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## Revenue Determination Guideline for NSW contestable network projects - Draft

Dear Ms Kaur,

Energy Networks Australia (ENA) appreciates the opportunity to comment on the NSW Revenue Determination Guideline for NSW contestable network projects draft consultation paper.

ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

ENA supports the objective of NSW arrangements to improve the timeliness of transmission delivery. However a robust and transparent end to end process is needed to ensure outcomes are in the long-term interests of NSW electricity consumers who will be funding the framework. It is important to avoid surprises for consumers so they are not just informed of the costs when they receive their retail bill.

The AER has a legal obligation (under the Electricity Infrastructure Investment Act) to calculate the prudent and efficient costs for its regulatory decisions. ENA suggests that the process to deliver on this obligation should include appropriate transparency and oversight to ensure investment is supported by and delivers value for consumers. In summary, ENA recommends:

- » Improving the clarity of the procurement evaluation criteria with some examples of the tradeoffs;
- » That the Infrastructure Planners (IP) procurement strategy and procurement assessment report should be public and indicate how the complex trade-offs between price, risk and revenue are being assessed to ensure the total cost to consumers is being managed. The IP's costs could be substantive and include preparatory and early works, community engagement and land access/acquisition. A robust and independent process is needed to ensure these costs are prudent and efficient;
- » That transparency needs to be at the centre of arrangements to ensure that NSW consumers are bought along the journey. Consultation with stakeholders should be required to discipline costs through scrutiny and so consumers are not just informed when they receive their bill;
- » Establishing an independent and representative Consumer Challenge Panel (CCP) to sit across the IP, Consumer Trustee (CT) and Australian Energy Regulator (AER) decision making processes to instil confidence and trust in the process;

- » The development of compliance and enforcement arrangements for the new Renewable Energy Zone Network Operator (REZ NO) entities as they become part of the backbone transmission system that must deliver a secure and reliable service for consumers;
- » The application of any AER Guidelines will need to be fit for purpose and recognise the flexibility in the REZ NO role and any other contracts associated with delivery of the REZ;
- » That the AER consider the incentive framework in the regulatory determination and ensure that it is appropriate and transparent;
- » There should be further consideration of the regulatory control period setting, the timing of regulatory determinations and Distribution Network Service Provider (DNSP) cost allocation decisions with the DNSP annual tariff proposals.

These recommendations are discussed in more detail below.

#### *Improve clarity of the Procurement evaluation criteria*

The draft guideline states that the AER will be satisfied with the procurement strategy if they consider it meets a number of criteria outlined in section 3.2. The AER should provide some examples relating to the criteria:

- » How a competitive outcome will likely be achieved – For example, if three bids are shortlisted and two drop out, will this still be considered competitive? If the final bid is more expensive than one of the earlier bids that was removed from the preferred tender list, should the earlier bid or option be reconsidered?
- » How the likely prudence, efficiency and reasonableness of costs will be assessed to inform the evaluation process - For example, how will a high capital cost and low rate of return be compared to a lower capital cost and higher rate of return? What consideration will there be of the total system costs ultimately born by consumers?
- » Clarity of the project scope and the services being provided, including the way those costs flow through to consumers – For example, how will different offerings and different scopes be assessed? It appears that some form of transmission network service, system strength service and distribution network service is being provided.

ENA welcome the OECC's intent to recommend regulations clarifying the meaning of 'competitive' in relation to competitive procurement. This will be fundamental in guiding the AER's assessment of the competitive procurement strategy and assessment of bids undertaken by the IP and must be reflected in IP, AER and CTs assessments. Usually this would consider the services being provided being well scoped, with the risk that the costs are only recoverable if there are sufficient parties interested in buying the service. The regulations should provide clarity for industry and consumers around when something is and isn't contestable.

#### *Robustness and transparency of the procurement process*

The IP's procurement strategy and procurement assessment report should be public and indicate how the complex trade-offs between price, risk and revenue are being assessed to ensure the total system costs to consumers is being managed. The IP's costs could be substantive and include preparatory and early works, community engagement and land access/acquisition. A robust and independent process will be needed to ensure these costs are prudent and efficient.

The IP can select how the project is delivered, whether it is across one or more contracts, including network, non-network options or demand response. The risk management framework the IP uses to manage the contract risks, and reliability and system security needs, should be clear in the procurement assessment report covering both the construction phase and future operations.

The IP's assessment of the vendor's risk management strategy should form part of the assessment report so that risks are best managed by those who can control them and the cost sharing arrangements with consumers is clear.

