

Explanatory Statement

Final amendments to Transmission Efficiency
Test and revenue determination guideline for non-
contestable network infrastructure projects

July 2024

Explanatory Statement: Final amendments to Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects

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1 Introduction

This explanatory statement accompanies the final amendments to our *Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects* (Guideline). It describes our final position on matters we have identified as part of our mid-2024 review of the Guideline.

We initiated the review of the Guideline with the aim of improving the efficiency of the non-contestable revenue determination process. We consider an improved, streamlined process will foster more productive engagement between the AER, Network Operators and other interested stakeholders. There is a limited timeframe for the non-contestable revenue determination (126-business days), and we have made these changes so as to make best use of the available time. This will benefit NSW electricity consumers by ensuring they pay no more than necessary now and in the future.

This review also considers changes required to the Guideline to reflect the introduction of new regulations to the *Electricity Infrastructure Investment Regulation 2021* (NSW) (EII Regulation) and new changes to the *National Electricity Rules* (NER), where relevant.

This explanatory statement sets out our reasons for the amendments we have made between the draft and final versions of the Guideline. It explains how we have taken into account the stakeholder submissions we received in response to the draft amendments to the Guideline (Draft Guideline).

As such, this explanatory statement builds on our earlier documents. The rationale for the amendments set out in the Draft Guideline which we are maintaining in the Guideline can be found in the [Explanatory Statement](#) which we released with the Draft Guideline in May 2024. This reasoning remains current except where there is explicit discussion to the contrary in this document. We have not repeated this material in the interests of brevity and so that reasoning for the latest round of changes can be easily understood.

1.1 Consultation process

1.1.1 Draft Guideline

On 7 May 2024, we published the draft amendments to the Guideline with accompanying explanatory statement. The amendments set out in the Draft Guideline were primarily focused on streamlining the revenue determination process to ensure the current 126 business day timeframe for making non-contestable revenue determinations is used more efficiently. The key change we proposed to the existing process was to replace the requirement for the AER to make a draft decision with a preliminary position paper. The preliminary position paper will be a relatively short, accessible document with AER reasoning on the material or contentious issues arising from the revenue proposal. Overall, we consider the changes to the process will improve the robustness of our assessment of the critical components of non-contestable projects, provide more flexible stakeholder consultation periods with more quality interactions, and give the Network Operator and other interested stakeholders a more targeted opportunity to make submissions on issues of concern.

Other amendments in the Draft Guideline included clarifying the pre-lodgement process, including a new section in the Guideline setting out how we propose dealing with non-contestable cost components of contestable augmentations to implement new EII Regulation, and new requirements to reflect the recent NER Chapter 6A financeability and concessional finance rule changes.

1.1.2 Public consultation

On 7 May 2024, we released our Draft Guideline for public consultation. On 21 May 2024, we hosted a public forum on the Draft Guideline which was attended by 11 external attendees from network businesses, consumer groups, NSW Government, and consultancies. The public forum allowed stakeholders the opportunity to ask questions about the amendments in the Draft Guideline before submissions were due.

By the end of the consultation period, we received written submissions from Transgrid, Ausgrid, Essential Energy, Public Interest Advocacy Centre (PIAC), Energy Users Association of Australia (EUAA), and AGL.¹ We also received a late submission from Clean Energy Finance Corporation (CEFC).

The majority of submissions were supportive of the amendments to the Draft Guideline except for Transgrid who submitted that we should keep the draft decision and only make administrative changes to the Guideline.

We have updated our Guideline where relevant to reflect stakeholders' views as explained in section 2 and have otherwise responded to stakeholder submissions in section 3.

1.2 Future amendments

We amend the Guideline from time to time to ensure it achieves its purpose. When we amend the Guideline, we follow the procedures set in clause 47C of the EII Regulation. This includes public consultation on a draft Guideline before finalising any amendments.²

Our current expectation is that the next review of the non-contestable Guideline will commence in late 2024. This will allow us to update the Guideline for any further amendments made to the EII Regulation.

¹ The submissions can be found on the AER website. See <https://www.aer.gov.au/industry/registers/resources/guidelines/2024-review-revenue-determination-guideline-nsw-non-contestable-projects/draft-guideline#submissions>.

² That is, for any changes not considered minor or administrative; see EII Regulation, cl. 47C(2).

2 Changes to the Guideline compared to the draft amendments

In finalising the Guideline, we considered the 7 stakeholder submissions received in response to our Draft Guideline. We have updated our Guideline where relevant to reflect stakeholders' views. This section below explains areas where we have made changes to the Guideline compared to the draft amendments in response to stakeholder submissions.

Our response to all other key issues raised in stakeholder submissions is set out in section 3 of this Explanatory Statement.

