

Response to submissions

The AER released its draft guideline on 15 May 2007 and called for submissions on the guideline. During the public consultation stage the AER received three submissions and met with interested parties.

The AER released the final process guideline on 7 September 2007. In addition to releasing the final version of the guideline the AER put together the following table which sets out the issues identified in the submissions as well as the AER's responses to those submissions.

Table of issues raised in submissions and the AER's responses

Section of the guideline	Issue raised	Proposed response
ETNOF		
2.4	The AER's interpretation of 'realistic expectation' is inconsistent with the rest of the NER - and the consequences of the AER's interpretation could potentially create unnecessary and/or onerous work for the TNSPs.	The use of the term 'realistic expectation' in the context of contingent projects may be different to how it could be used in relation to revenue proposals – the guideline does not intend to define how terms are used in other parts of the NER. The guideline has been amended to ensure it reflects this.
3	Much of the information required by the AER will be made available via existing requirements, e.g. the reg test. ETNOF are concerned the pre-lodgement process duplicates work.	The TNSPs will need to provide the information in an application. The AER would not ask TNSPs to redo work but to collate the required information and submit it in a format AER staff and its consultant can use. The guideline has been amended to state the AER does not expect duplication of work.
3	Consideration be given to a more informal approach to the specification of the pre-lodgement process in recognition of the varying requirements of projects of different scope and scale.	The purpose of the guideline is that the applications meet the threshold level of information required under the NER. The NER do not allow for flexibility with regard to this threshold requirement depending on the size of the particular project. The AER's view is that the process set up in the guideline will assist TNSPs meet their requirements under the NER. The guideline has been amended to more clearly that it is an informal process.

6.1	The AER will get independent expert advice as to whether the trigger event has occurred even though the TNSPs will conduct their own public processes.	As part of the assessment process the AER is required to be 'satisfied' that the trigger event has occurred (clause 6A.8.2(e)). The AER may not always seek independent advice – it will depend on the nature of the trigger event.
4.2	Accepts that confidential submissions may be necessary (as part of the public consultation process) but would appreciate the opportunity to respond to confidential submissions if they result in claims that are contrary to the TNSP's views.	The AER intends to follow its standard procedure for dealing with confidential submissions.
Powerlink		
2.3, 6, 6.2	Powerlink's recent revenue determination (which includes several contingent projects) was made in accordance with the transitional provisions which do not require contingent projects to be assessed against the same threshold set out in the NER and the guideline.	The contingent project provisions in the NER will only apply to Powerlink where the provisions are consistent with the recent revenue determination and the relevant transitional Rules. The guideline has been amended to note that transitional provisions may vary the application of the guideline.
EA		
2.1, 2.4, 4.1	EA recommends that the guideline be made more flexible in its requirements for 'final' information and approvals. That is, where planning approvals or a regulatory test are not available, the guideline should be sufficiently flexible to allow 'best available information'	The guideline has been amended to state that the best available information should be provided. The AER will only be prepared to make a decision, based on the use of preliminary information where: <ul style="list-style-type: none"> ▪ It would be impractical for the TNSP to supply final versions; and ▪ The AER can be confident that the information provided will be sufficient to closely reflect the decision it would likely make if it had access to final information.
General comment, 3	EA requested the AER provide a letter of comfort during the pre-lodgement stage that the application does or does not meet the lodgement criteria. Further, EA have requested that the final guideline provide for a statement of issues, akin to the ACCC's statement of issues under the informal mergers process	The information the TNSP must provide is set out at 6A.8.2(b)(3) of the NER. Under the current arrangement set out in the guideline the AER would be able to give the TNSPs an indication of whether it considers the TNSP has provided sufficient information and the AER will inform TNSPs of any information it considers the application is lacking. A formal statement of issues is not required.