

# Explanatory Statement

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

May 2024

Explanatory Statement: Draft 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 draft amendments to our *Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects* (Guideline). It describes our position on matters we have identified as part of our mid-2024 review of the Guideline. This review follows the Australian Energy Regulator (AER) making its first non-contestable revenue determination for the Waratah Super Battery in December 2023.

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. 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.

## 1.1 Authority to amend the Guideline

We can amend the Guideline from time to time. We have published the proposed amendment on our website for a period of 20 business days and we will consider any submissions received within that period before finalising these amendments.<sup>1</sup>

Clause 47A of the EII Regulation deals with the Regulator's guidelines for non-contestable revenue determinations. It sets out what matters in Chapter 6A of the NER must be included in the Guideline.<sup>2</sup> Under clause 47A(3) of the EII Regulation we are required to:

- ensure our guidelines set out how a non-contestable revenue determination will be made by us, including how we will make a determination under clause 47E(4) for a contestable augmentation, and
- as far as is reasonably practicable, make our guidelines consistent with the NER, Chapter 6A as that Chapter applies to the AER making a transmission determination.

We have followed these requirements in undertaking our review of the Guideline.

## 1.2 Scope of the review

The review of the Guideline is targeted on two aspects:

1. the non-contestable revenue determination process (specifically the change to a more streamlined and efficient process), and
2. other matters including our assessment of non-contestable components under contestable augmentations, amendments to section 3 (pre-lodgement) and financeability.

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<sup>1</sup> EII Regulation, cl. 47C.

<sup>2</sup> These matters are set out in EII Regulation, clause 47A(4) and include the building block approach, RAB, return on capital, depreciation, estimated cost of corporate income tax, forecast capex/opex, reopening for capex, network and cost pass throughs. Matters to be excluded from the Guideline are set out in EII Regulation, clause 47A(5).

## 1.2.1 Non-contestable revenue determination process

The intent of this review is to arrive at more practical determination process that better serves all stakeholders—including the Network Operator, consumers, and other government entities. The key overall constraint is the limited time available to make the determination, requiring us to carefully consider which regulatory steps add the most value. We also acknowledge that all stakeholders involved face resource constraints. Our intent is to have a process that allows them to target their input towards the most important issues to them, maximizing the impact of their feedback. As such, we are proposing to amend the Guideline to change the revenue determination process to depart from the process applied by the AER when making a transmission determination under NER Chapter 6A.

This review proposes to streamline the revenue determination process to ensure the current 126 business day timeframe is used more efficiently. We are proposing to do this by amending the Guideline by removing the requirement for the AER to make a draft decision (as currently set out in EII Chapter 6A cl. 6A.12) and instead replacing it with a preliminary position paper. The preliminary position paper will provide stakeholders with key AER reasoning on the major or contentious issues arising from the revenue proposal.

We consider this creates a more streamlined and efficient process to assess non-contestable revenue proposals for REZ projects. It moves the non-contestable revenue determination towards the format of other existing regulatory processes assessing single project costs (rather than a whole portfolio of projects) that do not have a draft decision, such as that used for the assessment of contingent projects. However, our new process has an additional step through the preliminary position paper.

Our proposed change 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.

## 1.2.2 Other matters

### Our assessment of contestable augmentations

The EII Regulations dealing with contestable augmentations were made in January 2024. We are proposing to amend the Guideline so it is clear how we will approach the assessment of contestable augmentations. In particular, the Guideline will set out how the AER will assess non-contestable cost components of a contestable augmentation. These are cost components that are neither:

- derived as a result of a competitive assessment process; nor
- determined using an appropriate referenced costs process contained in the contractual arrangements for the project to which the augmentation relates.<sup>3</sup>

We will also update our revenue determination guideline for NSW contestable network projects to set out how we will approach other elements of the contestable augmentation framework.

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<sup>3</sup> EII Regulation, cl. 47E(4).

## Amendments to section 3 (pre-lodgement)

We are proposing to make amendments to section 3.5 of the Guideline, which deals with Network Operator’s engagement with the AER and other stakeholders during the pre-lodgement period. We consider our proposed amendments will improve the pre-lodgement process by clarifying our level of engagement with the Network Operator and other interested stakeholders and the role of the Network Operator’s stakeholder engagement process in the development of the revenue proposal.

## Financeability and concessional finance benefits

We are also amending the Guideline and EII Chapter 6A in response to two recent AEMC rule changes published March 2024:

1. Sharing concessional finance benefits with consumers
2. Accommodating financeability in the regulatory framework

These changes ensure consistency with NER Chapter 6A.<sup>4</sup> The concessional financing rule change allows benefits of low cost financing provided by governments to be shared with consumers where there is an intent to do so. The financeability rule change allows the AER to modify the depreciation schedule if a Transmission Network Service Provider (TNSP) (equivalent to a Network Operator under the EII) can demonstrate it is unable to efficiently finance any project that forms a part of an actionable Integrated System Plan (ISP) project. The AEMC’s final determination on the financeability rule change also requires the AER to publish a financeability guideline setting out how we will assess and determine financeability.

## 1.3 Getting involved

We are now asking stakeholders to provide submissions on the draft amendments to our Guideline. We will consider those submissions before we finalise any changes. We aim to develop and finalise our amendments to the Guideline by July 2024.

