

Victoria New South Wales Interconnector West (VNI West)

Determination of dispute - application of the regulatory investment test
for transmission

October 2023

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Contents

1	Who we are and our role in this process	3
1.1	Victorian Ministerial Orders made under the National Electricity (Victoria) Act 2005	3
1.2	The VNI West RIT-T	4
1.3	The dispute	5
1.4	Structure of this document	8
2	Our dispute resolution process	9
3	Application of our dispute resolution process	12
3.1	Our assessment approach	12
3.2	Interested party	12
4	Assessment of grounds of dispute	15
4.1	Ground 1: Selection of preferred option	15
4.2	Ground 2: Consideration of ISP candidate option and credible options	18
4.3	Grounds 3 and 4: Credible options in the PADR and PACR	20
4.4	Ground 5: Consultation requirements	22
4.5	Grounds 6-9: Matters outside the scope of the dispute resolution process	23
4.6	Supplementary notice	24
5	Determination	27

Executive Summary

This document sets out the Australian Energy Regulator's (AER) determination of a dispute, brought by the Moorabool and Central Highlands Power Alliance Inc. (MCHPA), of AEMO Victoria Planning (AVP)¹ and Transgrid's² joint regulatory investment test for transmission (RIT-T) for its Victoria NSW Interconnector West (VNI West) project.

We are responsible for developing, publishing and maintaining the RIT-T and accompanying RIT-T Application Guidelines for actionable Integrated System Plan (ISP) projects (RIT-T Guidelines).³ The RIT-T is an economic cost-benefit analysis that is used by transmission businesses to assess and rank different electricity investment options. We are also responsible for determining RIT-T disputes raised by parties following the conclusion of the RIT-T process as set out in rule 5.16B of the National Electricity Rules (NER). Under this framework, a party listed in clause 5.16B(a) may raise a dispute challenging conclusions made by the RIT-T proponents (in this case AVP and Transgrid) in their Project Assessment Conclusions Report (PACR) in relation to the application of the RIT-T.

AVP and Transgrid initiated the VNI West RIT-T consultation process in 2019 to identify a project that:

- Efficiently maintains supply reliability in Victoria following the closure of further coal-fired generation and the decline in ageing generator reliability, including mitigation of the risk that existing plant closes earlier than expected.
- Facilitates efficient development and dispatch of generation in areas with high quality renewable resources in Victoria and southern New South Wales through improved network capacity and access to demand centres.
- Enables more efficient sharing of resources between NEM regions.⁴

AVP and Transgrid published their PACR for the VNI West project on 27 May 2023. The VNI West PACR identified Option 5A as the preferred option which identifies a corridor that connects it to the Western Renewables Link (WRL) at a new terminal station at Bulgana and crosses the Murray River north of Kerang to connect to the proposed Project Energy Connect transmission line at Dinawan in New South Wales.⁵ The cost is estimated to be \$3.4B and is expected to deliver approximately \$1.3B in net benefits over the assessment period.

On 26 June 2023, the AER received a notice of dispute from MCHPA, representing electricity consumers in Western and North-western Victoria, disputing the conclusions of the

¹ A division of AEMO Ltd.

² NSW Electricity Networks Operations Pty Limited ACN 609 169 959 as trustee for NSW Electricity Networks Operations Trust ABN 70 250 995 390 trading as 'Transgrid'.

³ AER, *Guidelines to make the integrated system plan actionable*, August 2020.

⁴ AVP and Transgrid, *Project Specification Consultation Report*, December 2019, p.4

⁵ AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, p.3.

VNI West PACR. MCHPA raised the dispute on multiple grounds including that it considers AVP and Transgrid did not comply with specific provisions of the NER concerning the application of VNI-West RIT-T. In section 4 of this document we discuss the specific grounds of the dispute including reference to AER's assessment of each element.

After considering the grounds of dispute raised by MCHPA, the AER's determination is that none of these grounds provide a basis to require AVP and Transgrid to amend their VNI West RIT-T PACR.

1 Who we are and our role in this process

The AER is the economic regulator for electricity transmission and distribution services in the National Electricity Market (NEM).⁶ Our electricity-related powers and functions are set out in the National Electricity Law (NEL) and NER.

We are responsible for developing, publishing and maintaining the RIT-T and accompanying RIT-T Guidelines.⁷ The RIT-T is an economic cost–benefit analysis that is used by transmission businesses to assess and rank different electricity investment options.⁸ The purpose of the RIT-T is to identify the credible option⁹ which maximises the present value of the net economic benefit to all those who produce, consume and transport electricity in the market (the preferred option).¹⁰ The RIT-T Guidelines provide guidance on the operation and application of the RIT-T.¹¹

Transmission businesses must apply the RIT-T to proposed transmission investments that are actionable ISP projects, except in the circumstances specified in clause 5.16.3(a) of the NER.¹² The RIT-T aims to promote efficient transmission investment decision making in the NEM and provide greater consistency, transparency and predictability.

1.1 Victorian Ministerial Orders made under the National Electricity (Victoria) Act 2005

The National Electricity (Victoria) Act 2005 (NEVA) was amended in 2020¹³ to create an authority for the Victorian Minister to expedite transmission projects by modifying or disapplying relevant provisions of the NEL and/or the NER.¹⁴

Under section 16Y of the NEVA, the Minister published Orders on 20 February 2023¹⁵ (February 2023 Ministerial Order) and 27 May 2023¹⁶ (May 2023 Ministerial Order). The Orders disapply certain NEL and NER provisions related to the RIT-T, including the dispute

⁶ In addition to regulating transmission and distribution in the NEM and Northern Territory, we also monitor the wholesale electricity and gas markets to ensure suppliers comply with the legislation and rules, taking enforcement action where necessary, and regulate retail energy markets in Queensland, New South Wales, South Australia, Tasmania (electricity only) and the ACT.

⁷ AER, *RIT-T application guidelines*, August 2020.

⁸ The current RIT-T, version 2.0, was published by the AER on 25 August 2020.

⁹ A credible option is defined in NER, cl. 5.15.2(a) as an investment option that (a) addresses the identified need; (b) is commercially and technically feasible; and (c) can be implemented in sufficient time to address the identified need. A credible option is also an option that is identified as a credible option in accordance with paragraphs (b) or (d) of cl. 5.15.2 (as relevant).

¹⁰ NER, cl. 5.15A.1(c)

¹¹ AER, *RIT-T application guidelines*, August 2020

¹² NER, cl.5.16.3(a)

¹³ *National Electricity (Victoria) Amendment Act 2020*

¹⁴ *National Electricity (Victoria) Amendment Act 2020*, section 4.

¹⁵ Victorian Government Gazette, *VNI West and WRL Ministerial Order*, 20 February 2023.

¹⁶ Victorian Government Gazette, *VNI West and WRL Ministerial Order*, 27 May 2023.

resolution provisions in the NER, and effectively deems the route which forms Option 5A as the 'preferred option' for the Victorian components of the VNI West project.

While the Ministerial Orders disapply provisions of the NEL and NER which concern the RIT-T framework (including the dispute resolution framework) and the Victorian augmentation framework, our role as set out in the NER is unchanged with respect to the NSW component of the VNI West project. We observe that the VNI West RIT-T is jointly undertaken by proponents, AVP (VIC) and Transgrid (NSW), and that the Ministerial Orders do not apply in NSW. We observe the NER contemplates RIT projects in their entirety and does not provide a mechanism to dissect RIT projects into jurisdictions. We consider the NER provisions concerning the RIT-T framework including the dispute resolution framework (under NER clause 5.16B) continues to have operation in NSW and, to the extent VNI West is effectively a joint project with effects in both NSW and Victoria, can apply to the VNI West project in its entirety.

