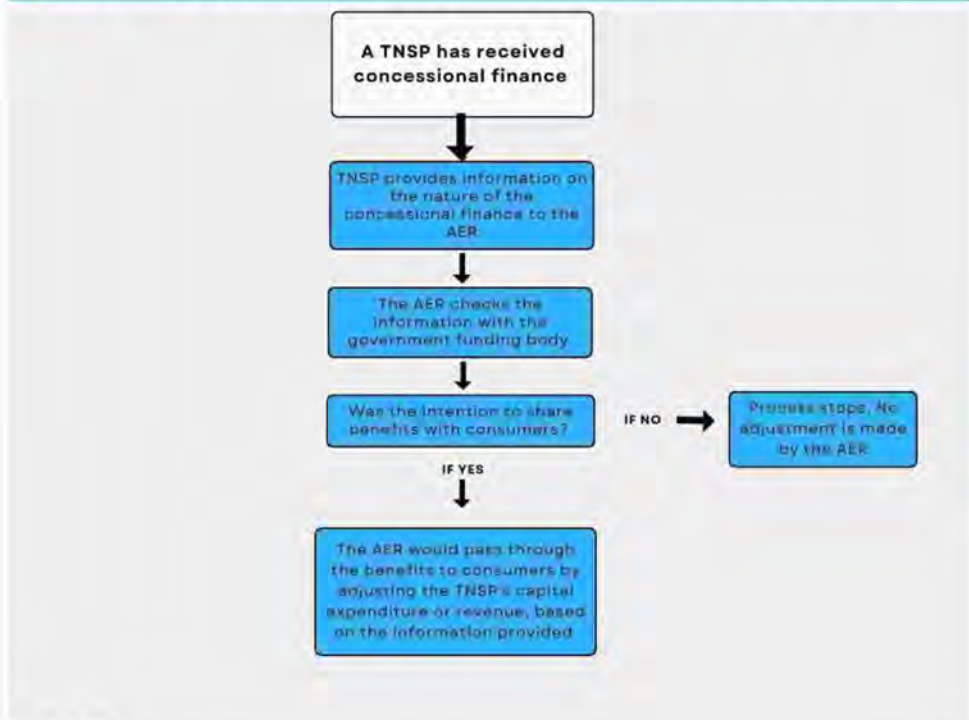
The following graphic provides an outline of the process detailed in the rule change request proposal.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

Figure 3.1: The proposed process for the treatment of concessional finance benefits



Source: AEMC

3.1.1

Information requirements

The Minister considers that the NER should allow the AER the ability to determine the intention of the government funding body and the extent to which it intends the benefit of such finance to be passed onto consumers in the form of either a capital contribution or an adjustment to recoverable revenue.

Who should be responsible for informing the AER about the existence of a concessional financing arrangement?

The rule change request proposes that the TNSP should be responsible for notifying the AER about the existence of concessional finance. The request further states that the NER should ensure that the AER is informed by the TNSP if the TNSP, or any entity in its corporate structure, receives concessional finance from a GFB.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

QUESTION 2: RESPONSIBILITY TO INFORM THE AER ABOUT THE EXISTENCE OF A CONCESSIONAL FINANCING ARRANGEMENT

Do you agree that the TNSP should notify the AER about the existence of a concessional finance arrangement?

What types of information about the concessional finance arrangement should be provided to the AER and by whom?

The rule change request proposes that when the service provider is informing the AER if it, or another entity, has received concessional finance the NER should provide that the TNSP must provide the following information:

- The name of the GFB that provided the concessional finance and contact details for that body.
- A description of the amount and type of concessional finance provided.
- If the concessional finance was provided to an entity other than the TNSP, the name and ACN of the entity that received the concessional finance and contact details for that entity.
- A copy of the agreement between the GFB and the TNSP or, if relevant, the entity that received the concessional finance that sets out the terms on which the concessional finance was provided.
- A description of the capital expenditure in relation to which the concessional finance was provided.
- If the concessional finance was provided to an entity other than the TNSP, how some or all of the benefit of the concessional finance was provided to the TNSP.
- A statement from the TNSP as to whether the GFB intended that some or all of the value of the concessional finance be treated as a capital contribution.

QUESTION 3: WHAT TYPES OF INFORMATION ABOUT THE CONCESSIONAL FINANCE ARRANGEMENT SHOULD BE PROVIDED TO THE AER AND BY WHOM

Do you agree with the types of information that should be provided to the AER, as detailed in the rule change request, and that the TNSP be required to provide the information?

How should the GFB's intent for the purpose of the concessional finance be determined? And how should the consumer benefit of concessional finance be treated?

The Minister suggests that the NER should require the AER to consult with the TNSP, the GFB, and if relevant, the entity that received the concessional finance, to ensure that the intent of the funding provided by the government body is clearly determined.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

They further suggest that the AER should be required to seek and consider submissions from the GFB on whether it intended that some or all of the benefit of the concessional finance be passed through to consumers as a capital contribution or as a reduction in a TNSP's revenue, and if yes, what portion of that value should be treated as a capital contribution or revenue reduction.