We encourage engagement by all energy sector participants and stakeholders. The decisions we make and the actions we take affect a wide range of individuals, businesses, and organisations. Hearing from those affected by our work helps us make better decisions, provides greater transparency and predictability, and builds trust and confidence in the regulatory regime.

Table 1 sets out the key milestones planned for the completion of this review.

**Table 1 Key milestones for review of the Guideline**

Key dates	Milestone
7 May 2024	Publish draft amendments to the Guideline on AER website, with accompanying explanatory statement
7 May 2024 to 5 June 2024	Formal consultation period

<sup>4</sup> The AEMC, ‘Rule determination - Sharing concessional finance benefits with consumers’, March 2024 can be found [here](#), the AEMC ‘Rule determination - Accommodating financeability in the regulatory framework’, March 2024 can be found [here](#).

Key dates	Milestone
21 May 2024	Public forum to discuss draft amendments to the Guideline with interested stakeholders
5 June 2024	Submissions close
12 July 2024 (Indicative)	Publish final amendments to the Guideline on AER website, with accompanying explanatory statement

## 1.4 Invitation for submissions

We invite energy consumers and other interested parties to make submissions on the draft amendments to the Guideline by Wednesday, 5 June 2024.

Submissions should be emailed to: [REZ@aer.gov.au](mailto:REZ@aer.gov.au) with an email title of 'Non-contestable guideline 2024 review – submission'.

Alternatively, submissions may be sent to:

Dr Kris Funston  
Executive General Manager, Networks Regulation  
Australian Energy Regulator  
GPO Box 3131  
CANBERRA ACT 2601

We prefer all submissions be publicly available to facilitate an informed and transparent consultative process. We will treat submissions as public documents unless otherwise requested. We will publish all non-confidential submissions on the [AER's website](#). For further information on the AER's use and disclosure of information provided to it, see the [ACCC/AER Information Policy](#).

We request parties wishing to submit confidential information:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

### 1.4.1 Public forum

The AER will host an online public forum to allow stakeholders the opportunity to ask questions about our draft amendments to the Guideline before submissions close.

The public forum will be held from 10.00 am to 11.00 pm (AEST) on Tuesday, 21 May 2024. To register your interest in the public forum, please email [REZ@aer.gov.au](mailto:REZ@aer.gov.au) by close of business on 16 May 2024.

## 2 New streamlined revenue determination process

One of the key functions conferred on the AER under the *NSW Electricity Infrastructure Investment Act (2020)* (NSW) (EII Act) is to make revenue determinations for Network Operators authorised by the Consumer Trustee or authorised (or directed) by the NSW Energy Minister to carry out network infrastructure projects.<sup>5</sup> In undertaking this function, we scrutinise the costs of these projects to assess if they reflect efficient costs.

We have based our current non-contestable revenue determination process on Chapter 6A of the NER. This involves a formal draft decision followed by the submission of a full revised revenue proposal.

The proposed new process has several changes, but the key innovation is a ‘preliminary position paper’ replacing the formal draft decision. The preliminary position paper will focus on the major and/or contentious issues arising from the revenue proposal. It will be a relatively short, accessible document that provides key AER reasoning on each of the major or contentious issues. It will also be released slightly earlier than the draft decision is released under the current process.

### 2.1 Reasons for amending the current revenue determination process

Our rationale for making the amendments to create a more streamlined non-contestable revenue determination is based upon our experience in making the Waratah Super Battery non-contestable revenue determination in December 2023. This was our first non-contestable revenue determination which was made in accordance with the current Guideline.

The current Guideline and EII Chapter 6A require the same process steps when making a non-contestable revenue determination as for a NER Chapter 6A transmission revenue determination. However, the AER has a maximum of 15 months under the NER to make a final decision for a TNSP and only a maximum of approximately 6 months (126 business days) under the EII Regulations.<sup>6</sup>

Table 2 below compares the time available for each decision stage under the current Guideline compared with the NER.

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<sup>5</sup> EII Act, s.38.

<sup>6</sup> NER, cl 6A.10.1(a)(1); 6A.13.3; EII Regulation, cl. 50(1)(b).



**Table 2 Comparison of NER and EII timeline for revenue determinations**

Determination stage	NER – indicative timeline for each determination stage	EII – indicative timeline for each determination stage
Initial Proposal	Must be submitted 17 months before the start of the regulatory period	No specified timeframe and may vary depending upon the project. <sup>7</sup>
Draft Decision	9 months from receiving the initial proposal	3 months from receiving the initial proposal
Revised Proposal	2 months from the publication of the draft decision	Less than 6 weeks from the publication of the draft decision
Final Decision	5 months from receiving the revised proposal	Less than 7 weeks from receiving the revised proposal

Table 2 demonstrates that we have roughly one-third of the time available to make a draft decision and a final decision under the EII timeframe compared to the NER timeframe. Under the current process, a significant amount of this assessment time is taken up by administrative tasks associated with making a draft decision.<sup>8</sup> Given the short timeframe, our experience has been that the formality of the current draft decision process can impact the quality of our engagement with the Network Operator and other interested stakeholders on specific material and/or contentious issues.