1.2 The VNI West RIT-T

AEMO Victoria Planning (AVP) and Transgrid initiated a RIT-T consultation process in December 2019 with the publication of the project specification consultation report¹⁷ (PSCR) to assess the viability of increasing interconnector capacity between Victoria and New South Wales, enabling more efficient sharing of generation between the states and the efficient connection of new renewable generation.

A project referred to as 'VNI West' was identified as an actionable project in the 2020 and 2022 ISPs.¹⁸ Projects that are identified as actionable are eligible for a streamlined process in accordance with rule 5.16A of the NER.

The project assessment draft report (PADR) was released in July 2022. It identified Option 1 as the preferred option and sought feedback from stakeholders on the options assessed and analysis undertaken¹⁹. In February 2022, the RIT-T Proponents published an additional consultation report²⁰ which assessed seven options in total, including five new options. Based on the analysis undertaken, the report proposed a new preferred option, Option 5, in response to submissions received and regard to its functions under the February 2023 Ministerial Order in assessing and ranking these options.

AVP and TransGrid published the PACR for the VNI West RIT-T on 27 May 2023.²¹ The PACR identified Option 5A, a new option following the May 2023 Ministerial order, as the preferred option. This option involves:

- constructing a new 500 kV double circuit overhead transmission line between Victoria and New South Wales

¹⁷ AVP and Transgrid, *Project Specification Consultation Report*, December 2019.

¹⁸ AEMO, *2020 Integrated System Plan*, June 2020.
AEMO, *2022 Integrated System Plan*, June 2022.

¹⁹ AVP and Transgrid, *Project Assessment Draft Report*, July 2022.

²⁰ AVP and Transgrid, *VNI West Consultation Report - Options Assessment*, February 2023.

²¹ AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023.

- connecting Western Renewables Link (WRL) (at Bulgana) with EnergyConnect (at Dinawan) via a new terminal station near Kerang; and
- crossing the Murray River north of Kerang.

The cost is estimated to be \$3.499 billion. AVP and Transgrid's modelling indicates that the preferred option, upon construction, is expected to provide an additional 4140MW of transfer capacity between the load centres.

The PACR estimates that Option 5A would deliver net market benefits of \$1.3 billion. The second ranked option, Option 5, is estimated to have three per cent lower capital costs. However, the benefits are estimated to be effectively equal to the preferred option. Under all sensitivities tested, the PACR concludes where the net market benefits of the options reduce, options 5 & 5A are still expected to generate significant cost savings for consumers.

The PACR observes that the May 2023 Ministerial Order specifies that the preferred option, to the extent it relates to the Victorian electricity transmission network, must connect to WRL at Bulgana, via a new terminal station near Kerang and cross the Murray River approximately north of Kerang.²²

The PACR also states that following the May 2023 Ministerial Order, for an option to be credible under the RIT-T and this PACR, it must assume the Victorian configuration and the NSW components must be viable with the Victorian configuration.²³

The PACR does not identify a specified route of the preferred option and Transgrid expects, at the completion of the RIT-T process, to undertake further engagement and route identification and refinement within the wider area of interest (with a width of between 10 kilometres and 50 kilometres) used as the starting point for consultation. This consultation on route selection is currently underway with the publication of a draft corridor report in June 2023.²⁴

1.3 The dispute

On 26 June 2023, the AER received a notice of dispute from Moorabool Central Highlands Power Alliance Inc. (MCHPA), representing electricity consumers in Western and North-Western Victoria, disputing the conclusions of the VNI West PACR.²⁵

The disputing party has raised the dispute regarding the VNI West PACR on nine grounds. These are set out in its notice to the AER, available on our website.²⁶ In summary, MCHPA contends that:

1. The VNI West RIT-T and PACR does not conform to clause 5.15A.1(c) of the NER.

²² AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, p. 3.

²³ *Ibid*, p. 5.

²⁴ Transgrid, *VNI West Draft Corridor Report - NSW*, June 2023.

²⁵ MCHPA, *Dispute Notice – VNI West Project Assessment Conclusions Report*, 26 June 2023.

²⁶ AER, *AER receives notification of RIT-T dispute from MCHPA*, 07 July 2023.

Clause 5.15A.1(c) of the NER provides that the purpose of the RIT-T is to identify the credible option that maximises the present value of net economic benefit to all those who produce, consume and transport electricity in the market—the preferred option. MCHPA’s dispute notice identifies that the VNI West PACR selects Option 5A as the preferred option even though it has lower net market benefits (\$1,371 million) than Option 5 (\$1,374 million) and, as such, claims that Option 5A is not the option that maximises the present value of net economic benefits.

2. The VNI West RIT-T and PACR does not comply with NER 5.15.2 and 5.15A.3(b)(7)(iii)

MCHPA claims that the VNI West PACR is non-compliant as it does not include an assessment of the ISP candidate option in the ISP, nor does it include an assessment on all the credible options identified and assessed in the VNI West PADR.

3. The VNI West PACR does not comply with clause 5.16A.4(j) of the NER.

Clause 5.16A.4(j) of the NER provides that the PACR must set out:

1. the matters detailed in the project assessment draft report as required under paragraph (d); and
2. a summary of, and the RIT-T proponent's response to, submissions received, if any, from interested parties sought under paragraph (f).

MCHPA observes the VNI West PACR only assesses 2 options (5 and 5A) that are categorically different options to those assessed in the VNI West Project Assessment Draft Report (PADR). MCHPA claims it is non-compliant as it does not include assessment of the VNI West PADR credible options as required.

4. The VNI West PACR does not comply with clause 5.16A.4(i) of the NER regarding other credible options assessed between the PADR and PACR stages.

Clause 5.16A.4(i) of the NER provides that 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).

MCHPA claims the VNI West PACR is non-compliant as it does not include assessment of the credible options in the PADR and Additional Consultation Report as required by the NER 5.16A.4.

5. The VNI West PACR did not comply with the consultation requirements as set out in clause 5.16A.4(f), (g) and (h) and the Cost Benefit Analysis (CBA) Guidelines.

Clause 5.16A.4(f) of the NER provides that 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 PADR. Clause 5.16A.4(g) provides that the period of consultation must be not less than six weeks from the date that AEMO publishes the report on its website. Clause 5.16A.4(h) provides that within four weeks after the end of the consultation period, at the request of an interested party, a Registered Participant or AEMO, 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.

MCHPA claims that in contradiction to clauses 5.16A.4(f)–(h), AVP did not consult in any way with any party, aside from the Victorian Government, regarding the proposed preferred option that was concluded in the VNI West PACR.

6. The VNI West PACR preferred option is not aligned with the latest ISP and therefore does not comply with clauses 5.22.15(b) and (c) of the NER.

Clause 5.22.15(b) relevantly provides that if, after the publication of the most recent ISP, new information becomes available to AEMO relating to the matters set out in clause 5.22.6 and, in AEMO’s reasonable opinion, that new information, may materially change the outcome of the RIT-T for an actionable ISP project that has either commenced or is due to commence prior to the publication of the next ISP, then AEMO must as soon as practicable, assess the impact of the new information on the optimal development path under that ISP.

Clause 5.22.15(c) provides that if AEMO is required to publish an ISP update under clause 5.22.15(a), or AEMO’s assessment under clause 5.22.15(b) determines that there is a material change to the need for, or the characteristics of a current actionable ISP project, AEMO must consult on the new information and the impact on the Optimal Development Path (ODP) under the ISP.

MCHPA claims AVP has not undertaken a consultation process to determine if the ISP should be updated given Option 5A is not aligned with the ODP identified in the 2022 ISP.

7. Further, AVP has not complied with its obligations under clause 5.14.4(a) and (b) of the NER.

Clause 5.14.4(a) of the NER provides that transmission network service providers (TNSPs) and AEMO (the joint planning parties) must take reasonable steps to cooperate and consult with each other to enable preparation of a draft or final ISP or ISP update. Clause 5.14.4(b) of the NER provides that as soon as practicable after a TNSP becomes aware of a material change to information provided under clause 5.14.4(a), that information must be updated.