BOX 1: TREATING CONCESSIONAL FINANCE BENEFITS AS A CAPITAL CONTRIBUTION OR A REVENUE ADJUSTMENT

The GFB and TNSP, under the proposed approach, are expected to negotiate whether the benefits of concessional finance intended to be shared with consumers are to be treated as a capital contribution or a revenue adjustment (known as 'the adjustment mechanism').

The AER, under the proposed approach, would consult with the TNSP and the GFB to confirm the intent of the concessional finance is given effect, including whether benefits are intended to be shared with consumers, the value of the benefits to be shared, and the adjustment mechanism to use.

Treating concessional finance benefits as a capital contribution

The rule change proposal seeks to allow the AER to treat some or all of the difference in the net present values (NPV) of:

- the debt/equity at the concessional rate of debt/equity, and
- the debt/equity cost at the benchmark efficient rate (as set in the RORI),

('the concessional finance benefit') as a capital contribution resulting in a reduction to a TNSP's RAB.

Treating concessional finance benefits as a revenue (MAR) adjustment

The rule change proposal also seeks to allow the AER to adjust a portion of a TNSP's full aggregate annual revenue (MAR) to reflect the value of the concessional finance benefit, as calculated above.

If the GFB and TNSP agree to a revenue reduction adjustment mechanism, then consideration would need to be given to the time period over which the benefits are reflected. This is distinct from a capital contribution adjustment mechanism, which would see the RAB reduced in a single year, and the benefit to consumers realised from that point forward.

Source: The rule change request (The Hon Chris Bowen MP, *Rule Change Request: Treatment of Concessional Finance for Transmission Network Service Providers*, March 2023) and AEMC.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

QUESTION 4: HOW THE AER CONFIRMS THE INTENT OF THE CONCESSIONAL FINANCE AND THE METHOD(S) THROUGH WHICH THE AER CAN TREAT THE CONCESSIONAL FINANCE BENEFITS

1. Do you agree that the AER should confirm the amount to be treated as a benefit to consumers and/or TNSPs with the TNSP and the GFB?
2. Do you agree that this amount should be treated as either a capital contribution and deducted from the RAB or as a MAR adjustment? Do you prefer one method over another? Why?
3. Do you see any issues with treating some or all of the benefits as either a capital contribution or as a revenue adjustment?
4. Do you agree the AER should be required to seek submissions from the government funding body:
 - to ensure benefits are passed on to customers and/or TNSPs as intended, and
 - to determine whether they intended that some or all of the benefit of the concessional finance be treated as a capital contribution or a MAR adjustment, if required?

If not, how should the AER confirm intent and treatment of consumer benefits?

3.2 Will the proposed solution resolve the problem?

The rule change request states that the proposed solution will address the issue by amending the NER to:

- Explicitly recognise the offering of concessional finance to TNSPs and the sharing of benefits with consumers.
- Specify who is responsible for informing the AER of the offering of concessional finance and providing the required information to facilitate the treatment of benefits including the intent of the concessional finance.
- Specify how the AER confirms the intent of the concessional finance and the method(s) through which the AER can treat the concessional finance benefits.

The proposed solution seeks to ensure that the benefits of concessional finance can be shared with consumers, where intended, and the AER is provided with the necessary powers under the NER to gather relevant information and facilitate the regulatory treatment of the concessional finance benefits.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

QUESTION 5: PROPOSED SOLUTION

1. Do you think the proposed solution is the most appropriate way to share benefits of concessional finance with consumers, or is there another more effective solution that could be implemented (including non-rules based solutions)?
2. Do you think the proposed solution:
 - a. is targeted, fit for purpose and proportionate to the issues it is intended to address?
 - b. considers the broader direction of reforms in transmission infrastructure?
 - c. provides for simplicity and transparency in regulatory arrangements?

3.3

What are the costs and benefits of the proposed solution?

The benefits of the proposed solution cited in the rule change request are that it would:

- Lower costs to consumers related to the investment in transmission infrastructure.
- Incentivise TNSPs to build the necessary transmission infrastructure when they receive concessional finance.
- Increase certainty in the investment environment by providing clarity on the treatment of concessional finance benefits.

The rule change request states that the costs of the proposed solution are expected to be minimal and administrative in nature.

QUESTION 6: COSTS AND BENEFITS OF THE PROPOSED SOLUTION

What do you think the direct and indirect costs and benefits of the proposed solution are likely to be? Are the costs likely to be proportionate to the problem they are intended to address?

3.4

What implementation issues might there be?

The rule change request outlines how the TNSPs, GFB and AER will be impacted by the proposed solution, including:

- TNSPs receiving the proportion of the concessional finance benefit determined and agreed to by the GFB and TNSP.
- TNSPs being required to provide relevant information to the AER.
- The GFB being required to consult with the AER to confirm their intent of the concessional finance benefit.
- The AER incorporating the treatment of the concessional finance benefit in the TNSP's regulatory determination processes of the TNSP.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

We will give consideration to any transitional arrangements that may be required to accommodate the implementation of the proposed solution to existing concessional finance agreements.¹³

QUESTION 7: IMPLEMENTATION CONSIDERATIONS

1. Do you have any suggestions regarding the commencement timeframe?
2. Are there additional measures that should be considered that would support the effective implementation of the desired solution?