Under the current process, there are practical difficulties for us in carrying out a detailed assessment of the revenue proposal within the 126 business day timeframe as well as completing all the required process steps. Under the EII Regulation, where we are unable to make a revenue determination within the required 126 business days timeframe we must prepare a report that specifies the reason/s for the delay in publication of the revenue determination, and the date by which we expect to make the revenue determination. We must also give the report to the NSW Minister for Energy and publish it on our website.<sup>9</sup> Furthermore, the Network Operator is entitled to recover reasonable costs incurred due to the AER failing to make a revenue determination within the time period specified.<sup>10</sup> We are required to assess these costs, including whether the Network Operator contributed to the delay.<sup>11</sup>

Therefore, where we are unable to make a revenue determination within the timeframe specified in the EII Regulation, there is a risk that NSW consumers may end up paying more. This risk may be material if the AER is repeatedly or systematically exceeding the legislated timeframe to assess more complex non-contestable revenue proposals. Given that making a final revenue determination outside the 126 business day timeframe creates financial risk for

<sup>7</sup> There is no standard timeframe set out in the EII Act or EII Regulations. The date by which the initial revenue proposal should be submitted to the AER will be set out in the Consumer Trustee’s authorisation or Minister’s direction or authorisation, or stated in contractual arrangements, for making a revenue determination.

<sup>8</sup> Examples include tasks associated with internal approval processes, addressing the legislated draft decision component determinations, proofing and conducting quality assurance over documents/models, and creating and publishing web content.

<sup>9</sup> EII Regulation, cl. 50(3).

<sup>10</sup> EII Regulation, cl. 46(1)(b)(iii).

<sup>11</sup> EII Regulation, cl.46(2).

NSW consumers, we consider making a revenue determination outside this timeframe should only occur in exceptional circumstances.

We consider adhering to formal draft decision and revised proposal steps may create adverse outcomes for the EII process which applies to REZ projects and is intended to be more streamlined and fast-paced. In our view, the risk of delay can be overcome if we have the flexibility of a streamlined process.

We have also considered the scope of the relevant decisions. Under the EII Act, we make a non-contestable revenue determination for a specific project. In the NER framework we make determinations on revenue recovery for all economically regulated services provided by a network service provider. The revenue determination process under the EII Act is akin to our assessment of contingent projects under the national framework where project costs are assessed and there is no requirement for a draft decision. While the proposed new streamlined process is a departure from the full NER transmission determination process, it falls within the bounds of existing regulatory processes.

We consider it is important to explore new processes which utilise the existing statutory timeframe in a more efficient manner. Our view is that a more streamlined revenue determination process is more reasonable and practical as set out in section 2.3 below.

## **2.2 Amendments creating a streamlined revenue determination process**

We are proposing to amend the Guideline to remove the requirement for the AER to make a draft decision (as currently set out in EII Chapter 6A cl. 6A.12) and instead introduce an alternative streamlined revenue determination process to ensure the current 126 business day timeframe is used more efficiently. An overview of the proposed amendments to the Guideline is set out in Appendix A below. In summary, these amendments involve:

- removing clause 6A.12 in EII Chapter 6A to remove the obligation on the AER to make, publish and consult on a draft decision, and the requirement for the Network Operator to submit a revised proposal to the AER.
- removing references in the Guideline to the draft decision including deleting the process steps relating to the publication of the AER's draft decision the submission of the Network Operator's revised proposal, invitation and publication of submissions on the draft decision/revised proposal.
- inserting new process steps into the Guideline to improve efficiency of the revenue determination process. This includes:
  - the publication of a 'preliminary position paper' approximately 55 business days from receiving the revenue proposal
  - the public consultation on the preliminary position paper for a period of 15 business days and conducting a public forum to receive feedback from stakeholders
  - the publication of substantive new information (non-confidential) submitted by the Network Operator following the revenue proposal, on our website for transparency.

Our reasons for introducing each of the new process steps are detailed below. The new process steps are designed to promote a decision-making process that clearly sets out all

key milestones and utilises the time and resources of all parties in the most efficient manner possible within the 126 business day timeframe. We will publish an indicative timetable and key milestones on our website at the start of the revenue determination process. Interested parties can register their interest in any specific non-contestable projects so we can contact them directly with any updates throughout the revenue determination process.

### **Consultation question on the creation of a streamlined revenue determination process**

Question 1: What are your views on the creation of a streamlined revenue determination process for non-contestable projects?

#### **2.2.1 Publication of preliminary position paper**

We will publish a preliminary position paper approximately 55 business days after receiving the revenue proposal.<sup>12</sup>

We do not intend for the preliminary position paper to replicate the draft decision. Unlike a draft decision, which must cover all aspects of our approach to making a revenue determination, the preliminary position paper will primarily focus only on the most material and/or contentious issues between the AER and the Network Operator. The purpose of this paper is to be easily accessible to stakeholders and to set out:

- a short summary of the revenue proposal including the areas where we are likely to accept the Network Operator's proposed position in our final decision. We encourage stakeholders to make submissions if they have concerns with the areas of agreement between the AER and the Network Operator as set out in this paper.
- a short summary of the areas of difference between our assessment and the Network Operator's revenue proposal. Where practical, we will provide an indication of the materiality of these differences on the total revenue amount proposed by the Network Operator.
- explanation of our position on any material and/or contentious matters where we are unlikely to accept the proposed revenue proposal position and are seeking further information from the Network Operator. These are the targeted matters that we particularly want stakeholders to engage on and make submissions.
- our position on any material issues raised in written submissions on the revenue proposal. Stakeholders are welcome to make further submissions or seek bilateral meetings with AER staff if they are unsatisfied with our position on these issues.
- upcoming timelines and milestones for the revenue determination to provide clarity on our process.
- information on how stakeholders can formally provide feedback to the AER.