2.1 Submission period for the preliminary position paper

Our Guideline sets a 20-business day period for stakeholder to make submissions on the preliminary position paper.³ This is an increase from the Draft Guideline which set a 15-business day submission period.

Most submissions on the Draft Guideline called for a longer submission period on the preliminary position paper.

- AGL and EUAA suggested increasing the submission period on the preliminary position paper to 20 business days.⁴
- Ausgrid suggested increasing the submission period to 25 business days for Network Operators and 35 business days for all other stakeholders to respond to the preliminary position paper and the Network Operator's submission.⁵

We recognise the shorter revenue determination timeframes under the EII framework compared to the NER framework and the impact it has on the limited time available to stakeholders in making submissions to regulatory processes.

We consider it reasonable to increase the consultation period on the preliminary position paper by 5 business days to a total of 20 business days. We note that stakeholders can also make submissions on the Network Operator's revenue proposal for a period of 15 business days once its published on the AER website. Therefore, there are a total of 35 business days available for public consultation under this determination process out of the maximum 126-business days available to the AER to make its determination.

We consider that increasing the submission period on the preliminary position paper to more than 20 business days could create risks for making the determination within the 126-

³ AER, *Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects*, July 2024, pp. 10, 21.

⁴ AGL, *Submission, 2024 Review of revenue determination guideline for NSW non-contestable network projects*, 5 June 2024; and EUAA, *Submission, AER draft amendments to transmission efficiency test and revenue determination guideline for non-contestable network infrastructure projects*, 5 June 2024, p. 1.

⁵ Ausgrid, *Submission, Non-contestable guideline 2024 review*, 5 June 2024, pp. 1–2.

business day timeframe. The preliminary position paper would be a more succinct document, compared to the draft decision, which would allow all stakeholders to focus their limited time on the most contentious and/or material matters when giving feedback to the AER.

Therefore, we consider the two submission periods, and the opportunity to participate in the public forum post the publication of the preliminary position paper, creates an appropriate balance between AER assessment timeframes and public consultation periods.

2.2 Late emerging issues, pre-lodgement, and compliant revenue proposals

Some submissions on the Draft Guideline raised the risk of new issues emerging post the publication of the preliminary position paper. Submissions also called for strengthening the pre-lodgement engagement between the Network Operator and its stakeholders prior to the submission of the revenue proposal. Specifically, stakeholders raised the following:

- Transgrid stated that the removal of draft decision may increase the risk that new issues emerge late in the decision-making process if the AER has not carried out a full and formal review like the draft decision.⁶
- Transgrid encouraged the AER to consider how it could formalise and strengthen pre-engagement, including to formalise a commitment to prioritise AER resources and time to this early engagement to improve outcomes later in the process.⁷
- PIAC stated that AER should have processes in place to seek extension to the 126-business day timeline to avoid situations where it feels compelled to approve a proposal despite late emerging issues.⁸
- EUAA suggested the AER provide guidance on the AER's approach if the Network Operator fails to provide sufficient information or fails to deliver its pre-lodgement requirements or fails the initial compliance test after lodgement.⁹

We consider the above issues are interlinked. We understand that it is not desirable to have new issues arise late under any decision-making process. We have weighed the risk of replacing the detailed draft decision with the more streamlined preliminary position paper and consider on balance there is not an increased risk of new issues emerging late under the new process. Under the new process, we would have more time dedicated to assessing the proposal and submissions compared to the current process where a significant amount of time is taken up by administrative matters. We encourage stakeholders to make submissions on the revenue proposal if there are any particular issues that are of concern to them so that they can be addressed in the preliminary position paper. While we can't guarantee that late

⁶ Transgrid, *Submission, Consultation on draft revenue determination guideline for non-contestable projects*, 5 June 2024, p. 4.

⁷ Transgrid, *Submission, Consultation on draft revenue determination guideline for non-contestable projects*, 5 June 2024, p. 7.

⁸ PIAC, *Submission, Revenue determination guideline for non-contestable network infrastructure projects*, 5 June 2024, p. 4.

⁹ EUAA, *Submission, AER draft amendments to transmission efficiency test and revenue determination guideline for non-contestable network infrastructure projects*, 5 June 2024, p. 2.

emerging issues wouldn't occur under either process, our view is that this risk can be minimised through:

- Comprehensive pre-lodgement engagement by the Network Operator on the content of the proposal with the AER and its stakeholders.
- The Network Operator ensuring that a high-quality and compliant proposal with adequate supporting information is submitted to the AER.

These two aspects of the Guideline are explained in detail below.

2.2.1 Pre-lodgement engagement

We have made further clarification in the Guideline regarding our expectations for pre-lodgement engagement.¹⁰ We have emphasised our expectations in line with the *Better Resets Handbook*¹¹ for the Network Operator to make its draft revenue proposal available so stakeholders can provide constructive feedback ahead of time for the Network Operator to address prior to submitting its revenue proposal to the AER.