#### *Need to improve transparency and consultation*

As currently drafted the overall framework is opaque. There is little transparency on how decisions are made regarding the project options, procurement assessment and selection, the cost benefit analysis and the AER's revenue determination. Transparency needs to be at the centre of arrangements to ensure that NSW consumers are bought along the journey. Consultation with stakeholders should be required to discipline costs through scrutiny and so consumers are not just informed when they receive their bill.

NSW electricity consumers are ultimately paying for the costs of the framework. The NSW objectives, while broader than the National Electricity Objective (NEO), still includes the NEO. The AER has made considerable effort to improve the robustness and transparency of costs to consumers in the Better Regulation Guidelines. The regulations should require the AER and others to undertake public consultation and to say how the key feedback has been taken on board. The cost, risk, and timing tradeoffs being made should be transparent and subject to a 'no surprises' approach for all stakeholders.

The framework should not include consultation as an optional component. Consultation should be required in the framework on decisions that impact the costs consumers will ultimately pay. Reasonable timeframes should be provided for consultation (4-6 weeks) and there should be transparency in how the comments have been dealt with by the decision maker in the process.

#### *Establish a representative and independent consumer challenge panel*

ENA suggests that a representative and independent consumer challenge panel sit across the IP, CTs and AER processes to ensure robust processes on behalf of all NSW consumers who pay these costs. This is no different to the approach taken under the actionable Integrated System Plan (ISP) rules, recommended by the ESB and supported by COAG.

#### *Development of a compliance and enforcement regime*

The REZ NO role is as yet not well defined. The OECC regulation suggest that it may include owning, financing, building, operating and maintaining the respective REZ infrastructure. The role does not appear to follow the already established Designated Network Assets (DNA) arrangements in the National Electricity Rules and will have a more significant impact on the operations of the national electricity market. Unlike a DNA which can only be an arterial REZ, the intent in NSW is that these new REZs join at another location onto the shared network and become part of the backbone transmission system. The AER should consider an appropriate enforcement and compliance regime that is sufficiently flexible to fit the variable REZ NO role contemplated.

The arrangements need to be fit for purpose and reflect that the collection of obligations under the IP's contracts and consequent arrangements with TNSPs will form a prescribed network service. REZ NO's may need a transmission or network licence and be subject to a range of service quality, reliability and

safety arrangements consistent with the NER regulated networks. Critical infrastructure arrangements may also apply.

#### *Guidelines for the REZ NO role*

The AER proposes to apply transmission guidelines to the REZ NO role and has highlighted 3 guidelines. Despite the fact this is a contestable framework, the intent is to largely apply the respective NER Guidelines. The AER intends to apply the Confidentiality Guideline, the Ring-Fencing Guideline and the Cost Allocation Guideline. The application of any AER Guidelines will need to be fit for purpose and recognise the flexibility in the REZ NO role and any other contracts associated with delivery of the REZ.

#### *Clarify incentive framework*

Earlier consultation in the NSW framework suggested that there would be incentives, however this draft contains no clear incentive framework to discipline capex and opex costs.

It appears from the proposed arrangements that there can be annual adjustments to revenue beyond CPI but with no clear sense of the materiality of those potential adjustments. There seems to be no clear incentive framework to drive economic efficiency. ENA encourages the AER to consider the cost, risk, incentive framework in the regulatory determination and ensure that it is appropriate and transparent.

#### *Improve alignment in the determinations to charging process*

The AER will make a revenue determination for a 5 year period on the costs and revenue profile for a network project. The Scheme Financial Vehicle (SFV) will pay the REZ NO according to the AER's determination. The AER will also make a further determination to allocate a portion of the SFV costs that are allocated to the NSW DNSPs to each DNSP. This DNSP cost allocation determination will occur prior to the DNSP submitting the DNSP network tariffs for approval to the AER on 1 April each year. It may be helpful to consider the REZ NO determination aligning and feeding into the DNSP cost allocation determination to avoid unnecessarily holding back costs.

ENA recommends further consideration of the regulatory control period setting, the timing of revenue determinations and DNSP cost allocation determinations with the DNSP annual tariff proposals.

At the end of the Project Deed, these projects and REZ NO roles will transition to the NER arrangements. There should be consideration in establishing this framework in how the future transition arrangements can be simpler.

ENA and its members welcome further engagement with the AER as the regulatory framework for the new REZ NO role evolves.

Should you have any queries on this response, please contact Verity Watson at [vwatson@energynetworks.com.au](mailto:vwatson@energynetworks.com.au).

Yours sincerely



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