We consider the preliminary position paper would provide transparency around our assessment of the revenue proposal as it provides an early indication of our likely final decision position on the material aspects of the Network Operator's revenue proposal. In

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<sup>12</sup> We note this approach is consistent with s.37(1)(d) of the EII Act which provides that a network operator is entitled to be informed of material issues being considered by the regulator under Part 5, Division 3 of the EII Act.

particular, we consider that it provides procedural fairness as this paper would set out our position on material and/or contentious issues and put the Network Operator on notice of what aspects of its revenue proposal the AER may not accept.<sup>13</sup>

Whilst we expect our positions to be robust at this point of the revenue determination process, we consider there is still flexibility for our positions and assessment to change based on any new information provided by the Network Operator and other stakeholders in written submissions on the preliminary position paper.

We consider this new approach is more targeted and efficient as it allows all stakeholders to focus their time on the most contentious and/or material matters when giving feedback to the AER. Further, we consider a succinct preliminary position paper, compared to the draft decision, also makes it more accessible to engage with.

## **2.2.2 Public consultation on AER's preliminary position paper**

Both the Network Operator and interested stakeholders will have the opportunity to formally respond to our preliminary position paper. We are proposing a consultation period of 15 business days (3 weeks).<sup>14</sup> We are of the view this amount of time is appropriate given the overall timeframe for making a non-contestable revenue determination and the fact the position paper will be short and focused on key issues.

We are proposing to amend the Guideline to clarify that we may hold a public forum after releasing our preliminary position paper. Depending on the level of stakeholder interest, we will advise of our intention to hold the forum at the time of publication of the preliminary position paper. We anticipate any forum would occur around 10 business days after the publication of the preliminary position paper.

We consider that the amendment to the timing of any public forum we hold is a more efficient use of all parties' time and will facilitate more effective and constructive engagement. This is because all stakeholders will have substantive information to present and/or respond to at this stage of the revenue determination process. In particular:

- The AER would get the opportunity to present on its preliminary position paper and the process so far.
- The Network Operator would get the opportunity to present on its proposal including any changes to its positions following stakeholder submissions and its views on our preliminary position paper.
- Where we have engaged a consumer representative, they would have the opportunity to present their views on both the Network Operator's proposal and our preliminary position paper.
- Other interested stakeholder would have the opportunity to ask questions and express their views.

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<sup>13</sup> We note the Network Operator is likely to already be aware of issues of concern to us through information request processes, and informal discussions with AER staff.

<sup>14</sup> We are also proposing to align the length of the consultation period on the revenue proposal to 15 business days – it is currently 14 business days.

For transparency we intend to publish on our website all (non-confidential) submissions we receive on our preliminary position paper. We will also publish any presentations made at any public forum we hold.

### 2.2.3 Publication of any substantive new information from the Network Operator

Currently we only publish the initial proposal and the revised proposal on our website. However, as there would be no revised revenue proposal under the new process, stakeholders would not get the opportunity to review any revised materials submitted by the Network Operator which would otherwise be included in a revised revenue proposal.

Therefore, we will publish any substantive new (non-confidential) information submitted by the Network Operator on contentious issues on our website.<sup>15</sup> This particularly applies to material submitted by the Network Operator in response to the preliminary position paper. This would provide stakeholders with more context on the AER assessment of these issues, especially if new information from the Network Operator changes our final decision position compared to the preliminary position. We consider this is an important step to promote transparency of our decision making.

Our normal processes around protection of confidential information will apply. If there is a submission containing confidential information that we consider should be published,<sup>16</sup> we will ask the Network Operator to prepare a public version with the minimum redactions necessary to make it suitable for publication.

We ask interested stakeholders to ensure they register their interest for any specific non-contestable projects so we can keep them updated on new materials published on the AER's website.

#### Consultation questions on the new process steps

Question 2: Do you consider the proposed new process steps will streamline the current process and be more efficient for all parties participating in a non-contestable revenue determination process? Why or why not?

Question 3: **For stakeholders who participated in the Waratah Super Battery non-contestable revenue determination process only:** What process barriers (if any) did you experience as part of the WSB review? In your view, will the proposed new process overcome them? Why or why not?

Question 4: What are your views on the level of transparency and stakeholder engagement under the proposed new process? What other changes (if any) would you suggest to facilitate informed and engaged stakeholders?

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<sup>15</sup> We are not proposing to publish every response we receive from a Network Operator during the course of the revenue determination process. This is because the Network Operator will respond to a large number of information requests issued by the AER. Most of these will be routine in nature and contain relatively non-contentious discussion of points of detail.