MCHPA claims the material increase in the cost of option 1, identified in the ODP of the ISP, also requires AEMO to undertake a consultation process in order to determine if the ISP (including ODP) should be updated.

8. The VNI West PACR as it stands means that AEMO is unable to satisfy the trigger event in clause 5.16A.5 of the NER, and therefore AEMO is unable to make a contingent project application under rule 6A.8 which provides the mechanism to recover costs for actionable ISP project early works.
9. The VNI West PACR states that the regulatory arrangements in Victoria do not require AVP to seek a “feedback loop” confirmation from AEMO regarding the alignment between a RIT-T and the latest ISP. MCHPA claims that this is not compliant with clauses 5.16A.5 and 5.22.15 of the NER and the CBA Guidelines.

On 5 July 2023, MCHPA also submitted a supplementary notice to the dispute expanding on some of the aspects of the grounds of the dispute. Among other matters raised in its supplementary notice, MCHPA alleged that the following reports had information that may affect the analysis undertaken by AVP and Transgrid in its VNI West PACR:

- Transgrid's Victoria to NSW Interconnector West - Draft Corridor Report – NSW published on 30 June 2023
- AEMO's Draft 2023 Transmission Expansion Options Report (DTEOR) published on 2 May 2023.

1.4 Structure of this document

This document sets out our determination on the dispute, including the reasons for the determination.

The determination is structured as follows:

- Chapter 2 sets out our dispute resolution process and how it relates to the present dispute.
- Chapter 3 sets out our approach to how we assessed the dispute.
- Chapter 4 sets out our assessment of the grounds of dispute raised by MCHPA regarding VNI West RIT-T.
- Chapter 5 sets out our determination on VNI West RIT-T dispute.

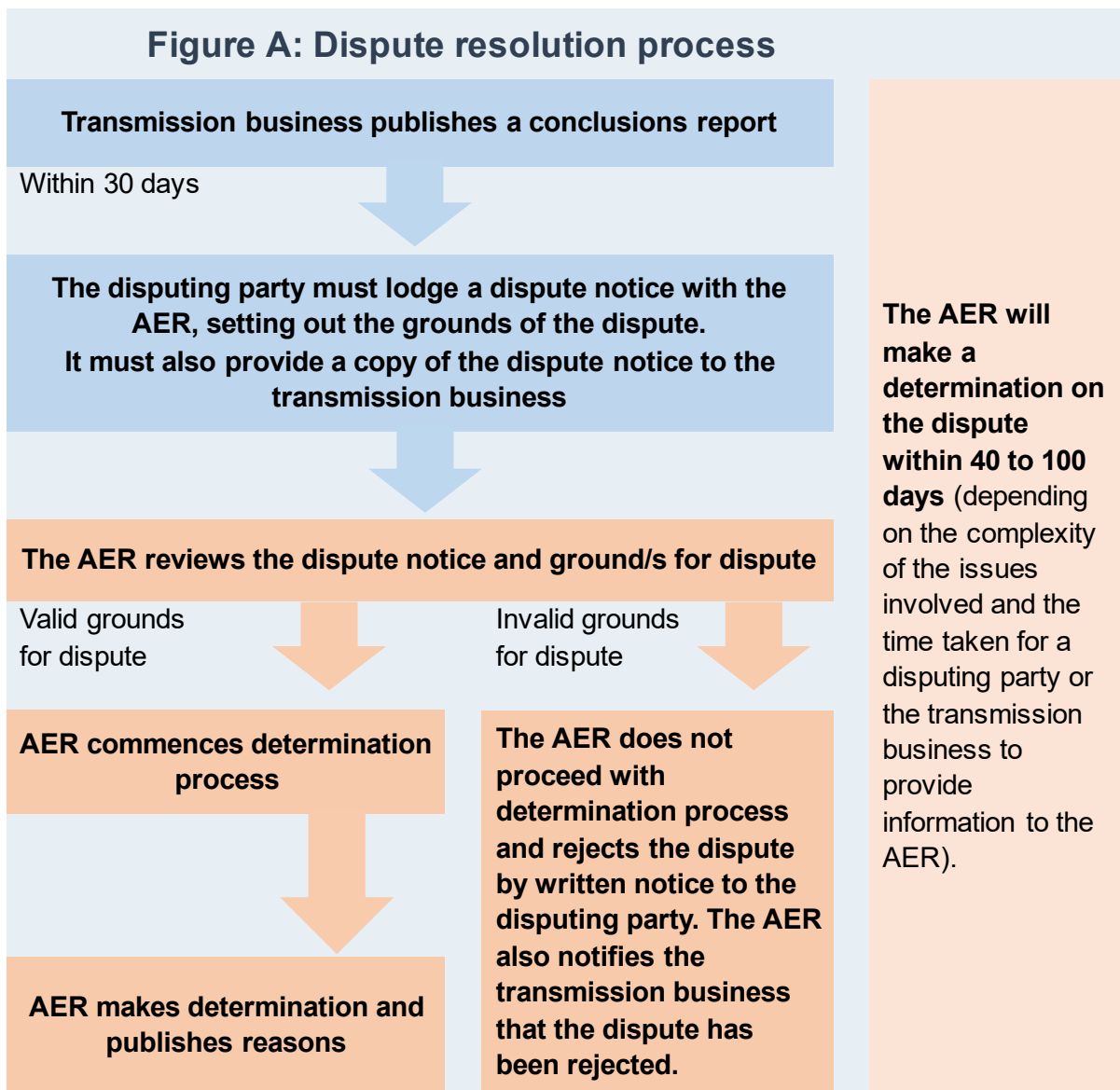
2 Our dispute resolution process

The AER is responsible for determining RIT-T disputes raised by parties following the conclusion of the RIT-T consultation process as set out in the NER. In accordance with rule 5.16B(c) of the NER, certain parties may raise a dispute in relation to the conclusions made in the PACR by a RIT-T proponent by lodging a written notice to the AER within 30 days of the publication of the PACR.

Rule 5.16B(a) of the NER identifies Registered Participants, the AEMC, Connection Applicants, Intending Participants, AEMO and 'interested parties' as parties eligible to lodge a dispute notice. A dispute may be raised about conclusions made by the RIT-T proponent in the PACR in relation to:²⁷

- the application of the RIT-T
- the basis on which the RIT-T proponent has classified the preferred option as being for reliability corrective action; or
- whether the preferred option will have a material inter-network impact.

²⁷ NER, r. 5.16B (a)



A dispute notice may not be raised about any issues in the PACR which the RIT-T treats as externalities or relate to an individual's personal detriment or property rights.²⁸ The AER's RIT-T Guidelines provide guidance on the information that should be included in a dispute notice.²⁹ The RIT-T Guidelines also provide a summary of the RIT-T dispute resolution process. This summary has been reproduced as Figure A above.³⁰

After considering the dispute notice and any other relevant information, we must either reject the dispute or make and publish a determination. We can:

- reject the dispute by written notice to the disputing party if we consider that the grounds for the dispute are misconceived or lacking in substance; and

²⁸ NER, r. 5.16B (b)

²⁹ AER, December 2018, *Regulatory Investment Test for Transmission (RIT-T) Application Guidelines*, p. 74.

³⁰ AER, December 2018, *Regulatory Investment Test for Transmission (RIT-T) Application Guidelines*, p. 75.