PIAC and Transgrid called for strengthening the pre-lodgement engagement in their submissions.¹² We agree that given the shorter 126-business day timeline, it is crucial for the Network Operator to conduct comprehensive pre-engagement with the AER and its stakeholders on the content of its revenue proposal. As there is limited time available during the determination process for us to seek further clarifying information from the Network Operator and stakeholders, the pre-lodgement stage can be utilised more constructively to ensure all parties are on the same page. This does not mean that the AER, the Network Operator or its stakeholders need to agree on each element of the revenue proposal. Instead, each party should have sufficient information available for it to develop an informed position on the elements of the proposal and be able to explain the reasons for its position to the other parties.

We encourage the Network Operator to engage with us on the type of information it needs to submit in its proposal. This is especially important for any new elements of the proposal which may not align with our positions in previous EII and NER regulatory determinations. To facilitate this engagement with the AER, Network Operators should:

- submit a pre-engagement plan to AER staff to provide input. This should clearly outline when and how the Network Operator is seeking AER staff feedback on the key contentious or material matters it expects to raise in its proposal.
- provide supporting models, data and analysis for AER staff review while pre-engaging to ensure comprehensive feedback and set up regular bilateral meetings with the AER staff to resolve issues before submission of the revenue proposal.

¹⁰ AER, *Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects*, July 2024, pp. 15-16.

¹¹ AER, *Better Resets Handbook - Towards consumer centric network proposals*, 9 December 2021

¹² PIAC, *Submission, Revenue determination guideline for non-contestable network infrastructure projects*, 5 June 2024, p. 2; Transgrid, *Submission, Consultation on draft revenue determination guideline for non-contestable projects*, 5 June 2024, p. 7.

- provide advanced dates and agenda of meetings with consumer panels to improve attendance.

Clause 6A.10.1(g)(3) of EII Chapter 6A requires that the revenue proposal must be accompanied by an overview paper which includes a description of whether the Network Operator has engaged with electricity consumers and, if so, what feedback was provided and how that feedback has been taken into account in developing the revenue proposal. Therefore, we also encourage the Network Operator to set up a consumer panel for consultation as soon as practical after becoming aware that it is undertaking a non-contestable project under the EII framework. For initial determinations for a non-contestable project, Network Operators should endeavour to make their draft proposal available for consultation at least 40 business days ahead of submitting the proposal to the AER. This would help ensure that stakeholder feedback can be addressed in the revenue proposal.

2.2.2 Revenue proposal and supporting information provided by the Network Operator

We have made a minor addition to the Guideline to emphasise that in accordance with clause 50(1) of the EII Regulation, the 126-business day timeframe for making our determination commences once the Network Operator submits a compliant revenue proposal.¹³

The revenue proposal and supporting information provided by a Network Operator at the start of a revenue determination process are crucial elements that enable productive engagement between the AER, Network Operators and other interested stakeholders. This is because a high-quality revenue proposal and supporting information will provide the AER and other stakeholders with an informed view of the Network Operator's proposal and the drivers for REZ projects costs. It will facilitate the AER's assessment of the efficiency of the Network Operator's costs in a timely manner, minimise the risk that the making of the revenue determination (and therefore the progression of the project) will be delayed and lead to NSW electricity consumers paying no more than necessary for REZ projects now and in the future.

We consider that if a Network Operator provides a compliant and high-quality revenue proposal and supporting information (usually contained in the information notice response) it is more likely that the 126-business day timeframe can be utilised efficiently because:

- Material and/or contentious issues can be identified early in the process giving the AER the ability to immediately focus on the substantive assessment of these issues rather than seeking further information and clarification.
- Stakeholders are more likely to be able to understand, identify and engage with the Network Operator's revenue proposal and any relevant issues. Therefore, it is more likely stakeholders will make informative and constructive submissions on the revenue proposal.
- Ongoing engagement between the Network Operator, the AER and interested stakeholders can be more focused and targeted throughout the process on material

¹³ AER, *Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects*, July 2024, p. 23.

and/or contentious issues. Engagement at the public forum and submissions on the AER's preliminary position paper are likely to be better informed and comprehensive.

The role of pre-lodgement engagement in developing a compliant and high-quality revenue proposal is discussed in the prior section. Other mechanisms within the existing EII framework and guideline which support the provision of a compliant and quality revenue proposal and accompanying supporting information are set out below.

Power to collect information the AER reasonably requires to make a revenue determination

The *Electricity Infrastructure Investment Act 2020 (NSW)* (EII Act) and EII Regulation give the AER the power to collect the information we require to make a revenue determination.