<sup>16</sup> That is, it contains substantive information on contentious matters, as per the reasoning in the prior paragraph,

## 2.3 Benefits of implementing a streamlined revenue determination process

We consider removing the draft decision stage from the current Guideline and replacing it with a preliminary position paper uses the current 126 business day timeframe more efficiently without compromising the quality of our assessment of non-contestable projects. It also has the benefit of prioritising regulator and stakeholder attention towards the most important aspects of the revenue determination.

The new process allows us to have greater assessment time to consider submissions received on the revenue proposal, gather further information from the Network Operator and assess issues relevant to our final decision. We will provide clear communication of our views by providing sufficient written reasoning in our preliminary position paper and our final decision document, such that all stakeholders are able to understand why we have arrived at our preliminary position/ final decision (even though they may not agree with the outcome).

We consider the new process provides a high quality, accessible and inclusive engagement process that gives stakeholders the ability to participate and allows us to fully understand and address all issues that concern them before making our final decision. Under the new process:

- The Network Operator and other interested stakeholders will receive a more targeted opportunity to focus on the material and/or contentious issues relevant to our decision.
- All interested parties will also have the opportunity to express their views at any public forum, and through written submissions to the revenue proposal and our preliminary positions paper.
- Stakeholders will get a strong indication of the direction that we are likely to take in our final decision through the preliminary position paper. The preliminary position will also be published at an earlier date than a formal draft decision,<sup>17</sup> allowing stakeholders with extra time to engage with us on issues that matter to them before we make our final decision.

It is always open to us to make a final decision earlier than the statutory timeframe if we have sufficient information to undertake our assessment and no material issues are raised by stakeholders. We consider that under the new process, there would be a greater opportunity to make our final decision earlier than the 126 business day limit, relative to the current process. This would be more likely to occur in the following circumstances:

- There are a small number of material and/or contentious matters in the Network Operator's proposal which can be resolved by the preliminary position paper stage.
- The Network Operator follows our standard forecasting approaches, provides supporting evidence in line with our expectations in the Better Resets Handbook<sup>18</sup>, and consults with its stakeholders before submitting its revenue proposal. This allows us to more easily and efficiently examine issues and expediate the decision-making process.

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<sup>17</sup> We are proposing to release our preliminary position paper approximately 55 business days from receiving the revenue proposal. Comparatively, under the current process we have 64 business days to make our draft decision.

<sup>18</sup> AER, *Better resets handbook - Towards consumer centric network proposals*, December 2021.

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- Stakeholders (including the Network Operator) have not raised any significant concerns with our preliminary positions.
- No new issues are raised in stakeholder submissions to our preliminary position paper.

Overall, we consider the proposed amendments will result in a more streamlined revenue determination process. This is because the new process will ensure we maintain the quality of our assessment of non-contestable projects, provide more flexible stakeholder consultation periods with more quality interactions.

## 3 Other matters

### 3.1 Non-contestable components of contestable augmentations

The EII Regulation was amended in January 2024 to create a framework for the AER to make revenue determinations for contestable augmentations.<sup>19</sup> A contestable augmentation is a network infrastructure project carried out by a network operator to augment an existing network infrastructure project that is subject to a contestable revenue determination.<sup>20</sup> The contestable augmentation would be a separate network infrastructure project, subject to its own authorisation and revenue determination.<sup>21</sup>

The EII Regulation sets out an approach for determining the costs of a contestable augmentation that provides for competition where possible, but recognises that this will not always be possible where components of the augmentation are required to be undertaken by the existing network operator. Cost components will be determined through one of three methods:

1. as a result of a competitive assessment process (contestable costs);<sup>22</sup> or
2. using an appropriate referenced costs process contained in the contractual arrangements for the existing network infrastructure project (referenced costs);<sup>23</sup> or
3. by an AER assessment of the prudent, efficient and reasonable cost based on the application of our Guideline (non-contestable costs).<sup>24</sup>

After establishing an amount for each cost component, the AER must then combine the amounts into a revenue determination for the Network Operator.<sup>25</sup>

We are proposing to amend the Guideline to comply with the requirement for it to include how the AER will make a determination for a non-contestable cost component of a contestable augmentation,<sup>26</sup> and to ensure that it is clear how we will approach this assessment. This is included as a new chapter 6 in the Guideline. We will separately amend our contestable guideline<sup>27</sup> to include our approach to assessing contestable cost components and whether referenced costs processes are appropriate. The contestable guideline will also set out process requirements in relation to revenue proposals for contestable augmentations, including information requirements and the revenue determination process.

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<sup>19</sup> NSW legislation, *Electricity Infrastructure Investment Amendment (Network Infrastructure) Regulation 2024*, 19 January 2024.

<sup>20</sup> EII Regulation, cl. 3.

<sup>21</sup> EII Regulation, cls. 47E(1) & 48(1A).

<sup>22</sup> EII Regulation, cl. 47E(2).

<sup>23</sup> EII Regulation, cl. 47E(3).

<sup>24</sup> EII Regulation, cl. 47E(4).

<sup>25</sup> EII Regulation, cl. 47E(6).

<sup>26</sup> EII Regulation, cl. 47A(3)(a).

<sup>27</sup> AER, *Revenue determination guideline for NSW contestable network projects*, August 2022.



