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22 September 2022

Mr Andrew Pirie  
Australian Energy Market Commission  
Level 15, 60 Castlereagh Street  
Sydney NSW 2000

Dear Mr Pirie

### **AER Submission – Establishing revenue determinations for intending TNSPs**

The Australian Energy Regulator (AER) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC's) draft rule change on establishing revenue determinations for intending TNSPs.

We support the proposed rule change to enable the commencement of a revenue determination process for an intending TNSP. The AEMC's draft rule provides greater certainty to market participants and regulators about the ability for intending TNSPs to request, and the AER to make, revenue determinations in anticipation of future prescribed transmission services. The draft rule also increases certainty about the regulatory process involved in making these determinations.

To assist the AEMC in making a final rule determination, we highlight the following issues for your consideration.

### ***Uncertainty in the timing of prescribed transmission services***

We agree with the AEMC's draft rule determination that an intending TNSP should not recover any costs from customers until it begins providing prescribed transmission services.<sup>1</sup>

We note that, in some cases, the intending TNSP may not be in a position to provide the prescribed transmission services (to which our revenue determination would apply) immediately after we make the revenue determination. For example, the intending TNSP may not have completed construction of the assets and operation of the transmission system required to provide these services. Another example is where a revenue determination is made for a converting MNSP before such time as the conversion takes effect, discussed further below.

In such cases we may forecast the future date on which we expect the intending TNSP to provide prescribed transmission services to customers. However, there may be varying degrees of uncertainty about prescribed transmission services being provided to customers from the forecast future date – for some intending TNSPs the likelihood that they will provide prescribed transmission services on or by this future date may be relatively certain, for others it may be relatively uncertain.

Neither the current National Electricity Rules (the Rules) nor the AEMC's draft rule appear to prescribe a process or methodology for the AER to address this uncertainty in making its revenue determinations. Consequently, it is not clear the extent to which, under the Rules, the AER may address this uncertainty through exercising its discretion in making decisions on the following:

- the commencement date of the revenue determination,
- the commencement and/or length of the regulatory control period, or
- the commencement of transmission prices.

The AER could, for example, have the flexibility to decide that:

- the commencement date of the revenue determination is conditional upon a 'trigger' event occurring (e.g., commissioning of the asset, or the point at which prescribed transmission services start being provided, or upon a former Market Network Service being determined to be a Prescribed Transmission Service); or
- the commencement date of the revenue determination is determined by a subsequent decision of the AER (i.e. the AER would declare when the period begins); or
- once the commencement date is triggered/declared, the revenue determination may either:
  - start the regulatory control period from year 1 (i.e. the first day of the first regulatory year occurs upon commencement); or
  - commence the determination mid-way through the regulatory control period (e.g. if the commencement date occurs in regulatory year 3 of the regulatory control period, the determination takes effect at that point and is only in effect for regulatory years 3, 4 and 5).

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<sup>1</sup> AEMC, Draft rule determination – establishing revenue determinations for intending TNSPs, 4 August 2022, page 18.

Further, to account for the possibility of a revenue determination being made, but the commissioning of the asset being delayed or never completed at all, it may be desirable for the AER to have the flexibility to:

- set a 'sunset' date by which the revenue determination for an intending TNSP must commence, otherwise it is taken to have never been made.
- reopen an intending TNSP's revenue determination at any time after making and before commencement, where the AER is satisfied that there has been a material change in circumstances that means the existing determination is no longer appropriate.

In addition, it may be desirable for the Rules to account for the possibility of the intending TNSP encountering delays while the AER is considering the revenue determination. For example, in the event of a material change in circumstances affecting the likely timing of the intending TNSP's provision of prescribed transmission services, it may be desirable for the AER to:

- have the discretion to cease considering a revenue proposal for an intending TNSP, once started.
- pause its consideration of a revenue proposal for an intending TNSP, pending the resolution of further issues, or further developments or steps to be taken by the intending TNSP.

The rule change should provide certainty to stakeholders about how these matters may be addressed, while also providing the AER with enough discretion to address these matters in a manner appropriate to each case.

### ***Conversion of market network service providers***

We welcome the explanation in the draft rule determination concerning the application of the rule change to an existing MNSP that intends to re-classify its network services as prescribed transmission services. We encourage AEMC to include similar explanation in its final determination.

We support the broad discretion afforded the AER by draft r.6A10.2(c) to have regard to any matters it considers appropriate in determining whether to commence making a revenue determination.

It is worth noting that the questions raised above concerning the commencement of the regulatory period may be expected to arise in relation to a converting MNSP. Under draft r.6A.10.2(c) it seems clear that the AER has the discretion to commence the process of making a revenue determination before such time as the service provider formally initiates the re-classification process. We support this but can envisage a service provider wishing to forestall the re-classification process until the outcome of the revenue determination is known. We consider this approach should not necessarily be precluded. However to accommodate it the regulatory framework would need to provide flexibility as to the commencement of the revenue determination.

### ***Concurrent revenue determination and contingent project processes***

The draft rule includes provisions that allow for an intending TNSP to submit a contingent project application in respect of its first revenue determination before that determination has been made – that is, while we are in the process of making that first revenue determination.

For some intending TNSPs, the contingent project may reflect a substantial proportion of the TNSPs assets, costs, and/or prescribed transmission services.

We note that the Rules prescribe a shorter process for making a contingent project determination than that for making a revenue determination. However, it is likely that the intending TNSP will only begin recovering costs from customers when its first revenue determination takes effect, regardless of any earlier contingent project decisions.

Further, concurrently assessing both an intending TNSP's first revenue proposal and a contingent project application may result in stakeholder confusion over the processes applicable to certain issues, repetition of submissions and responses, potential re-agitation of settled matters, live matters to be mistaken as settled matters, or consultation fatigue.

We consider that a single process for the assessment of both the intending TNSP's first revenue determination and any contingent projects may provide for more streamlined and effective approach for stakeholder engagement.

We also note that a contingent project allows for the amendment of the expenditure forecasts of a revenue determination but may not amend the opening RAB value of the determination. If an intending TNSP's first regulatory control period is to start when the intending TNSP begins providing prescribed transmission services, costs incurred before prescribed transmission services are provided to customers will not be forecast expenditure but will rather be reflected in the opening RAB value. It is not clear that a contingent project could be applied to these costs.

### ***Matters that may be addressed in a Framework & Approach paper***

Under the new rule the AER has a broad discretion to make and publish an F&A paper if it considers it desirable to do so (new r.6A.10.1A(a1)). We support this amendment but consider a minor change to draft r.6A.10.1A(a2) may be desirable to confirm that the AER discretion to include matters not listed in existing r.6A.10.1A(b) – i.e. to confirm existing r.6A.10.1A(g) operates with respect to an F&A paper made under draft r.6A.10.1(a1).

This would improve the utility of the F&A by confirming the AER has flexibility to include information to stakeholders on its proposed approach to a range of complex or contentious

matters beyond those listed in existing r.6A.10.1A(b) – an example might be establishing an opening asset base for the forthcoming revenue determination.

If you have any queries relating to this submission, please contact Blair Burkitt at

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Yours sincerely

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General Manager, Network Expenditure  
Australian Energy Regulator