Clause 48(1) of the EII Regulation imposes on a Network Operator an obligation to provide the AER with information about the proposed amounts payable to the Network Operator for carrying out the infrastructure project that we reasonably require to exercise our functions under Part 5 of the EII Act. Further, in the context of non-contestable revenue determinations the information must be prepared in accordance with the Guideline and any other requirements we notify the Network Operator of.¹⁴

As discussed in section 3.5.2 of the Guideline we can issue a written notice to a Network Operator under the EII Act requiring it to provide information that we require to make a revenue determination.¹⁵ At a minimum the information notice will include those matters set out in section 4.1.1 of the Guideline as well as additional expenditure and supporting information to assist our assessment of the revenue proposal.

The Guideline states a revenue proposal submitted to the AER by a Network Operator must be accompanied by the information requested in an information notice issued under s.38(7) of the EII Act.¹⁶ A Network Operator must comply with any information notice we issue unless it has a lawful excuse.¹⁷

We will publish a revenue proposal and information notice response on the AER's website in accordance with section 4.1.2 of the Guideline which sets out the way we will treat confidential information through the revenue determination process.

The timing for the AER's making of a non-contestable revenue determination is set out in clause 50(1) of the EII Regulation. This provision also makes it clear that the applicable timeframe commences after we have received the information from the Network Operator required by clause 48 of the EII Regulation.

¹⁴ See clause 48(3) of the EII Regulation. We note the Guideline contains guidance on both the transmission efficiency test and the making of a non-contestable revenue determination as referenced in cl.48(3)(a)&(b) of the EII Regulation.

¹⁵ EII Act, s.38(7)-(8) and EII Regulation, cl. 48.

¹⁶ See section 4.1.1 of the Guideline. This is underpinned by the requirement in clause 6A.4.1(b)(2) in EII Chapter 6A.

¹⁷ EII Act, s.38(9).

Compliance review of the revenue proposal

Section 5.1 of the final amended Guideline deals with the compliance review of the revenue proposal and is based upon the requirements in EII Chapter 6A.¹⁸ The section outlines the procedure to be followed upon receipt of the Network Operator's revenue proposal to ensure the proposal complies with the requirements in the EII Act, EII Regulation and the Guideline. As part of this process, we will assess whether:

- the revenue proposal meets requirements set out in the EII Act and EII Regulation and the final Guideline, including the completeness of models.
- the Network Operator has submitted information in compliance with our confidentiality requirements.
- the revenue proposal is consistent with the requirements of an authorisation made by the Consumer Trustee, or a direction or authorisation issued by the Minister.
- the Network Operator's response to any information notice we issue under the EII Act is complete.
- for a REZ network infrastructure project authorised by the Consumer Trustee, the Network Operator's proposed capital cost to develop and construct a project exceeds the maximum capital cost set by the Consumer Trustee.

If a Network Operator's revenue proposal is not compliant, we will notify the Network Operator, Consumer Trustee and Infrastructure Planner and discuss the areas of non-compliance as soon as practicable after receiving the revenue proposal. The Network Operator must resubmit its revenue proposal or provide further information in a form that complies with the relevant requirements within 10 business days of receiving the notification.

We expect that most compliance assessments will be relatively clear—for example, the absence of requested information would render a proposal non-compliant. However, there may be situations where it is necessary to apply regulatory judgement—for example, where requested information was provided but there is a question over whether it sufficiently answers the question asked. In these situations we will apply reasonable regulatory judgement, and have regard to the materiality of the information. We do not intend to delay the progression of the revenue determination over minor or inconsequential details.

Commencement of the 126-business day timeframe

The provisions of the EII Act, the EII Regulation, and the Guideline (including EII Chapter 6A) which are discussed above, operate to encourage Network Operators to provide compliant and high-quality revenue proposals and comprehensive supporting information.

Once we are satisfied we have received a compliant revenue proposal we will notify the Network Operator and other stakeholders of when the 'clock' has started and the date by which we must make the revenue determination.¹⁹

¹⁸ See clauses 6A.4.1(b), 6A.10.1(c), 6A.11.1 and 6A.11.2 of EII Chapter 6A.

¹⁹ This will generally include a notification on the AER website.

If we consider a Network Operator has provided a non-compliant revenue proposal or information notice response, then clause 50 of the EII Regulation operates to ensure the 126-business day timeframe for making a non-contestable revenue determination does not commence. In accordance with clause 50(1) of the EII Regulation, the ‘clock’ will only start upon provision of a compliant revenue proposal (including information notice response), such that we have the information we require to make a non-contestable revenue determination.