- notify the RIT-T proponent that the dispute has been rejected.³¹

Alternatively, we must make and publish a determination that:

- directs the RIT-T proponent to amend the matters set out in the PACR, and specifies a reasonable timeframe for the RIT-T proponent to comply with the AER's direction; or
- states that, based on the grounds of the dispute, the RIT-T proponent will not need to amend the PACR.³²

We must decide whether a dispute is valid and resolve the dispute within:

- 40 days of receiving the dispute notice; or
- an additional period of up to 60 days where we notify interested parties that additional time is required to make a determination because of the complexity or difficulty of the issues involved.³³

In making a determination on the dispute, we:

- must only take into account information and analysis that the RIT-T proponent could reasonably be expected to have considered or undertaken at the time it performed the RIT-T
- must publish our reasons for making the determination
- may disregard any matter raised by the disputing party or the RIT-T proponent that is misconceived or lacking in substance; and
- must specify a reasonable timeframe for the RIT-T proponent to comply with the AER's direction to amend the matters set out in the PACR.³⁴

Under rule 5.16B (f)(3) of the NER, we may request additional information regarding the dispute from the disputing party and/or the RIT-T proponent. These parties must provide any additional information as soon as is reasonably practicable.³⁵

A request for additional information will automatically extend the period of time for making a determination by the amount of time it takes the relevant party to provide the requested information, provided that:

- we make the request for additional information at least seven days prior to the expiry of the relevant period; and
- the RIT-T proponent or disputing party provides the information within 14 days of receipt of the request.³⁶

³¹ NER, r. 5.16B (d)(1) and (2)

³² NER, r. 5.16B (d)(3)

³³ NER, r. 5.16B (d)

³⁴ NER, r. 5.16B (f)

³⁵ NER, r. 5.16B (h)

³⁶ NER, r. 5.16B (i)

3 Application of our dispute resolution process

We received a written dispute notice from MCHPA on 26 June 2023.³⁷ Rule 5.16B(c) of the NER requires a dispute notice to be provided to us within 30 days of the date of the publication of the PACR. As the PACR was published on 27 May 2023, MCHPA met the deadline for raising a dispute.

On 5 July 2023, the AER received a supplementary notice to the 26 June 2023 dispute notice from MCHPA. The notice raised issues with a Draft Corridor Report published by Transgrid on 30 June 2023. Given this notice was received outside of 30 days of the date of the publication of the PACR, consistent with rule 5.16B(c) of the NER, we have only addressed this notice to the extent it provides supplementary information to the grounds raised in the 26 June 2023 dispute notice and did not raise any additional grounds.

To better understand the concerns raised by MCHPA, we met with representatives of MCHPA on 6 July 2023.

On 8 August 2023, in accordance with 5.16B(d) of the NER, we decided that additional time is required to make a determination on the dispute due to the complexity of the issues raised and extended our determination by up to 60 days.³⁸

On 9 August 2023, we sought further information from MCHPA in accordance with rule 5.16B(f)(3) to assist our determination of whether MCHPA is an ‘interested party’ consistent with the NER, and we extended the determination period by the period of time MCHPA took to respond. MCHPA provided its response to our request on 23 August 2023.

3.1 Our assessment approach

Our review of this dispute was an assessment against the RIT-T requirements, in light of the grounds of the dispute. That is, we conducted a review as to whether the grounds of the dispute identified a failure by AVP and Transgrid to apply the VNI West RIT-T in accordance with the NER and CBA guidelines.³⁹ Our assessment has been performed, and our determination is made, taking into account the national electricity objective.

3.2 Interested party

Under clause 5.16B(a), Registered Participants, the AEMC, Connection Applicants, AEMO, and interested parties may, by notice to the AER, dispute conclusions made by the RIT-T Proponent in the PACR, in relation to the application of the RIT-T, and other matters set out in clause 5.16B(a).

³⁷ MCHPA, *Dispute Notice – VNI West Project Assessment Conclusions Report*, 26 June 2023.

³⁸ AER, *AER extends timeframe for making a decision on VNI West RIT-T dispute*, 8 August 2023.

³⁹ NER, r.5.16B (a)

In its dispute notice, MCHPA identified as an interested party noting that it represents more than 2000 electricity consumers in Western and north-western Victoria, comprising households, small and large farm businesses, other businesses and community groups, and that it made a submission to the VNI West PADR in September 2022.⁴⁰ In accordance with clause 5.15.1 of the NER, an interested party is defined as:

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).

The phrase 'material and adverse NEM impacts' is not defined in the NER. We have provided guidance in our RIT-T application guidelines that we consider material and adverse NEM impacts include impacts on:⁴¹

- a network operator or other stakeholders such as aggregators or energy service companies in the NEM that:
 - constrain the network operator's ability to fulfil functions mandated under the NER; or
 - undermine the stakeholder's ability to perform its operations to the extent that it can no longer operate or perform a particular function. This may result from physical obstruction or a substantial reduction in profitability; or
- an electricity consumer, in their role as a consumer of electricity, that reduce the quality or reliability of their electricity supply below what is required under the NER or reduce the sum of consumer and producer surplus.

We are of the view that, despite the disapplication of rule 5.16B by the February and May 2023 Ministerial Orders, interested parties may give notice to the AER disputing the conclusions in the VNI West PACR. We have formed this view on the basis that rule 5.16B continues to have operation in NSW and, to the extent that VNI West is effectively a single project with effects in both NSW and Victoria, there are no limitations to a person or group of persons residing and consuming electricity in Victoria raising a dispute under the NER applying as law in NSW (provided they meet the definition of an 'interested party').

We sought further information from MCHPA to assist our determination of whether MCHPA is an 'interested party' consistent with the definition in clause 5.15.1 of the NER. In response MCHPA provided the following reasons to demonstrate that MCHPA as an interested party has the "potential to suffer a material and adverse NEM impact":⁴²

- The Alliance is the representative of around 2,350 end users of electricity, all of whom are supplied with electricity to their households and businesses through the NEM operation in Victoria (Members).
- The investment identified as the "preferred option" in the purported VNI West PACR is a significant investment for the NEM in Victoria.

⁴⁰ MCHPA, *Dispute Notice – VNI West Project Assessment Conclusions Report*, 26 June 2023.

⁴¹ AER, *Regulatory Investment test for transmission, Application guidelines*, August 2020, pp. 68-69.

⁴² MCHPA, *Response to information request*, 23 August 2023

- There is, therefore, clearly a potential for the investment in the “preferred option” in the purported VNI West PACR to result in the Members paying more for electricity or suffering from reduced quality or reliability of their electricity supply, than they would if a different investment were to be made.

MCHPA confirmed that it represents users in north-western Victoria.⁴³ At our request, MCHPA also provided a statutory declaration attesting to their role in representing electricity consumers.

On the basis of this confirmation, we are satisfied that for the purposes of cl 5.15.1 of the NER that MCHPA represents users that have the potential to suffer a material and adverse NEM impact from the investment identified as the preferred option in the VNI West PACR.

⁴³ MCHPA, *Response to information request*, 23 August 2023

4 Assessment of grounds of dispute

4.1 Ground 1: Selection of preferred option

MCHPA contends that the VNI West RIT-T and PACR do not comply with cl. 5.15A.1(c) of the NER, which identifies the purpose of the RIT-T and defines the preferred option in the RIT-T. Specifically, MCHPA states:⁴⁴

The VNI West PACR selects a preferred Option 5A that has lower net market benefits (\$1,371m present value, weighted) than the runner up option in the PACR Option 5 (\$1,374m) – Option 5A does not maximise the present value of net economic benefits.

MCHPA refers to cl. 5.15A.1(c) of the NER which defines ‘preferred option’ as:

The purpose of the regulatory investment test for transmission in respect of its application to both types of projects is to identify the credible option that maximises the present value of net economic benefit to all those who produce, consume and transport electricity in the market (the preferred option). For the avoidance of doubt, a preferred option may, in the relevant circumstances, have a negative net economic benefit (that is, a net economic cost) to the extent the identified need is for reliability corrective action or the provision of inertia network services required under clause 5.20B.4.