Our assessment of non-contestable cost components is only one component of a broader contestable augmentation determination. Most process elements of our Guideline will, therefore, not be relevant to that assessment. The key section of our Guideline that will apply is section 5 (AER's assessment approach).

In addition to our standard assessment criteria, the EII Regulation requires the AER to take into account the contractual arrangements for the related network infrastructure project (including incentive arrangements), and any other contract entered into by the network operator under an authorisation in relation to the contestable augmentation.<sup>28</sup>

The period for which we determine costs must correspond with the term of the contractual arrangements for the related network infrastructure project.<sup>29</sup> This may be a period greater than five years.

The timeframe for making a contestable augmentation determination also differs from a non-contestable determination. The standard timeframe for the AER to make a revenue determination for a contestable augmentation is 84 business days.<sup>30</sup> However, we may, by written notice to the network operator, extend the time period by a further 42 business days if satisfied the extension is reasonably necessary because:

- the revenue determination is complex, and
- we are not satisfied that a cost component should be considered a contestable or referenced cost.<sup>31</sup>

Noting this timing difference, we have included in the Guideline a separate process for our assessment, including consultation, that will apply to non-contestable cost assessments for a contestable augmentation.

### **Consultation question on the contestable augmentation amendments**

Question 5: What further changes (if any) would you suggest to improve our approach to assessing non-contestable components of a revenue determination for a contestable augmentation?

## **3.2 Amendments to section 3 (Pre-lodgement)**

We are proposing to make amendments to section 3.5 of the Guideline which deals with Network Operator engagement with the AER and other stakeholders during the pre-lodgement period.

Generally, we consider the Network Operator's pre-lodgement engagement plays a key role in setting the pace of the revenue determination process. This is because a thorough and comprehensive pre-lodgement process is likely to result in a quality revenue proposal that

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<sup>28</sup> EII Regulation, cl. 47E(5).

<sup>29</sup> EII Regulation, cl. 52(2)(d).

<sup>30</sup> EII Regulation, cl. 50(a1).

<sup>31</sup> EII Regulation, cl. 50(2A).

meets all the requirements of the Guideline and EII Chapter 6A. In our view, this will facilitate the ability of stakeholders to engage on the revenue proposal and our ability to assess it.

Our proposed changes are designed to make it clear:

- we will have an open dialogue with Network Operators on any emerging issues through bilateral and stakeholder engagement meetings prior to the submission of their formal revenue proposal. Where possible, we will also provide feedback to support and facilitate the Network Operator's stakeholder engagement process in the development of the revenue proposal.
- we expect that a Network Operator, where possible and appropriate, will incorporate the findings of any pre-lodgement stakeholder engagement into its revenue proposal.

However, as already pointed out in the Guideline, the timing between an authorisation or direction for a REZ project to commence and the due date for a revenue proposal is unknown and may vary between non-contestable determinations. In practice, this may impact upon the length and depth of any pre-lodgement process.

Under our proposed changes if we do provide any substantive comments on pre-lodgement issues stakeholders will be included in the feedback loop between us and the Network Operator. This will give stakeholders an early insight into issues we may consider to be material and/or contentious.

### **Consultation question on the pre-lodgement amendments**

Question 6: What are your views on the proposed clarifications to the pre-lodgement process? What other changes (if any) would you suggest to improve the efficacy of pre-lodgement engagement?

## **3.3 Financeability and concessional finance benefits**

On 21 March 2024, AEMC published final rules to address two related issues:

1. Sharing concessional finance benefits with consumers<sup>32</sup>, and
2. Addressing financeability challenges for TNSPs with regards to actionable Integrated System Plan (ISP) projects<sup>33</sup>.

The concessional financing rule change was made in conjunction with the financeability rule change under the NER to facilitate lower costs and faster delivery of transmission infrastructure by providing low cost financing. This rule allows benefits of low cost financing provided by governments to be shared with consumers where there is an intent to do so. We intend to apply this rule in the EII context for REZ projects where there are similar concessional financing agreements.

The financeability rule change requires the AER, subject to the TNSP putting in a financeability request and a financeability test identifying that there is a financeability issue,

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<sup>32</sup> AEMC, Sharing concessional finance benefits with consumers, March 2024. See: <https://www.aemc.gov.au/rule-changes/sharing-concessional-finance-benefits-consumers>

<sup>33</sup> AEMC, Accommodating financeability in the regulatory framework, March 2024. See: <https://www.aemc.gov.au/rule-changes/accommodating-financeability-regulatory-framework>

to amend the depreciation schedule to bring forward cash flows so that a TNSP can efficiently raise finance for ISP projects. The AEMC's final determination also refers to a financeability guideline, to be published by the AER, which will set out the approach to how we will assess financeability requests by the TNSP and how we will be amending the depreciation schedule.<sup>34</sup>

To ensure consistency between NER Chapter 6A and EII Chapter 6A, we are proposing to amend the non-contestable guideline as well as EII Chapter 6A to reflect the new financeability provisions in the NER.<sup>35</sup> While EII Regulation clause 47D(3) allows the AER to address financeability issues for EII projects, the NER changes will complement the provisions in the EII framework by:

- providing greater clarity and certainty on the AER's approach to assessing financeability
- ensure internal consistency between the NER and EII frameworks in amending the depreciation schedule for financeability.

