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CLEAN ENERGY COUNCIL MEMBER

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REVIEW OF THE COST-BENEFIT ANALYSIS AND REGULATORY INVESTMENT TEST GUIDELINES

InfraFuture welcomes the opportunity to provide feedback to the AER's review of the cost benefit analysis (**CBA**) and regulatory investment test (**RIT**) guidelines, with a particular focus on the aspects of social licence and early works for **major transmission infrastructure** projects.

The AER's intent to enhance community engagement and social licence through the revised guidelines is commendable. It is in the interests of both energy consumers and impacted communities that project proponents make efficient and effective decisions about the extent and quality of their engagement and social licence efforts. We are pleased that the sector has recognised that inadequate early engagement and investment in social licence has led to community unrest, erosion of social licence, heightened community opposition and project delays which have contributed to an increase in project costs.

This submission reflects our aspiration that the regulatory framework:

1. **Incentivises proponents to undertake early and meaningful engagement**
2. **Ensures TNSPs are held to account for their commitments to engage and invest in communities**
3. **Considers whether customers should reward proponents with long-term profits for making investments that are designed to compensate host communities for the impacts of projects**

Thank you for the opportunity to provide feedback on this important review.

Yours sincerely,

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1. THE REGULATORY FRAMEWORK MUST INCENTIVISE EARLY AND MEANINGFUL ENGAGEMENT

Community support influences projects costs

A lack of community support for a transmission project can directly impact project costs through project approval and construction delays. Community impact therefore forms a critical part of project risk planning approval and construction phases.

Insufficient early and meaningful engagement is more likely to lead to community and land-holder opposition to a project, which in turn is more likely to lead to delayed project approvals which increases project costs and risks. This is backed up by the State of Infrastructure and Engagement Annual Survey of Infrastructure Professionals which found that stakeholder and community pressure was one of the leading causes of project delays and cancellations in the last five years.[1]

Under the current regulatory framework, consumers (and not project proponents) are unfairly bearing the risk of poorer service reliability and higher energy costs resulting from project delays. For consumers within impacted communities, this negative impact is compounded because not only do they share the higher cost and risk of poorer reliability, they also bear poor local outcomes from inadequate investment in social licence.

Early engagement is critical in the process

It is in consumers interests that quality engagement and investment in social licence occur from the very early stages of needs identification and economic assessment of project planning. Where a project is not funded through a regulatory determination (i.e. is a contingent project or an actionable project under the ISP), the costs have not been assessed or approved when engagement for the project begins. Where funds to support engagement have not been approved, there is a risk that proponents spend less than they otherwise might on engagement and social licence activities due to a lack of certainty that such costs will be assessed as prudent and efficient. Some state governments are addressing this issue directly by taking on the role of coordinating and delivering community engagement in the early stages of project identification and assessment. In Victoria, VicGrid has taken responsibility for community engagement for the Victorian Transmission Plan in the hope that early-stage engagement with impacted communities and a formal strategic assessment of land use up front will help achieve better outcomes and greater support for transmission projects and thereby mitigate against delays. In NSW, EnergyCo is leading early engagement associated with the REZs, but engagement for other transmission projects is left to proponents.

The regulatory framework must incentivise early and meaningful engagement for transmission projects and explicitly recognise the social impacts of projects on local and regional communities.

The existence of a stakeholder engagement plan does not guarantee good community engagement

We commend the introduction of a RIT requirement for proponents to produce a stakeholder engagement plan for actionable projects and we recommend that TNSPs implement stakeholder engagement plans as a default for all projects subject to a RIT. However, the requirement for a plan does not guarantee that engagement will be conducted in line with best practice standards. This is particularly important in planning and design stages of a project (i.e. early works) because this is where communities have the largest influence on project options and costs. There is a risk that without a stronger alignment of incentives or oversight, plans could be superficial and fall short of the expectations set out in the National Guidelines[1].

An important component of best practice social licence and of engagement plans, is the development of benefit sharing initiatives. Best practice outlined in the Clean Energy Council and the National Guidelines require initiatives to be co-designed with the impacted communities themselves, ensure they address the specific needs and concerns of the directly affected communities. They also must be appropriate and proportionate to the scale of the project and the level

[1] *National Guidelines, Community engagement and benefits for electricity transmission projects*, released by the Energy and Climate Change Ministerial Council, July 2024 p22

of change or disturbance experienced by local people and where feasible, commence implementation as early as possible, even prior to construction approvals. The draft RIT-T guidelines at Example 40, requiring benefit sharing initiatives be set at a constant percentage of project value for all options is not consistent with the best practice approach that benefit sharing initiatives be proportionate to the level of disturbance for each project option. We request that the AER amend this example in its RIT-T guideline.

Engagement for RIT-T is less well scrutinised than for resets

The current RIT-T guideline falls short by not providing monitoring or enforcement mechanisms to ensure stakeholder engagement plans and the actual engagement undertaken meet a minimum and best practice standard. Unlike the 5-yearly reset processes where customer engagement activities are heavily scrutinised by consumer advocates, TNSP's own community advisory panels, the AER's Consumer Challenge Panel and the AER itself, early engagement for the RIT-T and CPA processes are less well scrutinised. This is concerning if a less expensive option is deemed non-credible due to community opposition without having tested whether engagement has been of sufficient quality to make this assessment. The pressure of timely approvals makes this issue difficult to address. It highlights the importance of engagement and social licence investment starting early and being designed for each project option rather than a one-sized-fits-all approach.