4.1.1 AER Assessment

The NER requires a RIT-T proponent to identify the preferred option in the RIT-T. The term preferred option is defined in cl. 5.10.2 of the NER as having the meaning given in cl. 5.15A.1(c) of the NER as the credible option that maximises the present value of net economic benefit to all those who produce, consume and transport electricity in the market.⁴⁵

Clause 5.16A.4(j) of the NER requires a PACR to set out the matters detailed in the PADR as required under clause 5.16A.4(d) of the NER. This includes a requirement in clause 5.16A.4(d)(7) of the NER that the PADR (or relevantly here, the PACR) “identify the proposed preferred option that the RIT-T proponent proposes to adopt”.

The PACR identified Option 5A as the preferred option with estimated net market benefits of \$1,371m (on a weighted basis⁴⁶) and compared this to Option 5 with estimated net market benefits of \$1,374m (on weighted basis⁴⁷)⁴⁸. To test the robustness of the outcome of cost benefit analysis, AVP and Transgrid undertook sensitivity testing on a range of factors, including changes in the capital costs and operating costs of the credible options.⁴⁹ While acknowledging that the net market benefits (on a weighted basis) of Option 5A are 0.02 per cent less than Option 5, AVP and Transgrid, in its VNI West PACR, attributed the following

⁴⁴ MCHPA, *Dispute Notice – VNI West Project Assessment Conclusions Report*, 26 June 2023, p. 1.

⁴⁵ NER, cl. 5.15A.1(c)

⁴⁶ The actionable ISP framework requires RIT-T assessments to use the scenarios and their weights. AEMO specified in the 2022 ISP that the Step Change scenario should be given a 52% weight, the Progressive Change scenario should be given a 30% weight, and the Hydrogen Superpower scenario should be given an 18% weight in the RIT-T assessment.

⁴⁷ *Ibid.*

⁴⁸ AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, p. 68.

⁴⁹ *Ibid.*, p.p. 70-75

two factors to the selection of Option 5A as the only credible option (and therefore the preferred option) for the purposes of the VNI West RIT and PACR:⁵⁰

- The ‘multi-criteria assessment’ undertaken in the PACR which confirmed additional benefits of Option 5A over Option 5; and
- The Victorian configuration specified in the May 2023 Ministerial Order.

The multi-criteria assessment was introduced by AVP and Transgrid in its Additional Consultation Report which was stated to be consistent with the objectives and the functions conferred on AVP by the February 2023 Ministerial Order.⁵¹ The PACR further explained the multi-criteria assessment:⁵²

In particular, in deciding on the preferred option, the multicriteria assessment has enabled social, environmental and cultural considerations to be weighed up, in addition to technical and cost-benefit considerations, recognising the importance of these factors in building social licence which in turn should assist to facilitate and expedite development, delivery, construction and energisation.

We consider that the multi-criteria assessment undertaken by AEMO Victoria Planning and Transgrid in the Additional Consultation Report and PACR (for only the Victorian segment of the project) is not a RIT-T requirement as set out in the NER or the AER's Cost Benefit Analysis guidelines. Specifically, RIT-T proponents are required to identify the credible option that maximises the present value of net economic benefit to all those who produce, consume and transport electricity in the NEM (the preferred option).⁵³ The NER prescribes the market benefits that may be included in the RIT-T (whereas the multi-criteria analysis framework considers benefits that go beyond the electricity market) and the classes of market benefits defined in the RIT-T and NER. As AVP's multi-criteria assessment takes into account considerations that are beyond the RIT market benefits, these considerations are not relevant to the identification and selection of the preferred option.

In response to our queries raised as part of the Compliance Issues Register⁵⁴, AVP and Transgrid reiterated the reasoning provided in the VNI West PACR that Option 5A is the only credible option for the purposes of VNI West PACR. Specifically, AVP and Transgrid stated that:⁵⁵

None of the four options discussed above comply with the **augmentation specified in the May 2023 Ministerial Order** [emphasis added], which is a relevant law, regulation or administrative requirement properly taken into account as provided for in the guidelines. These options are therefore not technically or commercially feasible and should not be considered as ‘credible options’; only Option 5A complies with this requirement.

In making our determination, we considered the effect of the February 2023 Ministerial Order and the May 2023 Ministerial Order on the RIT-T.

⁵⁰ AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, p. 87.

⁵¹ AVP and Transgrid, *VNI West Consultation Report - Options Assessment*, February 2023, p. 11.

⁵² AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, p. 87.

⁵³ AER, *RIT-T application guidelines*, August 2020, p. 5.

⁵⁴ AER, *Compliance Issues Register*, 21 June 2023.

⁵⁵ AVP and Transgrid, *Final Compliance Report*, 23 June 2023, p. 14.

The February 2023 Ministerial Order defines early works to be undertaken for the specified augmentation. In particular, clause 3.1 of the February 2023 Ministerial Order states the specified augmentation involves:⁵⁶

The carrying out of all works to construct a new high-capacity transmission line between Victoria and [NSW] connecting the Western Renewables Link with Project Energy Connect to meet the identified need described in the VNI West PADR and all associated works, insofar as such works are an augmentation of the declared transmission system.

Pursuant to cl. 6.1(f) of the February 2023 Ministerial Order, AVP is given the function of carrying out or procuring the carrying out of early works for the specified augmentation (which relevantly includes VNI West), including but not limited to matters such as:

- route identification, refinement and selection
- land and easement assessment
- entering into land access arrangements, including licenses and options
- the procurement and disposal of long lead time items of capital equipment for use in the construction or operation of VNI West.

Schedule 1 to the May 2023 Ministerial Order specifies, for the VNI-West project, a Victorian configuration which reflects the preferred option in the VNI West RIT-T. The May 2023 Ministerial Order provides that AVP's functions of carrying out or procuring the carrying out of early works set out in clause 6.1(f) of the February Ministerial Order extend to VNI West being the specified augmentation referred to in clause 3.1.⁵⁷ We observe that references in the May 2023 Ministerial Order to VNI West embrace the works specified in Schedule 1 to that Order (which describes Option 5A). It appears to us that the functions given to AVP pursuant to the February 2023 Ministerial Order (as extended under the May 2023 Ministerial Order) have the consequence that Option 5A is the only commercially and technically feasible option. As a result, we consider that AVP is practically constrained to implementing Option 5A.

While the Ministerial Orders do not apply in New South Wales and therefore has no binding effect on Transgrid, we consider the Ministerial Orders mean that Transgrid was constrained such that it had to adopt Option 5A. This is because no other option would have been "commercially and technically feasible" (as no other project could be developed on the part of the network not under Transgrid's control) and implemented in sufficient time to meet the identified need.

We conclude that a consequence of the February and May 2023 Ministerial Orders, that:

⁵⁶ Victorian Government Gazette, *VNI West and WRL Ministerial Order*, 20 February 2023, clause 3.1.

⁵⁷ Clause 3 of the May 2023 Ministerial Order identifies the specified augmentation for the purposes of the Division 7 of Part 3 of the National Electricity (Victoria) Act. The May 2023 Ministerial Order provides that the functions under clause 6.1(f) of the February Ministerial Order extend to VNI West being the specified augmentation referred to in clause 3.1 of the May 2023 Ministerial Order.

- There is only one credible option available, being Option 5A, which meets the requirements of the specified augmentation in Schedule 1 of the May 2023 Ministerial Order.
- AVP had no choice other than to identify Option 5A as the only credible option and therefore the preferred option to the extent that it was responsible with Transgrid for the preparation of the PACR.

For these reasons we determine that the VNI West PACR complies with the requirements of clause 5.15A.1(c). We conclude that VNI West PACR complies with NER clause 5.16A.4(j) insofar as it identifies option 5A as the preferred option, being the credible option that maximises the present value of net economic benefit to all those who produce, consume and transport in the NEM.

4.2 Ground 2: Consideration of ISP candidate option and credible options

The second ground raised in the dispute notice relates to MCHPA's claim that the VNI West RIT-T and PACR do not comply with cl. 5.15.2 and cl. 5.15A.3(b)(7)(iii) of the NER, which mainly relate to the identification of credible options in actionable RIT-Ts.