3.5

How would the rule change apply in Victoria?

Victoria is the only jurisdiction in the NEM where AEMO has declared network functions. In Victoria, the functions undertaken by TNSPs elsewhere are split between AEMO and declared transmission system operators (DTSOs). AEMO is accountable for the provision of the shared network, procuring services from DTSOs (such as AusNet Services), who own and operate the shared network assets.

The rule change request outlines how concessional finance benefits would be shared with consumers in Victoria's Declared Shared Network for transmission assets procured through contestable and non-contestable processes.

The rule change request proposes that arrangements for the delivery of concessional finance benefits in Victoria's contestable process will be determined by the GFB (the CEFC) and AEMO, as the Victorian transmission planner. For a contestable project, any sharing of concessional finance benefits with consumers will be through a reduction in the overall total cost of a tenderer's bid.

In Victoria, non-contestable projects are permitted to be rolled into the service provider's RAB. This rule change request proposes to apply to non-contestable augmentations. The TNSP, under the proposed arrangements, will be required to notify the AER whether they have received concessional finance as part of their revenue determination. The AER in response can use its proposed powers to vary the MAR allowance or reduce the RAB of the relevant service provider to reflect the benefits shared with consumers.

3.6

What are your views on compliance and enforcement in relation to the proposed solution?

The rule change request proposes to give the AER powers to facilitate the correct regulatory treatment of consumer benefits of concessional finance. This includes a compliance and enforcement role for the AER to confirm the TNSP's proposed treatment of the concessional finance benefits with the GFB.

¹³ We are aware announcements from Rewiring the Nation Fund have been made for [Marinus Link](#), [VNI West](#) (via [Kerang](#)), [REZs and offshore wind development](#) and [Transmission and REZ projects in NSW](#).

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

The rule change request seeks to allow the AER to obtain the necessary information from a TNSP to determine the agreed intent of the concessional finance and the extent to which the benefits of the concessional finance are to be passed to consumers.

The rule change request states that the NER should require the AER to consult with the TNSP, the GFB, and if relevant, the entity that received the concessional finance, to satisfy itself that the proposed treatment of the concessional finance benefit aligns with the intent of the funding provided by the government body.

Further, the request proposes that the AER should be required to seek and consider submissions from the GFB on whether it intended that some or all of the benefit of the concessional finance be passed through to consumers as a capital contribution or as a reduction in a TNSP's revenue, and if yes, what portion of that value should be treated as a capital contribution or revenue reduction. The AER is advised to consult with both the TNSP and GFB in determining the intent of the concessional finance.

QUESTION 8: COMPLIANCE AND ENFORCEMENT

Do you have any feedback on the compliance and enforcement role proposed for the AER?

3.7

Can the problem be resolved in a different or more efficient way?

We are also seeking input on whether the issue can be resolved outside of a rule change, or whether there are more preferable rules that might better promote the long term interests of consumers.

QUESTION 9: ARE THERE ALTERNATIVES SOLUTIONS THAT WOULD BE PREFERABLE?

Can you share any alternative solutions that you think would be preferable and more aligned with the long-term interests of consumers?

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

4 MAKING OUR DECISION

When considering a rule change proposal, the Commission considers a range of factors.

This chapter outlines:

- issues the Commission must take into account
- the proposed assessment framework
- decisions the Commission can make
- rule-making for the Northern Territory.

We would like your feedback on the proposed assessment framework.

4.1 The Commission must act in the long term interests of consumers

The Commission is bound by the National Electricity Law (NEL) to only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).

The NEO is:¹⁴

To promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system

4.2 We must also take these factors into account

4.2.1 Revenue and pricing principles

The Commission must take into account the revenue and pricing principles set out in section 7A of the NEL in making certain rules.¹⁵ Relevantly for this rule change request, we must take those principles into account in making rules with respect to transmission system revenue and pricing and the principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power relating to the making of a transmission determination.¹⁶

The Commission considers the following revenue and pricing principles are the most relevant to this rule change request:

- A regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in complying with a regulatory obligation or requirement, or making a regulatory payment.¹⁷

¹⁴ Section 7 of the NEL.

¹⁵ Section 88B of the NEL.

¹⁶ Section 88B of the NEL refers to items 15 to 24 of Schedule 1 to the NEL, which cover transmission system revenue and pricing and regulatory economic methodologies.

¹⁷ Section 7A(2) of the NEL.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

- Regard should be had to the regulatory asset base with respect to a transmission system adopted in any previous transmission determination (or other relevant determination) or in the NER.¹⁸
- A price or charge for the provision of a direct control network service should allow for a return commensurate with the regulatory and commercial risks involved in providing the direct control network service to which that price or charge relates.¹⁹

4.3 We have three options when making our decision

After using the assessment framework to consider the rule change request, the Commission may decide:

- To make the rule as proposed by the Minister²⁰
- To make a rule that is different to the proposed rule (a more preferable rule), as discussed below, or
- Not to make a rule.