2.3 Clarification to meaning of concessional finance

We received a late submission from the CEFC on the Draft Guideline regarding the concessional finance provisions in EII Chapter 6A of the Guideline (Appendix A).²⁰ The CEFC stated that the proposed definition of a concessional finance agreement contained in the draft EII Chapter 6A, does not capture agreements made between a Government Funding Body and a Transmission Network Service Provider that has been made for the purpose of addressing a financeability issue, meaning the AER would not take them into account in performing a financeability test. Therefore, this definition should be amended to also capture agreements that a Government Funding Body specifies to be a concessional finance agreement for the purposes of:

- Clause 6A.6.3A “Financeability adjustment” of EII Chapter 6A; and
- The equivalent clause 6A.6.3A “Financeability adjustment” of the NER.

We acknowledge the definition of concessional finance agreement included in the draft EII Chapter 6A of the Guideline (Appendix A) may not accurately reflect our stated approach to assess financeability requests on a whole of business basis.²¹

As discussed in the Explanatory Statement accompanying the Draft Guideline,²² in March 2024 the Australian Energy Market Commission (AEMC) published changes to the NER regarding the treatment of concessional finance and financeability.²³ We stated in the Explanatory Statement that we intend to apply the concessional financing rule change in the EII context and that we intend to ensure consistency in the treatment of financeability between the NER and EII frameworks.²⁴ We also stated in the draft Guideline that to ensure regulatory consistency, we intend to apply the financeability guideline published under the

²⁰ CEFC, *Submission to the 2024 Review of revenue determination guideline for NSW non-contestable projects*, 12 July 2024.

²¹ AER, *Guideline, Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects, Draft amendments*, May 2024, p. 27.

²² AER, *Explanatory statement, Draft amendments to Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects*, May 2024, pp. 15–16

²³ AEMC, *Rule determination, National Electricity Amendment (Accommodating financeability in the regulatory framework) Rule 2024*, 21 March 2024; and AEMC, *Rule determination, National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024*, 21 March 2024.

²⁴ AER, *Explanatory statement, Draft amendments to Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects*, May 2024, p. 15-16.

NER to the EII framework.²⁵ Appendix A to the draft Guideline included a draft EII Chapter 6A that incorporated the AEMC rule changes.²⁶

Accordingly, we have amended the definition of concessional finance agreement in EII Chapter 6A for consistency with the definition in the NER. We have also made it explicit that concessional finance agreements specified for the purposes of NER Chapter 6A are captured under the EII Chapter 6A framework, consistent with our approach to assessing financeability for EII determinations.²⁷

In aligning the definition of concessional finance agreement with the NER definition, we have also retained a reference to clause 6.2.9(b), which relates to concessional finance agreements entered into by a Distribution Network Service Provider (DNSP). We consider this reference is required to address the possibility that:

- a DNSP under the NER is appointed as a Network Operator under the EII framework
- the DNSP has entered into a relevant concessional finance agreement for ISP projects related to its NER distribution network component.

We consider the amended definition in the EII Chapter 6A of the Guideline better implements the policy intent in the draft Guideline for consistent treatment of concessional finance and related financeability requests across the two frameworks.

²⁵ AER, *Guideline, Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects, Draft amendments*, May 2024, pp. 26–28.

²⁶ AER, *Appendix A: EII Chapter 6A, Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects, Draft amendments*, May 2024. The clauses inserted into the EII Chapter 6A were identical to the base NER versions, except for changes to account for different terminology and to remove some options that were not relevant under the EII.

²⁷ AER, *Appendix A: EII Chapter 6A, Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects*, July 2024, p. 1.

3 AER response to issues raised in submissions

The AER's consideration of other issues raised in stakeholder submissions to the Draft Guideline are set out in the table below along with the AER's response. We acknowledge the issues raised and that the non-contestable determination process is an important matter for stakeholders.

Table 1 AER response to issues raised in submissions

AER response to issues raised in submissions
<p>Issue: Strengthening of consumer representation for pre-lodgement engagement</p> <p>Submissions that raised this: PIAC</p> <p>Comments: PIAC highlighted the resourcing difficulties faced by consumer stakeholders compared to industry stakeholders.²⁸ PIAC recommended establishing a standing reference panel that would have responsibilities for working with the AER to identify relevant stakeholders and engage with them actively before and during the formal submission periods. This ongoing panel would boost the engagement capabilities of respondents for non-contestable determinations.</p> <p>AER response: We recognise the limited consumer resourcing available to participate in regulatory processes and make submissions. We have reviewed the number and format of existing consumer forums which are relevant to non-contestable REZ projects.</p> <p>Most prominently, the NSW Department of Climate Change, Energy, the Environment and Water convenes a NSW Roadmap consumer reference group (Roadmap CRG), which is engaged to provide a forum for discussion between community representatives, key stakeholders, and Roadmap delivery entities including EnergyCo as the Infrastructure Planner and AEMO Services as the Consumer Trustee. The Roadmap CRG meets quarterly to discuss matters relating to the planning and delivery of the REZ transmission network (both contestable and non-contestable projects), as well as broader REZ issues. The Roadmap CRG is involved from relatively early in the development process when questions of project scope are still being deliberated, noting that such aspects are fixed by the time we reach (pre-)engagement for an AER non-contestable determination.</p> <p>In addition to this, we expect the Network Operator to set up its own consumer panel to engage on the substance of their non-contestable revenue proposal and ensure NSW consumers understand the cost impact of the project.²⁹ These are usually enduring</p>