The relevant clauses of the NER are set out below.

- Clause 5.15.2(b) of the NER provides that, subject to cl. 5.15.2(b1) of the NER, in applying the RIT-T, the RIT-T proponent must consider, amongst other things, all options that could reasonably be classified as credible options.
- Clause 5.15.2(b1) of the NER provides that cl. 5.15.2(b) of the NER only applies to the application of the RIT-T to an actionable ISP project where a RIT-T proponent is considering new credible options under cl. 5.15A.3(b)(7)(iii)(C) of the NER.
- Clause 5.15A.3(b)(7)(iii)(C) of the NER provides that the RIT-T must consider any new credible options in the RIT-T that were not previously considered in the ISP that meet the identified need.

MCHPA claims that:⁵⁸

The VNI West PACR is non-compliant as it does not include assessment on the ISP candidate option in the ISP nor all the credible options identified and assessed post the VNI West PADR that were not considered in the ISP.

⁵⁸ MCHPA, *Dispute Notice – VNI West Project Assessment Conclusions Report*, 26 June 2023, p. 2.

4.2.1 AER Assessment

The NER and RIT-T specify categories of credible options that must be considered when applying the RIT-T to an actionable ISP project:⁵⁹

- the ISP candidate option or ISP candidate options, which may include refinements of an ISP candidate option.
- Non-network options identified in the ISP as being reasonably likely to meet the relevant identified need, in accordance with NER clause 5.22.12(e)(1).
- Any new credible options that were not previously considered in the ISP that meet the identified need (including any non-network options submitted to AEMO in accordance with NER clause 5.22.14(c)(1)). New credible options will typically arise from new information or changes in circumstances that was not available/did not apply to AEMO when developing the ISP, or as variants of the ISP candidate option.

The 2022 ISP identified the VNI West project (via Kerang) as an actionable ISP project and also defined the technical characteristics of the candidate option.⁶⁰ The Additional Consultation Report published in February 2023 and regarded by AVP and Transgrid as "an additional step to supplement the RIT-T assessment" considered seven credible options, including two credible options assessed in the PADR⁶¹ (including the Option 1 identified as the 2022 ISP candidate option). AVP and Transgrid explained that the additional five credible options assessed in the Additional Consultation Report were in response to feedback on the PADR. These additional five options were new credible options that were not in the 2022 ISP nor the PADR. The PACR also provided further reasoning on the options considered at various stages of the RIT-T, and gave two justifications for not progressing these credible options:⁶²

- The first justification related to the relative ranking of credible options in the Additional Consultation Report. This ranking was largely made on the basis of the multi criteria analysis. As discussed in section 4.1, we do not consider that reasoning based on the multi criteria analysis is applicable to the selection of the options included in the PACR.
- The second justification related to the May 2023 Ministerial Order, which had the effect of limiting AVP to identify Option 5A as being the only credible option which meets the requirements of the specified augmentation in Schedule 1 of the May 2023 Ministerial Order, and therefore the preferred option.

For the same reasons regarding ground one in the dispute notice, as a consequence of the February and May 2023 Ministerial Orders, we consider that there is only one credible option available—Option 5A. Therefore, we determine that the VNI West PACR complies with the requirements of clauses 5.15.2(b) and (b1) and 5.15A.3(b)(7)(iii) of the NER insofar as there is only one credible option, following the issuing of the February and May 2023 Ministerial Orders.

⁵⁹ AER, *RIT-T application guidelines*, August 2020, p. 5.

⁶⁰ AEMO, *2022 Integrated System Plan*, June 2022, pp. 27-28.

⁶¹ AVP and Transgrid, *Project Assessment Draft Report*, July 2022, p. 51.

⁶² AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, p. 87.

4.3 Grounds 3 and 4: Credible options in the PADR and PACR

MCHPA claim that the VNI West PACR does not comply with cl. 5.16A.4(j) of the NER regarding the credible options presented in the VNI West PACR. Specifically, MCHPA submits that the VNI West PACR does not include an assessment of the VNI West PADR credible options as required by clause 5.16A4(j)(4) of the NER.

MCHPA states that the VNI West PACR only assesses two options (Option 5 and Option 5A), that are categorically different options to those assessed in the VNI West PADR.⁶³

MCHPA also submits that the VNI West PACR does not conform to clause 5.16A.4(i) of the NER regarding other credible options assessed between PADR and PACR stages. Specifically, MCHPA states that the VNI West PACR is non-compliant as:

- It does not include assessment of the credible options included in the Additional Consultation Report as required by the clause 5.16A.4 of the NER.
- It only assesses one of the 7 options in the Additional Consultation Report (Option 5) against a new credible Option 5A which was not part of the VNI West PADR nor the Additional Consultation Report.

4.3.1 AER Assessment

The VNI West PADR included an assessment of two credible options including the ISP 2022 candidate option for the VNI West project.⁶⁴ In February 2023, the RIT-T Proponents published an Additional Consultation Report⁶⁵ which assessed seven options in total, including five new options. In its Final Compliance Report, AVP and Transgrid state that Options 1, 2, 3, 3A and 4 from the Additional Consultation Report (Option 1 was also in the VNI West PADR) were not progressed in the PACR due to the Victorian components scoring lower than Option 5 across the range of objectives assessed in that report, taking the February 2023 Ministerial Order into account.⁶⁶

The PACR states:⁶⁷

In preparing the PACR, Option 5 was assessed as a credible option. However, following the May 2023 Ministerial Order, Option 5 is no longer a credible option, because it is based on a different Victorian configuration to that required under the Ministerial Order.

AVP and Transgrid's Final Compliance Report also states that following the May 2023 Ministerial Order, Option 5A was found to be the only credible option as it conformed to the requirements of the specified augmentation in the Order. They further explain that:⁶⁸

⁶³ MCHPA, *Dispute Notice – VNI West Project Assessment Conclusions Report*, 26 June 2023, p. 2.

⁶⁴ AVP and Transgrid, *Project Assessment Draft Report*, July 2022, p. 51.

⁶⁵ AVP and Transgrid, *VNI West Consultation Report - Options Assessment*, February 2023.

⁶⁶ AVP and Transgrid, *Final Compliance Report*, 23 June 2023, p. 11.

⁶⁷ AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, pp. 5-6.

⁶⁸ AVP and Transgrid, *Final Compliance Report*, 23 June 2023, p. 12.

While no longer considered credible, Option 5 was included in the published PACR to provide greater transparency around the information provided to the Minister in the draft, prior to making the May 2023 Ministerial Order, and to demonstrate how similar the two options were from a net market benefit perspective.

The PACR also notes that it assessed two options – Option 5, which was developed in response to stakeholder feedback on the PADR, and a variant of this, Option 5A, developed in response to stakeholder feedback on the Additional Consultation Report and in compliance with the May 2023 Ministerial Order. It further explains the reasons for Option 5A as:⁶⁹

AVP and Transgrid have identified a variant of Option 5 involving a routed corridor north of Kerang, crossing the Murray River on Wamba Wamba Country (Option 5A). One of the primary drivers for this further north-western corridor investigation since the Additional Consultation Report was to take into account the Murray River Group of Councils' concerns raised around the potential impacts of the Option 5 area of interest on the endangered Plains-wanderer bird species, culturally sensitive areas of national significance (such as Ghow Swamp), tourism and recreation activities around Echuca, agriculture, and community impacts in Victoria. Critically, these same stakeholders suggested an alternate northern Murray River crossing that, in their view, currently has broader social license and would help alleviate many of these environmental, land-use and cultural concerns, ultimately improving likelihood of timely project delivery.