The Commission may make a more preferable rule (which may be materially different to the proposed rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule is likely to better contribute to the achievement of the NEO.²¹

4.4 Proposed assessment framework

Considering the NEO and the issues raised in the rule change request, the Commission proposes to assess this rule change request using the following focus areas:

- Principles of market efficiency
 - Risk allocation — does the proposal consider the impacts of different approaches to risk allocation on stakeholder behaviours and outcomes, specifically TNSPs and the regulator?
- Outcomes for consumers
 - Incentives — does the proposal detail an appropriate regulatory treatment to capture the consumer benefit of concessional finance in the regulatory framework?
- Principles of good regulatory practice
 - Simplicity and transparency — does the proposal provide a simple and transparent mechanism for notification and capturing of consumer benefits from concessional finance in the regulatory framework?
 - Consider broader direction of reform — does the proposal give regard to complementary reforms being considered including the AEMC's recommended reforms

¹⁸ Section 7A(4) of the NEL.

¹⁹ Section 7A(5) of the NEL.

²⁰ The Minister for Climate Change and Energy, Rule change request, *Treatment of Concessional Finance for Transmission Network Service Providers*, 11 April 2023.

²¹ Section 91A of the NEL.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

to transmission planning and investment and rule change request on providing flexibility in addressing TNSP financeability concerns?

- Decarbonisation — noting the proposal does not directly influence the assessment of a project's economic case, is the proposal consistent with the timely decarbonisation of the energy market?

QUESTION 10: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework?

4.5

The proposed rule would not apply in the Northern Territory

Parts of the NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.²²

The proposed rule would not apply in the Northern Territory, as it amends provisions in NER chapter 6A that does not apply in the Northern Territory.²³ Consequently, the Commission will not assess the proposed rule against additional elements required by the Northern Territory legislation.

²² National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (**NT Act**). The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016.

²³ Under the NT Act and its regulations, only certain parts of the NER have been adopted in the Northern Territory. The version of the NER that applies in the Northern Territory is available on the AEMC website at: <https://energy-rules.aemc.gov.au/ntner>.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
GFB	Government Funding Body
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
Proponent	The proponent of the rule change request

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

A

**SUMMARY OF STAKEHOLDER SUBMISSIONS TO
TPIR STAGE 3 DRAFT REPORT ON CONCESSIONAL
FINANCE**

Table A.1: Summary of stakeholder views on concessional finance in TPIR Stage 3 Draft Report

KEY ISSUE	STAKEHOLDER VIEWS
<p>Defining and clarifying the objective of concessional finance (CF) and the need for additional guidance in the NER</p>	<p>Stakeholders widely support the AEMC developing additional guidance on the treatment of benefits from CF.</p> <p>Some stakeholders commented that:</p> <ul style="list-style-type: none"> The NER should provide for appropriate transitional arrangements to account for agreements already entered between TNSPs and Government funding bodies, or where negotiations are already underway (e.g. Marinus Link). Consideration should be given to how concessional finance arrangements would apply in Victoria, given transmission arrangements that separate planning and delivery, and the Federal Government’s recent commitment to provide a concessional loan to support VNI West.
<p>Notifying the AER about CF, including provision of information, and how the intent of the CF is communicated to the AER</p>	<p>Most stakeholders agreed that the TNSP is best placed to notify the AER of the decision on CF and to provide the necessary information to the AER.</p> <p>Some stakeholders commented that:</p> <ul style="list-style-type: none"> Both parties to the CF arrangement should notify the AER and that this is likely to occur in practice. The regulatory framework should enable the AER to consult with the government funding body (financier) to determine whether the intention was for consumers and/or the TNSP to benefit from the CF, and if so, the proportion of the concessional finance intended to benefit each party.

INSIDER TRADING LAWS MAY APPLY TO INFORMATION IN THIS DOCUMENT

Australian Energy
Market Commission

Consultation paper
Concessional finance for TNSPs
8 June 2023

KEY ISSUE	STAKEHOLDER VIEWS
<p>How the AER treats CF</p>	<p>Most stakeholders agreed additional guidance is required on how the determined value of the CF benefit should be treated by the AER in the revenue determination process.</p> <p>A large group of stakeholders provided detailed proposals on how the regulatory framework and the AER should treat benefits from CF. Some stakeholders commented that:</p> <ul style="list-style-type: none"> ▪ The NER should facilitate a range of possible regulatory mechanisms (including treating the consumer benefit as a capital contribution, making an adjustment to a TNSP's MAR, or making an adjustment to a TNSP's prices) and these stakeholders suggested that the mechanism should be agreed on by the TNSP and provider of CF, avoiding the need for the AER to develop guidelines and exercise discretion in its determination. ▪ An ex-post assessment framework would promote transparency and ensure TNSPs have passed on the CF benefits. ▪ Actual Commonwealth lending rates should be included in regulatory decisions, including the WACC. Changes to the relevant laws or rules may be required and should not be considered a barrier.