2. TNSPS SHOULD BE HELD TO ACCOUNT FOR THEIR COMMITMENTS MADE TO CUSTOMERS

Funds allocated for community and engagement must be used as intended

Engagement and social licence budgets can be the first to suffer funding cuts when project cost overruns occur, and there is a risk that funds intended for community engagement and social licence are re-allocated to cover other costs such as engineering design and geotechnical studies, which can be perceived as more time critical.

There is no mechanism within the regulatory framework that ensures proponents deliver a minimum standard of community outcomes through engagement and social licence activities, nor is there a governance process or authority that monitors whether proponents deliver promised outcomes.

New regulatory tools such as LTESA and CIS guarantee community investment occurs

Newer regulatory instruments have recognised this problem. The NSW Long-Term Energy Supply Agreements (LTESA) and the Commonwealth's Capacity Investment Scheme (CIS) have been designed to ensure that promised community engagement and investment is delivered. LTESA and CIS offer generator and storage proponents revenue guarantee contracts which recognise the need for enforceable engagement and social licence obligations. Both schemes closely monitor performance against proponent's commitments through quarterly reporting and include contractual liquidated damages for non-delivery of social licence commitments.

The design of LTESA and CIS reflects the NSW and Commonwealth Government's commitment to impacted communities and acknowledges that regulatory monitoring and enforcement is essential to ensure meaningful engagement and benefit sharing initiatives are achieved.

AER approach should align community and investor incentives

The AER's current approach relies heavily on the discretion of project proponents and includes no ex-post review of whether social outcomes or promises to communities are delivered. This seems risky in circumstances where a proponents' objectives are investor returns which may conflict with delivering promised community benefits in full.

The regulatory framework should align the incentives of proponents with that of communities and hold TNSPs to a standard of accountability for social investment equivalent to that being applied by other regulatory instruments. A failure to align proponents' incentives to deliver community outcomes leaves impacted communities exposed.

The regulatory framework should facilitate visibility of engagement and benefit sharing costs and activities

The framework incentivises proponents to deliver projects within approved budgets, but the lack of visibility of forecast engagement and benefit sharing initiatives costs makes it difficult for impacted communities, consumer advocates and the AER to identify what activities have been delivered against the plans and spent against the forecast costs.

The guideline requires proponents to justify how the efficient level of spending on stakeholder engagement has been identified for the RIT-T assessment. This provides a baseline against which proponents could report their engagement expenditure and activity as planning and construction proceeds. Appropriate reporting would enable stakeholders to see whether funds allocated and approved for engagement or benefit sharing have in fact been spent on these activities.

To ensure the proper delivery of community outcomes, the regulatory framework should facilitate visibility of costs and outcomes. Having separate cost categories for engagement, social licence and benefit sharing costs could be part of the solution.

3. SHOULD PROPONENTS EARN A PROFIT ON SOCIAL LICENCE INVESTMENT?

It doesn't feel 'right' that customers pay a long-term return to proponents for their investment in community benefit sharing initiatives that are designed to compensate communities for the impacts of the project itself.

The AER should consider a review of how costs associated with social licence and benefit sharing initiatives are recognised in the framework. We believe that project proponents should not earn a return on capital for engagement and benefit sharing initiatives that are aimed at building and maintaining social licence. We believe that community initiatives that are critical for gaining and sustaining social licence should not be used to inflate a proponent's RAB, nor increase the long-term costs to consumers or provide higher long-term returns to investors.

4. CONCLUSION AND RECOMMENDATIONS

The RIT-T and CBA guidelines fall short of adequately incentivising proponents to ensure projects deliver a minimum standard of community engagement and social licence which is essential to achieving efficient transmission investment.

We commend the proposed changes to the RIT-T guidelines that require engagement plans to be created and updated. However, the inclusion of a regular monitoring and compliance mechanism for engagement, social licence and community benefit initiatives would strengthen engagement outcomes. These stronger incentives are aligned with prudent and efficient investment decisions and successful, timely delivery of critical infrastructure projects in the interests of energy consumers.

There are several ways in which the AER might improve transparency of engagement and social licence investment and ensure proponent commitments are delivered. We offer four options below:

1. **Detailed project level self-reporting** by TNSPs will improve transparency and demonstrate commitment to delivering early and meaningful engagement and community benefit sharing initiatives in line with best practice. Like the Energy Charter where signatories commit to report on certain measures, a Community Benefit Charter could be established where TNSPs self-report on each project's engagement commitments to communities and the delivery of benefit sharing initiatives against their commitments.
2. **AEMO Services** could be engaged to deliver a monitoring and compliance regime, leveraging its similar role for the NSW LTESA and Commonwealth CIS regimes. LTESA and CIS contracts contain detailed schedules that itemise a proponent's dollar commitments against individual community investment projects and impose remedies where proponents fail to deliver on their commitments. AEMO Services could be contracted by AER to deliver a similar framework for transmission proponents to monitor and ensure delivery of benefits to local communities. Engaging AEMO Services could achieve a consistent NEM-wide approach with relative speed. This could be implemented via changes to the AER's investment assessment framework.

3. **The AER** could amend its framework to require TNSPs to report costs and outcomes of community engagement and social investment associated with large transmission projects. Community costs could be ring-fenced from general project costs to ensure that other project costs do not consume funds earmarked for engagement and social licence. As an initial step the AER could introduce new guidelines for quarterly reporting of community engagement and benefit sharing costs and activities against plans.
4. **Jurisdiction based licences** could be amended to include a compliance function for commitments to engagement and social licence. However, coordination of changes to licence conditions across multiple jurisdictions will take time and will likely deliver less consistency across the NEM.

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