The RIT-T requires that proponent(s) must identify the credible options assessed and the proposed preferred option in a PADR, consult on the proposed preferred option and then publish a PACR which again describes each credible option assessed and the proposed preferred option.

We do not consider that clause 5.16A.4(j) requires that the credible options outlined in the PADR be the same as the credible options outlined in the PACR. Nor is it the case that the preferred option cannot change between the PADR and the PACR. Further, we consider that clauses 5.16A.4(f) and (h) require that the PACR must be prepared “having regard to” the consultation undertaken between PADR and PACR. Further, this consultation necessarily means that the RIT-T proponent is not bound under the NER to assess other credible options, including the preferred option as part of the PACR. We consider that the consultation between the PADR and PACR stages may result, among other things, in identifying additional credible options or identifying a different preferred option (including an option that it had not previously identified at the PADR stage).

We consider that the inclusion of a new option (Option 5A) in the PACR does not mean that the PACR is not compliant with clauses 5.16A.4(i) and 5.16A.4(j) of the NER. For the reasons discussed above in our assessment of Grounds 1 and 2, we conclude that, notwithstanding that other options were raised and consulted on in earlier stages of the RIT-T, as a consequence of the May 2023 Ministerial Order, there is only one credible option available — Option 5A. We determine that the VNI West PACR therefore complies with the requirements of clause 5.16A.4(i)-(j) of the NER insofar as there is only one credible option following the May 2023 Ministerial Order and the VNI West PACR considers that option.

⁶⁹ AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, p. 40.

4.4 Ground 5: Consultation requirements

MCHPA submits that the VNI West PACR did not comply with the consultation requirements as set out in NER clauses 5.16A.4(f), (g) and (h) and section 4.5 of the CBA Guidelines. In particular, MCHPA states that:⁷⁰

In contradiction to 5.16A.4(f) – (h), AEMO did not consult in any way with any party, aside from the Victorian Government, regarding the proposed preferred option that was concluded in the VNI West PACR (Option 5A), it simply appeared in the VNI West PACR as a completely new option.

4.4.1 AER Assessment

For actionable ISP projects, the NER requires RIT-T proponents undertake a two stage process in publishing a Project Assessment Draft Report (PADR) followed by a six-week mandatory consultation process inviting submissions from stakeholders and concluding with the RIT-T proponent(s) publishing a PACR.

The VNI West PADR was published on 29 July 2022 followed by a six-week consultation period ending on 9 September 2022. AVP and Transgrid published submissions received in response to PADR. On 23 February 2023, AVP and Transgrid published the Additional Consultation Report and commenced a six-week stakeholder consultation (until 5 April 2023) on seven credible options including the two credible options assessed in the PADR. The additional consultation report provided details on the stakeholder engagement undertaken during the consultation period including a summary of submissions received.

As noted above, AVP and Transgrid considered the Additional Consultation Report as an additional step in the VNI West RIT-T. Specifically, AVP and Transgrid's VNI West final compliance report stated⁷¹:

This Consultation Report had regard to the February 2023 Ministerial Order and represented an additional step to the formal RIT-T process, over and above the minimum consultation requirements prescribed under the RIT-T process.

As discussed in section 4.3.1, we consider that a new option can be identified in the PACR that was not previously identified in the RIT-T process. We observe there is no requirement in the NER to identify all credible options in the PACR (and in this case the Additional Consultation Report) nor is there any reason why a RIT-T proponent cannot refine the options for the project during the course of consultation. We also note that AVP and Transgrid undertook an additional consultation step by publishing and consulting on the Additional Consultation Report in February 2023. As discussed in section 4.33, AVP and Transgrid stated in the PACR that Option 5A was identified in response to stakeholder feedback on the Additional Consultation Report. However, notwithstanding that other options were raised and consulted on in earlier stages of the RIT-T, as a consequence of the May 2023 Ministerial Order, there remained only one credible option available—Option 5A. No further meaningful consultation could have been conducted in relation to Option 5A once the May 2023 Ministerial Order was published.

⁷⁰ MCHPA, *Dispute Notice – VNI West Project Assessment Conclusions Report*, 26 June 2023, p. 3.

⁷¹ AVP and Transgrid, *Final Compliance Report*, 23 June 2023, p. 11.

For these reasons we determine that the consultation processes undertaken by AVP and Transgrid between the PADR and PACR stages, including the publication of Additional Consultation Report, satisfies the consultation requirements set out in NER clause 5.16A.4(f) – (h) and section 4.5 of the CBA Guidelines.

4.5 Grounds 6-9: Matters outside the scope of the dispute resolution process

Rule 5.16B(a) of the NER identifies the matters in relation to which a notice may be given to the AER disputing conclusions made by a RIT-T proponent in a PACR. These include:

- the application of the RIT-T
- the basis on which the RIT-T proponent has classified the preferred option as being for reliability corrective action; or
- the RIT-T proponent's assessment regarding whether the preferred option will have a material inter-network impact in accordance with any criteria for a material inter-network impact that are in force at the time of the preparation of the PACR.

We consider that Grounds 6 to 9 (inclusive) concern matters that do not relate to the application of RIT-T or to any other categories under rule 5.16B(a) of the NER for which a dispute may be raised. Accordingly, we are required to reject these grounds of dispute, under clause 5.16B(d)(i), on the basis that each of these grounds of dispute are misconceived or lacking in substance. Our reasoning with respect to these grounds is set out below:

In ground 6, MCHPA states that the VNI West PACR preferred option is not aligned with the latest Integrated System Plan (ISP) and therefore does not comply with clauses 5.22.15(b) and (c) of the NER. We consider that this ground does not dispute conclusions made by AVP and Transgrid in the VNI West PACR and is not a dispute in relation to the application of the RIT-T. Rather it relates to the ISP update process, a process which is separate and subsequent to the application of VNI West RIT-T. Accordingly, we consider this dispute to concern matters beyond those matters listed in clause 5.16B(a) that may be raised in a dispute under rule 5.16B, and therefore conclude that we are required to reject this ground on the basis that it is misconceived or lacking in substance.

In ground 7, MCHPA claims that further to ground 6, AEMO has not complied with its obligations under clause 5.14.4(a) and (b) of the NER. Clause 5.14.4(a) of the NER provides that TNSPs and AEMO (the joint planning parties) must take reasonable steps to cooperate and consult with each other to enable preparation of a draft or final ISP or ISP update. Clause 5.14.4(b) of the NER provides that as soon as practicable after a TNSP becomes aware of a material change to information provided under clause 5.14.4(a), that information must be updated. Similar to ground 6, we consider that the ground 6 does not dispute conclusions made by AVP and Transgrid in the VNI West PACR and is not a dispute in relation to the application of the RIT-T. Accordingly, we consider this dispute to concern matters beyond those matters listed in clause 5.16B(a) that may be raised in a dispute under rule 5.16B, and therefore conclude that we are required to reject this ground on the basis that it is misconceived or lacking in substance.

MCHPA claims in ground 8 that further to ground 6, the VNI West PACR as it stands means that AEMO is unable to satisfy the contingent project trigger event for actionable ISP projects

in clause 5.16A.5 of the NER, and therefore AEMO is unable to make a contingent project application under rule 6A.8 which provides the mechanism to recover costs for actionable ISP project early works. We consider that the contingent project process under NER clause 6A.8 (including determination that a trigger event has occurred under clause 5.16A.5) is a regulatory process separate and distinct to the application of the RIT-T as set out in the NER. Therefore, we consider that ground 8 does not dispute conclusions made by AVP and Transgrid in the VNI West PACR and is not a dispute in relation to the application of the RIT-T. Accordingly, we consider this dispute to concern matters beyond those matters listed in clause 5.16B(a) that may be raised in a dispute under rule 5.16B, and therefore conclude that we are required to reject this ground on the basis that it is misconceived or lacking in substance.