Note: For more information, please see the AEMC *Transmission Planning and Investment Review* project page [here](#). Submissions received in relation to concessional finance are located under the heading "Stage 3 Draft Report".

From: [REDACTED]
Sent: Monday, July 24, 2023 2:06 PM
To: [REDACTED]
CC: [REDACTED]
Subject: RE: Update on TPIR rule change timings

Hi [REDACTED]

There has been a lot of movement and changes!

- We have commenced the following TPIR related rule changes:
 - [Financeability](#)- submissions due 3 August
 - [Concessional finance](#)- submissions closed on 14 July. Draft due 21 September
 - [Emissions](#)- submissions due 17 August
- We have received and are about to commence the [enhancing community engagement](#) rule change (social licence). Aiming for Draft determination on 10 August
- We have received [workability of the feedback loop](#). Timeframe TBC
- We have not yet received, but are expecting in the next couple of months:
 - Economic assessment process 1
 - Targeted ISP ex post review.

Let me know if you have any questions,
[REDACTED]

From: [REDACTED] <[REDACTED]@aer.gov.au>
Sent: Friday, July 21, 2023 10:16 AM
To: [REDACTED] <[REDACTED]@aemc.gov.au>; [REDACTED]
<[REDACTED]@aemc.gov.au>
Cc: [REDACTED] <[REDACTED]@aer.gov.au>
Subject: Update on TPIR rule change timings

Hi [REDACTED] and [REDACTED]

Could you please share an update of the timings for the TPIR and related rule changes?
I've been trying to track them as we get updates from DCCEEW as they develop and lodge the proposals but there have been a lot of changes!

Kind regards,

[REDACTED] (he/him)
Assistant Director | Policy Development | Strategic Policy & Energy Systems Innovation
Australian Energy Regulator
Level 29 | 135 King Street Sydney NSW

T: 02 9230 9141



The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

IMPORTANT: This email from the Australian Energy Regulator (AER), and any attachments to it, may contain information that is confidential and may also be the subject of legal, professional or other privilege. If you are not the intended recipient, you must not review, copy, disseminate, disclose to others or take action in reliance on, any material contained within this email. If you have received this email in error, please let the AER know by reply email to the sender informing them of the mistake and delete all copies from your computer system. For the purposes of the Spam Act 2003, this email is authorised by the AER www.aer.gov.au

From: [REDACTED]
Sent: Friday, November 10, 2023 11:54 AM
To: Danielle Beinart; [REDACTED]; [REDACTED]; [REDACTED]
CC: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
Subject: Notes from DCCEEW/ AEMC monthly catch up 9 November 2023- Transmission work

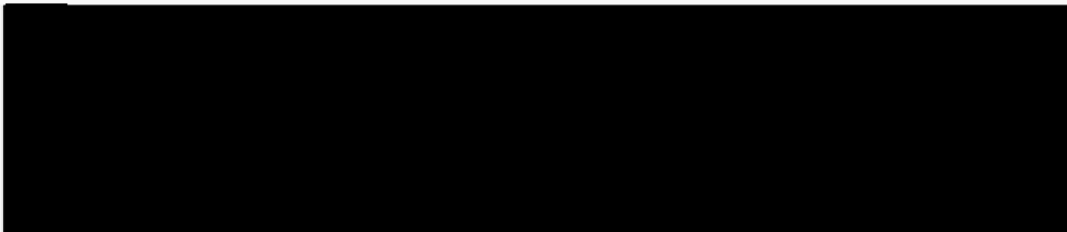
Hi All

Please find below my notes from our monthly transmission catch up with DCCEEW which was held yesterday. Topics included the [REDACTED] [REDACTED] social licence work, current rule changes and pending rule changes.



DCCEEW's social licence guidelines will not require rule changes

- DCCEEW is finalising its draft social licence guidelines for feedback and has a workshop with jurisdictions on these next Monday
- They will not put the guidelines in the rules or AER guidelines as they want them to apply to all transmission projects including REZ. We expressed support for this approach
- Noted the AER's directions paper was seen to open the door to more flexibility in relation to benefits sharing. More work is progressing on benefits sharing.



- Early works/EAP1 and targeted ex post review will then go to Bowen for approval. Expected to be with the AEMC by 2nd week of December.

We also provided an **update on our rule changes**, DCCEEW was happy that the first of the TPIR rule changes (community engagement has been completed)

- Updated on extensions for financeability and concessional finance and public forums. DCCEEW confirmed they would attend the public forum
- Happy with our approach to feedback loop and emissions
- Happy with the publication of community engagement

Let me know if you have any questions or would like any more information on any of the above.

Thanks

██████████

██████████ Director

Australian Energy Market Commission

D ██████████ | T ██████████
██████████ [@aemc.gov.au](mailto:██████████@aemc.gov.au) | www.aemc.gov.au

Level 15, 60 Castlereagh St, Sydney NSW 2000.