²⁸ PIAC, *Submission, Revenue determination guideline for non-contestable network infrastructure projects*, 5 June 2024, pp. 2–4.

²⁹ One example is the Transgrid Advisory Council, which was consulted as part of the first non-contestable revenue determination (on the Waratah Super Battery).

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consumer panel arrangements (including consultation on other related projects), which allows consumer representatives to broaden their skillset and knowledge over time.

The AER also already undertakes to explicitly provide for consumer voices to be heard through our consultation processes and forums. As per our general practice, where appropriate for a given non-contestable revenue determination, we can appoint a Consumer Challenge Panel (CCP) to provide input on issues of importance to consumers. The engagement of CCP members means we can benefit from their experience across multiple prior regulatory processes, as well as continuing to build their knowledge over time.³⁰

Taken together, there already appears to be a reasonable basis for consumer representatives to build expertise in REZ matters and so advocate for better consumer outcomes. There is considerable overlap between the membership of these consumer panels and setting up an additional standing reference panel appears likely to draw from the same pool. We also understand that consumer representatives make pragmatic choices to prioritise their time towards areas of greatest potential impact. The non-contestable projects on the NSW Roadmap currently involve lower capital expenditure than other potential projects that might compete for consumer representative time.

On balance, we don't consider it preferable to set up another consumer panel structure at this time. However, we will continue to monitor the level of consumer engagement for REZ infrastructure projects and advocate for consumer views and preferences to be represented in regulatory proposals.

Issue: Removal of Draft decision could create investment risk for the Network Operator

Submissions that raised this: Transgrid

Comments: Transgrid submitted that the removal of draft decision may reduce investor certainty and impact its ability to progress projects in a timely manner.³¹ Transgrid considers it likely that the reduced scope of the preliminary positions paper will delay Transgrid's internal executive and/or Board approval processes. Transgrid states that this change may also impact its ability to meet commercial commitments required by the Infrastructure Planner or the Minister as part of contractual arrangements for a project.

AER response: We understand that investor certainty is a key consideration for Network Operators. The EII framework has a shorter timeframe for making revenue determinations compared to the NER framework because one of its intents is for network projects to progress to development in an expedited timeframe. We consider a draft decision to be a desirable process step in making revenue determinations in most circumstances. However, given the EII timeframe is significantly shorter than the NER timeframe, we

³⁰ See <https://www.aer.gov.au/consumer-challenge-panel>.

³¹ Transgrid, *Submission, Consultation on draft revenue determination guideline for non-contestable projects*, 5 June 2024, pp. 1, 4.

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consider it is necessary to develop a fit-for-purpose revenue determination process which uses the limited time in the most efficient manner. We consider removing the draft decision stage from the Guideline and replacing it with a preliminary position paper uses the 126-business day timeframe more efficiently without compromising the quality of our assessment of non-contestable projects. It has the benefit of prioritising regulator and stakeholder attention towards the most important aspects of the revenue determination in the much shorter timeframe.

Under the new process there is no reduction in revenue determination stages, but a longer draft decision is replaced with a targeted and concise preliminary position paper. Section 4.2 of the Guideline sets out the information provided in the preliminary position paper which would provide a strong indication of the likely final decision outcome especially on any material and/or contentious matters. Our usual practice for all determinations (NER, EII, cost pass throughs, contingent projects etc) is to put our findings to the Network Operator for comment (generally through information requests, though the exact format differs across processes) prior to making our decision. This ensures a 'no surprises' approach where the outcome of our decision should be expected by the Network Operator. It also provides the Network Operator an opportunity (aside from the information submitted in the proposal) to submit information in response. The preliminary position paper will explicitly and formally set out the areas of differences between the AER assessment and the Network Operator's proposal, which the Network Operator may rely on for its internal approvals or investment decisions. All stakeholders, including Network Operators, will have a 20-business day window to respond to the preliminary position paper.

We note that outcomes may change between a draft decision and a final decision, just as they may change between a preliminary position paper and a final decision. It is up to the Network Operator to decide how much weight it puts on each stage, whether it is a draft decision or a preliminary position paper. The AER's assessment of the revenue proposal remains comprehensive under either process.