At the time of publishing this proposed amendment to the non-contestable guideline, the AER has not yet published its financeability guideline under the NER. Nevertheless, consistent with the proposed amendments to EII Chapter 6A, our intention is that our NER financeability guideline will apply under the EII framework. Our financeability guideline will set out how we will:

- identify the 'financeability position' of a TNSP (or Network Operator) and assess it against the 'financeability threshold' for the purposes of determining whether there is a financeability issue; and
- address any financeability issues identified through the application of the financeability test, such as through bringing forward cash flows by earlier depreciation of an asset (or group of assets) that form part of the actionable ISP project.

We expect to commence consultation on our financeability guideline under the NER in the second half of 2024. We encourage all EII stakeholders to engage with this process.

### **Consultation questions on financeability**

Question 7: What further changes (if any) would you suggest to align the assessment of financeability between the NER and EII frameworks?

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<sup>34</sup> NER Chapter 6A, cls 6A.3.3A(p)-(r).

<sup>35</sup> EII Regulation, cl. 47A(3)(b).

## Summary of questions

<p><b>Creation of a streamlined revenue determination process</b></p> <p>1. What are your views on the creation of a streamlined revenue determination process for non-contestable projects?</p>
<p><b>New process steps</b></p> <p>2. Do you consider the proposed new process steps will streamline the current process and be more efficient for all parties participating in a non-contestable revenue determination process? Why or why not?</p> <p>3. <b>For stakeholders who participated in the Waratah Super Battery non-contestable revenue determination process only:</b> What process barriers (if any) did you experience as part of the WSB review? In your view, will the proposed new process overcome them? Why or why not?</p> <p>4. What are your views on the level of transparency and stakeholder engagement under the proposed new process? What other changes (if any) would you suggest to facilitate informed and engaged stakeholders?</p>
<p><b>Contestable augmentation amendments</b></p> <p>5. What further changes (if any) would you suggest to improve our approach to assessing non-contestable components of a revenue determination for a contestable augmentation?</p>
<p><b>Pre-lodgement amendments</b></p> <p>6. What are your views on the proposed clarifications to the pre-lodgement process? What other changes (if any) would you suggest to improve the efficacy of pre-lodgement engagement?</p>
<p><b>Financeability</b></p> <p>7. What further changes (if any) would you suggest to align the assessment of financeability between the NER and EII frameworks?</p>

## Appendix A

### Summary of draft amendments in the Guideline (tracked changes version)<sup>36</sup>

Current guideline requirement	Reference	Amendment	Reason for amendment
Purpose of the Guideline	Section 1.1.1, p.7	Added reference to the new contestable augmentation section in the Guideline	Contestable augmentations
Process step – AER to consult on a revenue proposal before making draft and the final determinations	Section 2, non-contestable revenue determination stage b, p.11	Deletes draft, and adds preliminary position paper	Streamlining of revenue determination process
Submissions on Network Operator's revenue proposal close 14 business days from receipt of the Network Operator's revenue proposal.	Section 2, Table 1 titled ' <i>Key process steps associated with the non-contestable framework</i> ', p.12	15 business days from the date of publishing the Network Operator's revenue proposal.	Streamlining of revenue determination process
Process step – AER advises the Network Operator of material issues under consideration and consults with the Infrastructure Planner.	Section 2, Table 1 titled ' <i>Key process steps associated with the non-contestable framework</i> ', p.12	Modifies the process step to remove a reference to the draft decision	Streamlining of revenue determination process
Process steps – AER publishes draft decision, Network Operator submits the revised proposal, AER publishes submissions on the draft decision/revised proposal, and AER assesses the revised proposal/stakeholder submissions.	Section 2, Table 1 titled ' <i>Key process steps associated with the non-contestable framework</i> ', p. 13	Amends four process steps to remove references to the draft decision and revised proposal	Streamlining of revenue determination process
AER publishes a draft determination for public consultation, 64 business days from receipt of Network Operator's revenue proposal.	Section 2, Table 1 titled ' <i>Key process steps associated with the non-contestable framework</i> ', p. 13	'AER publishes a preliminary position paper for public consultation, approximately 55 business days from receipt of Network	Insertion of new process step (as part of the streamlined revenue determination process)

<sup>36</sup> Note: Minor consequential, typographical and formatting changes to the Guideline are not separately identified in this table.