The Gadigal people of the Eora nation are the traditional owners of the land on which AEMC's office is located.

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Please consider the environment before printing.

From: [REDACTED]
Sent: Friday, February 24, 2023 5:24 PM
To: [REDACTED]
CC: [REDACTED]
Subject: FOR COMMENT: Feedback loop rule change request [SEC=OFFICIAL]
Attachments: Rule change request - DCCEEW - feedback loop rule.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hi [REDACTED]

Please find attached for comment the 'Feedback loop' rule change request that is the result of the work of the Australian Energy Market Commission's (AEMC) Transmission Planning and investment Review.

This is an opportunity for the AEMC to comment on the rule change request prior to formal submission by the Commonwealth to the Commission.

If you could please respond with comments or nil response on these rule changes by **3 March 2023**, that would be much appreciated.

I hope you have a lovely weekend.

Kind regards,

[REDACTED]
[REDACTED]

Senior Policy Officer

Electricity Division | Networks Reforms and Projects |

Turrbal and Jagera Land, L13 100 Creek Street, Brisbane 4000

Department of Climate Change, Energy, the Environment and Water

P [REDACTED] | E [REDACTED]@industry.gov.au

[DCCEEW.gov.au](https://www.dcceew.gov.au) ABN 63 573 932 849

Acknowledgement of Country

Our department recognises the First Peoples of this nation and their ongoing connection to culture and country. We acknowledge First Nations Peoples as the Traditional Owners, Custodians and Lore Keepers of the world's oldest living culture and pay respects to their Elders past, present and emerging

OFFICIAL



Rule Change Proposal

Feedback loop rule change request

February 2023

OFFICIAL

OFFICIAL

1. Request to make a Rule

1.1. Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

2. Relevant background

2.1. AEMC Transmission Planning and Investment Review

On 27 October 2022, the AEMC published the Stage 2 Final report of the Transmission Planning and Investment Review (the Review). Stage 2 of the Review focused on near term solutions and reducing uncertainty, including recommendations to improve workability of the feedback loop assessment to ensure a more effective consumer safeguard.

The AEMC established the Review to consider how to ensure that the regulatory framework supports the timely and efficient delivery of major transmission projects, while ensuring investment in these projects are in the long-term interests of consumers.

2.2. The feedback loop assessment

The feedback loop was first introduced as part of the actionable Integrated System Plan (ISP) reforms as a safeguard for Australian electricity consumers. The feedback loop assessment requires that, after completing a Regulatory Investment Test for Transmission (RIT-T), a Transmission Network Service Provider (TNSP) must seek written confirmation from the Australian Energy Market Operator (AEMO) that:

- The preferred RIT-T option addresses the relevant need identified in the most recent ISP and aligns with the optimal development path (ODP) outlined in that ISP, and
- The costs of this option does not change the status of the actionable ISP projects as part of the ODP.

This process safeguards consumers by ensuring that only investments in their long-term interest are eligible for regulatory funding. It also ensure this level of funding does not exceed the efficient level by capping the costs that can be sought by a RIT-T proponent in the contingent project assessment (CPA). The Australian Energy Regulator's (AER) Cost Benefit Analysis (CBA) Guidelines provide guidance as to how AEMO should conduct the feedback loop assessment to test the alignment between RIT-T projects and the most recent ISP ODP.

3. Statement of Issue

3.1. Practical difficulties in the application of the feedback loop undermines its ability to effectively safeguard consumers and support timely delivery of transmission projects

There are workability issues that undermine the feedback loops' ability to operate as an effective safeguard while supporting the efficient delivery of ISP projects.

The issues stem from the requirement for the feedback loop to be assessed against the ODP in the 'most recent ISP'. Under the current actionable ISP framework, 'most recent ISP' refers to the latest final ISP or ISP update that has been published. As such, the feedback loop assessment focuses on the current ODP and not the ODP identified in the next ISP publication. This is in contrast to the RIT-T process, which uses AEMO's most recent Inputs, Assumptions and Scenarios Report (IASR), that will underpin the future ODP in the next draft and final ISP.

The ODPs in current and future ISPs, will be underpinned by different inputs, assumptions and scenarios according to AEMO's IASR. This creates several challenges for AEMO in attempting to conduct a feedback loop assessment, including:

- Compromising the accuracy of the assessment's results due to AEMO being unable to use the latest available information and relying on outdated IASR underpinning the ODP in the most recent ISP
- Increases the potential for inconsistencies between the inputs underpinning the feedback loop assessment and the RIT-T preferred option
- Creating additional burden for AEMO in its development of the next ISP due to the need to draw on two sets of modelling and inputs – impacting the timeliness of the feedback loop assessment.

This rule change request seeks to address these workability issues by allowing the feedback loop to use inputs that will underpin the ODP in the next ISP. This will be particularly important at times where there are significant differences between the RIT-T preferred option and the ISP candidate.