Delays in the AER's assessment are often caused by incomplete or insufficient information provided in revenue proposals. To improve investor certainty, we highly encourage Network Operators (including Transgrid) to pre-engage with the AER and provide comprehensive and complete information in its revenue proposal (as set out in section 2.2 above). This is critical in ensuring that all the information required by us to make our determination is available on the first business day of the timeframe rather than through information request processes. By adhering to the pre-lodgement and compliance requirements the Network Operator can not only minimise the number of information requests it needs to respond to, but it can also facilitate an earlier final decision which would advance investor certainty.

On this basis, we maintain our assessment that a preliminary position paper is the preferable use of the limited timeframe available, and the Guideline reflects this.

AER response to issues raised in submissions

Issue: Financeability assessment

Submissions that raised this: PIAC, Transgrid, EUAA

Comments: While submissions didn't raise any concerns with aligning the NER Chapter 6A financeability rule change with the EII Chapter 6A, they made the following comments:

- PIAC's view is that AER should assess financeability issues on a whole of regulated business basis for EII projects as well.³²
- EUAA encourage the AER to ensure the requirement for evidence of financeability issues to support accelerated depreciation are maintained at a high level that encourages Network Operators to truly explore all alternative financing options.³³
- Transgrid considers the AEMC rule change on financeability falls short on providing certainty to investors and recommends that the AER should not form any definitive views on its interpretation and application of how the financeability test should apply to the NSW guidelines before carrying out further detailed consultation through developing the financeability guidelines.³⁴

AER response: Our amendment to the Guideline and EII Chapter 6A to reflect new financeability provisions ensures consistency between the NER and EII frameworks. This reflects clause 47A(3) of the EII Regulation, which requires the Guideline to be consistent with the NER Chapter 6A unless it is not reasonably practicable to do so. We also consider that preserving regulatory consistency in this aspect across these frameworks prevents any distortions to allocative efficiency and corresponds with the whole-of-business basis for the financeability assessment.

We published our proposed financeability guideline for consultation on 17 July 2024.³⁵ We encourage stakeholders to participate in this process to provide feedback on how we have proposed to implement the financeability rule change and assess financeability following a request related to actionable Integrated System Plan (ISP) projects. The financeability guideline also discusses the treatment of concessional finance as part of the financeability assessment. As stated in the Guideline, we will apply the financeability guideline to the EII framework when considering any financeability request submitted by a Network Operator.

The Transgrid submission strongly recommended that the AER should not adopt a 'proposed interpretation' on whether a financeability test under the EII Act would consider both NSW and national framework assets together, until this matter had been consulted on

³² PIAC, *Submission, Revenue determination guideline for non-contestable network infrastructure projects*, 5 June 2024, p. 4.

³³ EUAA, *Submission, AER draft amendments to transmission efficiency test and revenue determination guideline for non-contestable network infrastructure projects*, 5 June 2024, p. 2.

³⁴ Transgrid, *Submission, Consultation on draft revenue determination guideline for non-contestable projects*, 5 June 2024, pp. 1, 5–6.

³⁵ AER, *Proposed financeability guideline*, July 2024. This proposed guideline is available on the AER website [here](#).

AER response to issues raised in submissions

in the financeability guidelines.³⁶ We agree that there are many implementation aspects to be determined, and so we have commenced consultation on the proposed financeability guideline. However, on the core proposition advanced by Transgrid, we consider the assessment of whole-of-business (instead of single project) financeability is consistent with, and required by, the AEMC rule change final decision and this does not constitute a new policy position by the AER.³⁷

Issue: Other matters raised in submissions

Comments: Major points are addressed in the rows above, but a number of other issues or suggestions were briefly raised in stakeholder submissions.

EUAA suggested that the AER:³⁸

- might consider improving transparency, efficiency and prudence on Network Operator overspend to ensure that any overspend is appropriate.
- ensure that timeline delays have minimal impact to overspend, and delay benefits accruing to consumers who will likely already be paying.
- provide guidance to Network Operators of our approach if the Infrastructure Planner fails to provide sufficient information or to perform a function as required under the EII Act and/or EII Regulation in delivering its recommendations.
- should have a high requirement for the evidence for major modification and discourage the removal of the EBSS or CESS in its determinations.

PIAC commented that:³⁹

- the AER should document the process it would use to seek an extension to the overall time limit, should this be necessary.

Essential Energy commented that:⁴⁰

- the proposed changes should lead to efficiency gains for determinations on distribution-level REZ (should these be declared in the future), including an earlier final decision.

AER response:

³⁶ Transgrid, *Submission re: Consultation on draft revenue determination guideline for non-contestable projects*, 5 June 2024, p. 6.

