

Our Ref: 45860-LTR-OUT-00588  
Your Ref: N/A

Friday, 20 January 2023

Australian Energy Regulator,  
GPO Box 1313,  
Canberra,  
ACT, 2601  
FTAO Warwick Anderson, General Manager

Delivered by email: transgrid2023@aer.gov.au

Dear Mr Anderson,

## **Project EnergyConnect – Australian Energy Regulator - Submission.**

### **1. Introduction and Purpose**

- 1.1 SecureEnergy is a Joint Venture between Clough Projects Australia Pty Ltd and Green Light Contractors Pty Ltd (the **Contractor**) and entered into an EPC contract dated 2 June 2021 (**Contract**) with NSW Electricity Operations Pty Ltd (**TransGrid**) in relation to Project EnergyConnect (the **Project**).
- 1.2 The Contractor has elected to make this submission independently of TransGrid.
- 1.3 The Project has been designated by the New South Wales Government as Critical State Significant Infrastructure<sup>1</sup> as it forms part of a new network of power transmission lines installed across multiple states, in particular, the Project involves constructing new 330kV double circuit transmission lines, and large-scale sub-stations, with approximately 800MW transfer capacity that will connect SA and NSW and provides a back-bone for Renewable Energy Zones.
- 1.4 The Contractor has material concerns concerning cost escalations in relation to the Project which were, are, and will continue to be for some time beyond the actual and reasonable control of the Contractor, and we believe the TNSP, to contain and sustain (**Unforeseeable Costs**). These Unforeseeable Costs arose out of COVID-19 and other supply chain shocks (such as the Ukraine War) and were clearly not contemplated (or capable of such) at the time of the Contract

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<sup>1</sup> <https://www.nsw.gov.au/media-releases/power-projects-vital-to-states-energy-future>

tender process as no-one could reasonably foresee at that time the extenuated nature of the COVID-19 shocks for example. The Unforeseeable Costs are approximately AUD\$250m.

## 2. Appeal to the AER- Re-Opening the CPA Decision

2.1. We now make these submissions to the 2028 Determination to reflect the impact of the Unforeseeable Costs consistent with your powers pursuant to the National Electricity Market Rules (**Rules**), and for reasons and in circumstances including that:

- (i) the Unforeseeable Costs are, and were caused by, continuing events beyond the reasonable control of the Contractor and the TNSP during relevant regulatory control periods and the occurrence of those events during those periods could not reasonably have been foreseen at the time of the making of the CPA Decision;
- (ii) the Contractor is not seeking any additional margin concerning the Unforeseeable Costs;
- (iii) recovery of the Unforeseeable Costs would be consistent with good economic regulation reflecting the efficient costs of achieving the requisite capital expenditure objectives, and the costs that a prudent TNSP would require to achieve those capital expenditure objectives and as required to meet the already identified realistic demand forecasts;
- (v) the Contractor believes the allowance of these Unforeseeable Costs is consistent with the requisite capex criteria for the purposes of inclusion within TransGrid's RAB, and
- (vi) the TransGrid document "Suspension of CESS for Project EnergyConnect" dated 2 December 2022 (**CESS Submission**)<sup>2</sup> is consistent with the Contractor's experience concerning the Unforeseeable Costs and corroborates entirely this submission (and we support TransGrid's own submissions in this respect).

2.2. The CESS Submission is therefore particularly relevant. We fully endorse its contents and set out some of those submissions below such as where it truthfully states:

*"There is significant uncertainty about the construction cost inflation outlook over the medium term. Transgrid proposes that the CESS be suspended temporarily (i.e., for the duration of the forthcoming regulatory period) for PEC, given:*

- *the significant uncertainty over when these inflationary pressures will abate;*
- *the fact that the current inflationary pressures were not (and could not have been) anticipated as recently as the start of 2022; and*
- *the cost increases related to Project EnergyConnect are largely beyond Transgrid's control.*

*Transgrid notes that all of these considerations apply to other major transmission projects that fall within the GreenConnect investment program, including HumeLink and VNI West. As such, there would seem to be a compelling case for temporary suspension of the CESS for all GreenConnect projects [page 2]...*

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<sup>2</sup> See <https://www.aer.gov.au/system/files/Transgrid%20-%20Suspension%20of%20CESS%20for%20Project%20EnergyConnect%20-%20Dec%202022%20-%20PUBLIC.pdf>

The RBA went on to explain that these recent cost increases were not anticipated even at the start of 2022:

*“Inflation in Australia remains lower than in many other advanced economies, **but it has picked up faster and to a higher level than previously expected**. Headline inflation was 2 per cent (seasonally adjusted) in the March quarter and 5.1 per cent over the year. While petrol prices and other global factors contributed significantly to the quarterly outcome, the sources of inflation are broadening. Firms are increasingly passing on cost increases as supply chain pressures have persisted and demand has remained strong. Trimmed mean inflation was 1.4 per cent in the quarter and 3.7 per cent over the year.*

***The outlook for inflation is also materially higher than envisaged three months ago. [Emphasis added.]”***

*This means that neither Transgrid nor the AER could have foreseen the current episode of high inflation when the AER made its final decision on Transgrid’s contingent projects application decision for Project EnergyConnect in May 2021. Transgrid notes that in that decision, the AER approved:*

- *zero real input cost escalation for materials; and*
- *real labour input cost escalation rates in line with those escalation rates used in Transgrid’s final revenue determination for the 2018-23 regulatory control period.*

*The growth in Transgrid’s real input costs (particularly in the final year of the current regulatory control period) has far exceeded the real input cost escalation rates allowed by the AER [page 3]...*

*There is a heightened risk of bankruptcy/insolvency if these costs cannot be passed through [page 5].*

*The weight of available evidence suggests a plausible scenario that construction cost inflation will remain very high for some time. While Covid-19 was the initial source of disruption domestically and abroad in early 2022, the war in Ukraine, lockdowns in China and the east coast flood recovery effort are expected to exacerbate these issues in the near term [page 6]”<sup>3</sup>.*

### **3. Next Steps**

- 3.1. The Contractor would welcome an opportunity to meet and openly to discuss the attached submission details with the AER, with the intention to reach an amicable resolution on a way forward to secure the Project.

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<sup>3</sup> See also, for example, pages 141-2 of TransGrid Revised Revenue Proposal, 2 December 2022

Yours sincerely

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**SAMUEL BASANTA LOPEZ**  
Contractor's Representative