Ground 9 relates to the statements in the VNI West PACR that the regulatory arrangements in Victoria do not require AVP to seek a “feedback loop”⁷² confirmation from AEMO regarding the alignment between a RIT-T and the latest ISP. Clause 5.16A.5 of the NER sets out the trigger events in relation to actionable ISP projects in order to be eligible to submit a contingent project application with the AER for cost recovery purposes. Under clause 5.16A.5(b) of the NER, for the actionable ISP project trigger event to occur, AEMO must provide written confirmation that the preferred option, identified in applying the RIT-T to an actionable ISP project, is aligned with the optimal development path in the most recent ISP. This process is also known as the ‘feedback loop’ and can entail re-running the ISP model with the RIT-T preferred option. MCHPA assert that these statements are not compliant with clauses 5.16A.5⁷³ and 5.22.15⁷⁴ of the NER and the CBA Guidelines.

We consider that the feedback loop process under 5.16A.5(b) of the NER, and the ISP Update process under clause 5.22.15⁷⁵ of the NER are separate and distinct to the application of the RIT-T. Therefore, we consider that ground 9 does not dispute conclusions made by AVP and Transgrid in the VNI West PACR and is not a dispute in relation to the application of the RIT-T. Accordingly, we consider this dispute to concern matters beyond those matters listed in clause 5.16B(a) that may be raised in a dispute under rule 5.16B, and therefore we conclude that we are required to reject this ground on the basis that it is misconceived or lacking in substance.

4.6 Supplementary notice

On 5 July 2023, MCHPA provided a supplementary notice to the dispute notice claiming that there is significant new information available which may assist the AER in assessing the grounds of the dispute raised in its 26 June 2023 dispute notice. Among other things, MCHPA

⁷² Under clause 5.16A.5(b) of the NER, for the actionable ISP project trigger event to occur, AEMO must provide written confirmation that the preferred option, identified in applying the RIT-T to an actionable ISP project, is aligned with the optimal development path in the most recent ISP. This process is also known as the ‘feedback loop’ and can entail re-running the ISP model with the RIT-T preferred option.

⁷³ NER Clause 5.16A.5 sets out the trigger events in relation to actionable ISP projects in order to be eligible to submit a contingent project application with the AER for cost recovery purposes.

⁷⁴ NER Clause 5.22.15 relates to AEMO’s obligations in relation to ISP Updates.

⁷⁵ NER Clause 5.22.15 relates to AEMO’s obligations in relation to ISP Updates.

alleged that information in the following reports have the potential to affect the information used in the VNI West PACR, including the analysis undertaken in the PACR.⁷⁶

- Transgrid's Victoria to NSW Interconnector West – Draft Corridor Report – NSW published on 30 June 2023⁷⁷
- AEMO's Draft 2023 Transmission Expansion Options (DTEO) Report published on 2 May 2023.⁷⁸

4.6.1 AER Assessment

Draft Corridor Report:

We consider that MCHPA's concerns related to Transgrid's draft transmission corridor report, a process separate to the VNI West RIT-T, does not dispute conclusions made by AVP and Transgrid in the VNI West PACR as, relevantly, it is not a dispute in relation to the application of the RIT-T.

We understand that Transgrid is currently progressing consultation on its draft transmission corridor report, as part of a route determination process which is separate to the RIT-T process and published after the publication of VNI West PACR. We also note that the PACR included details related to the area of interests for the preferred option, while acknowledging that route determination process would follow the RIT-T completion and will be subject to separate consultation process undertaken by AVP and Transgrid separately in their jurisdictions.⁷⁹

AEMO's Draft 2023 Transmission Expansion Options (DTEO) Report

MCHPA submit that, as a result of additional information available in AEMO's DTEO Report, the VNI West PACR was required to include an assessment of Option 1 of the VNI West PADR and Additional Consultation Report. It claims:⁸⁰

Option 1 in the VNI West PADR directly avoids a significant part of ~\$1billion in REZ transmission costs now proposed by AEMO in its DTEOR for V6 Central North Victoria REZ – partly because Option 5A does not deal at all with Bendigo congestion etc. The \$187m of REZ transmission cost benefits for Option 1 in the VNI West PADR would appear to be well understated.....

... By not assessing Option 1 of the VNI West PADR in the VNI West PACR, there is a real risk that Option 5A is in fact not the preferred option, and that additional and unnecessary networks costs will be burdened on consumers, directly contravening the National Electricity Objective.

⁷⁶ MCHPA, *Supplement to MCHPA 26/6/23 Dispute Notice – VNI-West Project Assessment Conclusions Report*, 5 July 2023

⁷⁷ Transgrid, *VNI West Draft Corridor Report - NSW*, June 2023.

⁷⁸ AEMO, *2023 Transmission Expansion Options Report*, September 2023.

⁷⁹ AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, pp. 40-43.

⁸⁰ MCHPA, *Supplement to MCHPA 26/6/23 Dispute Notice – VNI-West Project Assessment Conclusions Report*, 5 July 2023, p. 6.

As discussed in section 4.3, we consider that AVP and Transgrid assessed various credible options during the course of the RIT-T process through the consultation processes between the PADR and PACR, including the additional consultation undertaken as part of the Additional Consultation Report. The PACR also presented a summary of options considered in earlier stages of the RIT-T, including providing reasons for why they were not progressed to the PACR stage.⁸¹ As explained above, we consider that as a consequence of the May 2023 Ministerial Order, there is only one credible option available—Option 5A. Therefore, we consider that the VNI West PACR complies with the requirements of the NER in relation to the application of RIT-T.

MCHPA also submitted that:⁸²

Our Disputes are based on the fact that the VNI West PACR does not rely on the 2022 ISP as it must, including the optimal development path, ISP candidate option and so on. Hence it is our view that [Grounds] 5 – 7 cannot be excluded by 5.16B(b)(3).

We note the operation of 5.16B(b)(3) which states that:⁸³

A dispute under this rule 5.16B may not be raised in relation to any matters set out in the project assessment conclusions report which:

....

... (3) for an actionable ISP project, uses or relies on matters set out in the most recent Integrated System Plan or Inputs Assumptions and Scenarios Report, including the identified need, ISP parameters, credible options or classes of market benefits relevant to that actionable ISP project.

We determine that AVP and Transgrid have applied the RIT-T for VNI West in accordance with the requirements set out in the NER and AER's CBA guidelines. We also determine that MCHPA's aforementioned observation does not impact our determinations of grounds 5 to 7 as set out in sections 4.4 and 4.5.

⁸¹ AVP and Transgrid, *Project Assessment Conclusions Report*, May 2023, Appendix 3, pp. 100-103.

⁸² MCHPA, *Supplement to MCHPA 26/6/23 Dispute Notice – VNI-West Project Assessment Conclusions Report*, 5 July 2023, p. 6.

⁸³ NER, r. 5.16B (b)(3)

5 Determination

On 26 June 2023, the AER received a notice of dispute from MCHPA, representing electricity consumers in Western and North-Western Victoria, disputing the conclusions of the VNI West PACR.⁸⁴ MCHPA has raised the dispute regarding the VNI West PACR on nine grounds as set out in Section 1.3.

Grounds 1 – 5:

For the reasons set out in sections 4.1- 4.4 in relation to Grounds 1 - 5, in accordance with clause 5.16B(d)(3)(ii) of the NER, we determine that AVP and Transgrid are not required to amend its VNI West RIT-T PACR.

Grounds 6 – 9:

We consider, for the reasons set out in section 4.5, that the Grounds 6 - 9 relate to matters that do not relate to the application of RIT-T or fall under other categories under rule 5.16B(a) of the NER for which a dispute may be raised. Accordingly, we are required to reject these grounds of dispute, under clause 5.16B(d)(1) on the basis each of these grounds of dispute are misconceived or lacking in substance.

⁸⁴ MCHPA, *Dispute Notice – VNI West Project Assessment Conclusions Report*, 26 June 2023.