³⁷ AEMC, *Rule determination - Accommodating financeability in the regulatory framework*, March 2024 can be found [here](#).

³⁸ EUAA, *Submission, AER draft amendments to transmission efficiency test and revenue determination guideline for non-contestable network infrastructure projects*, 5 June 2024, p. 2.

³⁹ PIAC, *Submission, Revenue determination guideline for non-contestable network infrastructure projects*, 5 June 2024, p. 4.

⁴⁰ Essential Energy, *Submission on draft amendments to transmission efficiency test and revenue determination guideline for non-contestable network infrastructure projects*, 29 May 2024, p. 1.

AER response to issues raised in submissions

In general, these comments all go to the importance of efficient and robust application of the non-contestable framework. We agree that these comments point to areas where the regulator needs to be vigilant and comprehensive in its assessment. The Guideline is explicit about allocating regulatory scrutiny with regard to relative impact—in particular, the new preliminary position paper is designed to prioritise attention towards material and/or contentious issues.

With regard to the specific EUAA points:

- On scrutiny of overspend and the potential impact of time delays, we consider that these matters can be addressed in the relevant (subsequent) revenue determination.
- We have not added further material into the Guideline about the role of the Infrastructure Planner. The key non-contestable steps involving the Infrastructure Planner are already addressed (e.g., sections 1.4, 2, 3.1), noting that these are principally steps where the non-contestable process could not proceed if the Infrastructure Planner did not fulfil its functions. We note there are other Infrastructure Planner decisions (which may be referenced by the EUAA submission) but these sit outside the scope of the Guideline.
- The Guideline (section 3.3) includes material on the application of incentive schemes such as the EBSS or CESS. We have not strengthened this to state an explicit 'high bar' for modification/removal of incentive schemes as suggested by the EUAA. However, we indicate that our starting point is the consistent application of these schemes for EII non-contestable projects. There is further guidance in the referenced NER guidelines (which we apply under the EII) on the type of material that must be submitted should a Network Operator seek to depart from this starting point.

With regard to the PIAC point:

- Under clause 50 of the EII Regulation there is no option for the Regulator to extend the time limit for the making of a non-contestable determination. This is not a matter we can address in our Guideline. Our expectation is that we will complete each non-contestable revenue determination in the 126-business day timeframe. We note that that EII Regulation also specifies the immediate next steps should we fail to make a revenue determination within the prescribed time (see clause 50(3)).

With regard to the Essential Energy submission:

- We concur that the proposed changes to streamline the determination process, particularly the introduction of a preliminary position paper, should increase efficiency (for all stakeholders) and increase the likelihood of an earlier final decision. While we are currently not aware of any plans for distribution-level REZ projects under the EII framework, we are open to engaging with the NSW Government and distribution networks if they are included under the NSW Roadmap.

Glossary

Term	Definition
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
CEFC	Clean Energy Finance Corporation
CCP	Consumer challenge panel
Consumer Trustee	A person or body appointed under section 60 of the EII. The Consumer Trustee is required to act independently and in the longterm financial interests of NSW electricity consumers. AEMO Services Ltd has been appointed as consumer trustee.
DNSP	Distribution Network Service Provider
Draft Guideline	Draft amendments to the Guideline published by the AER on 7 May 2024
EII Act, the Act	Electricity Infrastructure Investment Act 2020 (NSW)
EII Regulation	Electricity Infrastructure Investment Regulation (NSW) 2021 made under the EII Act
EUAA	Energy Users Association of Australia
Guideline	Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects
Infrastructure Planner	A person authorised to exercise the functions of an infrastructure planner under section 63 of the EII Act. The Infrastructure Planner performs a range of planning and contracting functions. The Energy Corporation of NSW (EnergyCo) has been appointed to undertake the role of Infrastructure Planner for the five renewable energy zones listed in section 23 of the EII Act.
ISP	Integrated System Plan
NER	National Electricity Rules has the same meaning as in the National Electricity (NSW) Law.
Network Operator	Has the meaning given to that term in the EII Act
NSW	New South Wales
NSW Roadmap	NSW Electricity Infrastructure Roadmap
PIAC	Public Interest Advocacy Centre
Project, network infrastructure project	A REZ Network Infrastructure Project or Priority Transmission Infrastructure Project as defined in the EII Act.
Regulator	A person or body appointed as a regulator under section 64 of the EII Act. The AER has been appointed as a Regulator for the purposes of Part 5 of the EII Act.
REZ	Renewable Energy Zones
Roadmap CRG	NSW Roadmap consumer reference group
Transmission Efficiency Test	The test to be applied to calculate the prudent, efficient and reasonable capital costs for development and construction of a network infrastructure project under section 38(4) of the EII Act.