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

Current guideline requirement	Reference	Amendment	Reason for amendment
		Operator's revenue proposal'	
New requirement - Submissions on preliminary position paper	Section 2, Table 1 titled ' <i>Key process steps associated with the non-contestable framework</i> ', p. 13	'Submissions on preliminary position paper close, 15 business days from the date of publishing the preliminary position paper'	Insertion of new process steps (as part of the streamlined revenue determination process)
Application of guidelines, incentive schemes and models	Section 3.3, p.16	Added reference to PTRM guidance note and NER financeability guidelines	Financeability rule change and updating references to PTRM guidance note.
Engagement between the AER and a Network Operator prior to submitting its revenue proposal.	Section 3.5, p.17	Amends requirement to clarify the nature of pre-lodgement engagement that will take place between the AER and the Network Operator.	Clarity around pre-lodgement engagement
Pre-lodgement stakeholder consultation	Section 3.5.1, p.17	'We expect that a Network Operator, where possible and appropriate, will incorporate the findings of this pre-lodgement stakeholder engagement into its revenue proposal.'	Clarity around pre-lodgement engagement
New requirement - Preliminary position paper	Section 4.2, p.21	New section on AER preliminary position paper	Insertion of new process step (as part of the streamlined revenue determination process)
Consultation on revenue proposal and draft decision	Section 4.3, pp. 21-22	Modifies the process step to remove a reference to the draft decision. The number of days for consultation on revenue proposal and preliminary positions paper updated to 15 business days for each.	Streamlining of revenue determination process
Consultation on revenue proposal and draft decision: We may hold a public forum on the Network Operator's revenue proposal and/or our draft decision	Section 4.3, pp. 22	'We may hold a public forum after releasing our preliminary position paper. We will advise of our intention at the time of publishing our preliminary position paper.'	Streamlining of revenue determination process
Approach to calculating depreciation	Section 5.3, pp.26-28	Explains the approach to calculating depreciation with more description added around applying	Financeability rule change

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

Current guideline requirement	Reference	Amendment	Reason for amendment
		financeability as per the rules, and the guideline published under the NER. Two new sections, 5.3.1 'Amending the depreciation schedule for financeability', and 5.3.2 'Financeability guideline' added	
New section - Non-contestable components of contestable augmentations	Section 6, pp. 31-32	New section added for non-contestable components of contestable augmentation determination. It has sub sections explaining the framework for, and our assessment of contestable augmentations, and the timeframe for our assessment.	Contestable augmentations
Appendix A (EII Chapter 6A) Interpretation	Appendix A, p.33	Meaning added for concessional finance, concessional finance agreement, and financeability request.	Concessional finance and Financeability rule changes
Appendix A (EII Chapter 6A) Interpretation	Appendix A, p.34	Meaning added for Network operator and revenue determination	Clarification of expressions used in EII Chapter 6A
New clause- Concessional finance adjustments	EII Chapter 6A, cl. 6A.3.3, pp.35-38	New clause added explaining concessional finance adjustments, and the associated process steps	Concessional finance rule change
Depreciation schedules	EII Chapter 6A, 6A.6.3(b)(1), p.43.	Adds 'and clause 6A.6.3A'.	Financeability rule change
New clause- Financeability adjustments	EII Chapter 6A, cl. 6A.6.3A, pp.43-47	New clause added explaining financeability adjustment, and the associated process steps.	Financeability rule change
Forecast operating expenditure	EII Chapter 6A, cl. 6A.6.6 (e)(14), p.50	Deleted 'prior to the submission of its revised Revenue Proposal under clause 6A.12.3,'	Streamlining of revenue determination process
Transmission Efficiency Test and forecast capital expenditure.	EII Chapter 6A, cl. 6A.6.7(e)(14), p.52	Deleted 'prior to the submission of its revised Revenue Proposal under clause 6A.12.3, is a	Streamlining of revenue determination process

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

Current guideline requirement	Reference	Amendment	Reason for amendment
		capital expenditure factor.'	
New clause- Concessional finance adjustments	EII Chapter 6A, cl. 6A.7.7	New clause added explaining concessional finance adjustments	Concessional finance rule change
Submission of proposal	EII Chapter 6A, cl. 6A.10.1, pp.64-65	Added new clauses at 6A.10.1 (b), (d) and (i), and at 6A.10.1(g)(6).	Concessional finance and Financeability rule changes
Preliminary examination and consultation	EII Chapter 6A, cl. 6A.11, pp.65-66	Made changes adding 'financeability request' and made references to the relevant clauses	Financeability rule change
Draft decision and further consultation	EII Chapter 6A, cl. 6A.12, pp.67-68	Deleted this clause/section	Streamlining of revenue determination process
Final decision	EII Chapter 6A, cl. 6A.13, p.69	Made changes adding 'financeability request' and made references to the relevant clauses	Financeability rule change
Requirements relating to draft and final decisions	EII Chapter 6A, cl. 6A.14, pp.70-72	Modifies the clause to remove references to the draft decision, adds 'financeability issue' and 'financeability test', also making references to the relevant clauses.	Streamlining of revenue determination process & Financeability rule change
Depreciation	EII Chapter 6A, cl S6A.2.2B	Modifies the clause to remove references to the draft decision	Streamlining of revenue determination process



## Glossary

Term	Definition
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AEST	Australian Eastern Standard Time
CCP	Consumer challenge panel
Contestable costs	Costs determined as a result of a competitive assessment process
EII Act, the Act	Electricity Infrastructure Investment Act 2020 (NSW)
EII Regulation	Electricity Infrastructure Investment Regulation (NSW) 2021 made under the EII Act
Guideline	Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects
ISP	Integrated System Plan
NER	National Electricity Rules.
Network Operator	Has the meaning given to that term in the EII Act
Non-contestable costs	Costs determined by an AER assessment of the prudent, efficient and reasonable cost based on the application of our Guideline
Project, network infrastructure project	A REZ Network Infrastructure Project or Priority Transmission Infrastructure Project as defined in the EII Act.
Referenced costs	Costs determined using an appropriate referenced costs process contained in the contractual arrangements for the existing network infrastructure project
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.
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.
TNSP	Transmission network service provider