4. Description of the proposed rule

The proposed rule would amend the National Electricity Rules (NER) to implement the rule change recommendations contained in the AEMC's TPIR - Stage 2 Final Report. The proposed amendments – which were prepared by the AEMC and accompanied the Final Report – are attached to this request.

The proposed amendments would improve the feedback loop assessment by ensuring the process is workable and fit for purpose, while also providing a clear and consistent regulatory framework to efficiently deliver ISP projects.

4.1. Aligning the feedback loop assessment with the publication of a draft or final ISP would aid in addressing workability issues

Aligning the feedback loop assessment with the draft or final ISP will address workability issues by allowing AEMO to consider the most up to date information in its assessment process.

The proposed amendments to the NER seek to:

- Enable the feedback loop assessment to be based on the inputs that will underpin the ODP in a draft ISP (proposed cl 5.16A.5(b)(1) and (2))
- Align the feedback loop with a draft or final ISP by establishing an exclusion window for feedback loop requests between the publication of the final IASR and draft ISP to be implemented through amendments to the AER's CBA Guidelines (proposed cl. 5.16A.5(c)(4))

4.2. Allowing the feedback loop and CPA process to occur in parallel would reduce potential delays

Amending the NER to allow the CPA process and feedback loop assessment to proceed concurrently will allow for quicker delivery of transmission projects and reduce potential 'bunching' of project assessments around the draft ISP.

The proposed feedback loop amendments will:

- Allow, but not require, the feedback loop and CPA process to occur concurrently to address concerns of the potential for delay due to the bunching of feedback loops around a draft or final ISP (proposed cl. cl 5.16A.5(b)).
- Require AEMO to complete the feedback loop assessment within 40 business days from the later of the date the request is submitted (or additional information is received) following an information request issued by AEMO, with a possible 60 business day extension if AEMO determines the assessment involves particular complexities or difficulties (proposed cl 5.16A.5A).

These amendments are unlikely to result in additional regulatory burden for TNSPs as the costs sought in the CPA are capped according to the outcome of the feedback loop assessment and running both processes concurrently will remain optional.

4.3. Requiring AEMO to complete the feedback loop assessment within 40 business days from the date the request is submitted or additional information is received would support timely delivery of projects

The proposed amendments will require AEMO complete a feedback loop assessment within a specific timeframe to ensure timely execution of regulatory process for ISP transmission projects.

The proposed amendment would:

- Require AEMO to complete the feedback loop assessment within 40 business days from the later of the following:
 - the date the request is submitted or
 - the date additional information is received following an information request issued by AEMO.
- Give AEMO the power to extend the assessment by 60 business days if it determines the assessment involves particular complexities or difficulties (proposed cl 5.16A.5A).

These amendments to the NER would promote a clear, consistent and predictable regulatory framework that offers stakeholders transparency regarding timeframes for the completion of the assessment process.

4.4. There would be transitional arrangements to allow adequate time for the amendments to be put in place while not disrupting existing projects

As this rule may result in significant changes to AEMO's, the AER's and TNSP's existing processes, there would be transitional arrangements to allow for smooth implementation that does not adversely impact existing projects.

The proposed transitional provisions would:

- Apply the proposed feedback loop amendments to an existing actionable ISP project if, and only if, the RIT-T proponent has not already requested a feedback loop assessment under existing cl 5.16A.5(b).
- Provide the AER with 12 months to update the CBA Guidelines in line with the proposed feedback loop amendments, and allow time for any consultation the AER undertakes for that purpose before the amendments commence.

5. How the proposed rule will address the issue

The proposed rule amendments will address the feedback loop's key workability issues by enabling AEMO to use the most recent IASR that underpins the upcoming ISP. This will prevent the practical challenges currently impacting the feedback loop assessment process, while also ensuring its results are consistently accurate when assessing RIT-T preferred projects against ISP candidates.

Running the CPA concurrently with the feedback loop and requiring AEMO to complete its assessment within 40 business days from application (or an additional 60 business days should complexities arise) will also ensure a transparency and predictable regulatory framework that can facilitate timely delivery of ISP projects.

The proposed rule change will ensure consumers are protected while not unduly delaying major transmission investment through the regulatory process.

6. How the proposed rule will or is likely to contribute to the achievement of the National Electricity Objective

The national electricity objective (NEO), as set out in section 7 of the National Electricity Law, is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to –

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

The relevant aspect of the NEO for present purposes is the promotion of efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, safety, reliability and security of the supply of electricity.

The proposed feedback loop amendments advance the NEO in the following ways:

1. Allowing AEMO to consider inputs from upcoming ISPs will promote more efficient decision-making by AEMO and help ensure the feedback loop operates as an effective safeguard for consumers.
2. Managing the timing of feedback loop requests in the CBA Guidelines enables AEMO to develop a tailored approach to feedback loop assessments.
3. Allowing the CPA process and feedback loop assessment to proceed concurrently will manage potential bunching of assessments around the publication of a draft ISP, thereby promoting efficient decision-making by AEMO.
4. Incorporating a timeframe for AEMO to complete the feedback loop promotes a clear, consistent and predictable regulatory framework by providing clarity and transparency to stakeholders regarding when the outcome of the feedback loop will be known.

7. Expected costs, benefits and impacts of the proposed rule

7.1. Expected benefits

The proposed feedback loop amendments would improve the workability of the feedback loop for AEMO and improve its ability to operate as an effective safeguard for consumers while also supporting timely delivery of ISP projects.

7.2. Expected costs

The proposed amendments are not expected to impose any significant new costs on TNSPs or consumers.

However, there may be some additional costs for AEMO and the AER during the initial implementation of the proposed amendments and any associated consultation. Any additional costs during implementation are likely to be offset by the benefit of improved workability of the feedback loop, improved consumer protection and minimised regulatory delays of transmission projects.

7.3. Impacts of the change on those likely to be affected.

The proposed amendments would likely require TNSPs to structure their regulatory and project timelines around the exclusion window between final IASR and draft ISP. This is not expected to considerably alter transmission project timelines, and will serve to streamline them through expedited regulatory process outside of this exclusion window.

The proposed exclusion window may impact the project timelines for TNSPs wishing to conduct a feedback loop and CPA. However, the benefits of improved timeliness of this process and limited chance of significant divergence between the RIT-T option the ISP candidate are expected to outweigh potential costs.

AEMO will be required to adjust its processes in the information it uses to assess RIT-T preferred options against the ISP ODP, as well as ensure the feedback loop assessment is completed according to the proposed timelines.

From: [REDACTED]
Sent: Wednesday, June 28, 2023 10:57 AM
To: [REDACTED]
Subject: RE: Community engagement rule change [SEC=OFFICIAL]
Attachments: New rule change proposal - Minister for Climate Change and Energy - 20230411 - Consultation expectations.pdf

Thanks [REDACTED]

I have attached the rule change request.

We were particularly keen on the AER views on the transitional rules included in the rule change request. Specifically, whether they are needed. There is also a transitional relating to updates to the CBA guidelines which we are keen to sense check with the AER.

Let me know if you have any other questions.

Cheers,
[REDACTED]

[REDACTED] Adviser
Australian Energy Market Commission
D [REDACTED] | T +61 2 8296 7800
[REDACTED] [@aemc.gov.au](mailto:[REDACTED]@aemc.gov.au) | www.aemc.gov.au

Level 15, 60 Castlereagh St, Sydney NSW 2000

The Australian Energy Market Commission office is located on land traditionally owned by the Gadigal people of the Eora nation.

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Please consider the environment before printing.

From: [REDACTED] <[REDACTED]@aer.gov.au>
Sent: Wednesday, June 28, 2023 10:14 AM
To: [REDACTED] <[REDACTED]@aemc.gov.au>
Subject: RE: Community engagement rule change [SEC=OFFICIAL]

OFFICIAL

Hi [REDACTED]
I hope you've been well too!

The social licence stuff sits across several teams in the AER so it might depend on what specifically you were looking to discuss. Could you send through some topics or questions and I can chase down who the right person (or people) would be.

Kind regards,

[REDACTED] (he/him)
Assistant Director | Policy Development | Strategic Policy & Energy Systems Innovation

Australian Energy Regulator
Level 29 | 135 King Street Sydney NSW
T: [REDACTED]



The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

From: [REDACTED] <[REDACTED]@aemc.gov.au>

Sent: Wednesday, 28 June 2023 9:58 AM

To: [REDACTED] <[REDACTED]@aer.gov.au>

Subject: Community engagement rule change

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi [REDACTED]

Hope you have been well!

Would you happen to know who in the AER I should reach out to for a discussion on the community engagement rule change request (social licence reform from TPIR)? Perhaps someone who is involved in developing the new guidelines?

Cheers,

[REDACTED]
[REDACTED] Adviser
Australian Energy Market Commission
D [REDACTED] T +61 2 8296 7800
[REDACTED] @aemc.gov.au | www.aemc.gov.au

Level 15, 60 Castlereagh St, Sydney NSW 2000

The Australian Energy Market Commission office is located on land traditionally owned by the Gadigal people of the Eora nation.

This email message is intended for the use of the addressee named and may contain privileged or confidential information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this email message in error please delete the email and notify the sender.

Please consider the environment before printing.

IMPORTANT: This email from the Australian Energy Regulator (AER), and any attachments to it, may contain information that is confidential and may also be the subject of legal, professional or other privilege. If you are not the intended recipient, you must not review, copy, disseminate, disclose to others or take action in reliance on, any material contained within this email. If you have received this email in error, please let the AER know by reply email to the sender informing them of the mistake and delete all copies from your computer system. For the purposes of the Spam Act 2003, this email is authorised by the AER www.aer.gov.au

subsequently added in - deadline
for completing PCB assessment.

- ~~acknowledged~~
imlikely to have a material
impact in practice.

■ - risks ■ does US TNSPs and
consumer groups?

remaining issue PCB - inclusion
window - most recent ISP.

once new IASR published - new
scenario weightings won't be available
→ will come out in new ISP.

- AEC provide guidance.