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Tuesday, 14 April 2026

Ms Kami Kaur
General Manager
Australian Energy Regulator
GPO Box 3131
Canberra, ACT, 2601

Lodged via email: REZ@aer.gov.au

Dear Ms Kaur

AER's draft Revenue Determination Guideline for NSW Non-Contestable Network Infrastructure Projects

Transgrid welcomes the opportunity to respond to the Australian Energy Regulator's (**AER**) revised draft *Revenue Determination Guideline for NSW Non-Contestable Network Infrastructure Projects (revised Draft Guideline)*. This targeted review addresses how the Australian Energy Market Commission's *Improving the cost recovery arrangements for transmission non-network options Final Rule (ICRA Rule)* is intended to be implemented within the NSW Electricity Infrastructure Investment (**EII**) framework.

As NSW's Transmission Network Service Provider (**TNSP**) and a Network Operator under the *EII Act 2020*, Transgrid is responsible for planning, building, maintaining and operating the backbone of the NSW transmission system. We are committed to delivering the infrastructure required under the NSW Electricity Infrastructure Roadmap in a manner that is safe, efficient and in the long-term interests of consumers.

The AER's updates incorporated in the revised Draft Guideline aim to provide network operators with greater clarity on how non-network options (**NNO**) components of network infrastructure projects will be assessed under the EII framework. We support the AER's ongoing work to refine regulatory arrangements for non-contestable network infrastructure projects, and we welcome the increased clarity and alignment with National Electricity Rules (**NER**) Chapter 6A.

We appreciate the AER's efforts to refine the revised Draft Guideline by:

- strengthening alignment with the NER, particularly Chapter 6A;
- clarifying the end-to-end determination process;
- formalising expectations for hybrid revenue determinations;
- improving transparency; and
- supporting efficient cost recovery for NNOs.

Consistent and stable regulatory processes are critical to facilitating timely investment and efficient delivery of major transmission projects. To support these outcomes, Transgrid outlines below several issues that warrant further consideration.

1. Scope of application of the Non-Contestable Guideline

Clauses 8.2 and 8.6.1 of the revised Draft Guideline allow multiple NNO components to be included in a single application only where they form part of a single contract. The effect of this is that if there are multiple contracts, each contract needs to be the subject of a separate application (even if the contracts all fall under a single revenue determination).

This approach differs from the equivalent, AER Network alternative support payment guideline¹ (13 March 2026) (**NASP Guideline**). The NASP Guideline allows an application in respect of a portfolio of NNO projects (provided they meet the same identified need) and expressly contemplates that such a portfolio could be made up of multiple contracts (see sections 3.5 and 4.1 and footnotes 17 and 18 of the NASP Guideline).

Requiring separate applications for each contract increases administrative burden and may prevent projects from meeting the materiality threshold. In practice, it is unlikely that multiple NNO projects would be delivered under a single contract. Projects meeting a single identified need are often delivered by different counterparties, or through separate contracts with the same counterparty.

RECOMMENDATION - Transgrid recommends that the final Guideline allow applications for portfolios of NNO projects comprising multiple contracts, consistent with the NASP Guideline.

2. Materiality threshold

The revised Draft Guideline proposes a materiality threshold requiring the expected average annual payment of each NNO component to be at least \$5 million (clauses 8.4 and 8.6.1). Transgrid has a number of concerns with this approach. These include:

- If the \$5 million threshold is not amended to incorporate all costs in a contract that are relevant to an EII Act authorisation, it will likely make the process unavailable in almost all circumstances.
 - Applying the threshold to a “NNO component” rather than the full contract price (to the extent relevant to the EII Act identified need) means that few if any contracts would reach the threshold.
 - > Fee structures in relevant contracts contain a number of elements and it is currently not clear what is or is not a “NNO component”. For example, availability fees, which are often the most material fees by a substantial margin do not appear to be part of a “NNO component”, which appears to be solely focussed on a service fee.
 - > Usual fees, such as maintenance fees, apply across different services, and it appears the focus on “NNO components” would result in these fees not being accounted for. It is also not clear how they could be apportioned between different components in a reliable and consistent manner.
 - > It is not unusual for a NNO contract to relate to a facility that is yet to be built or requires material modifications in order to provide the relevant service. This can take a number of years and can

¹ See <https://www.aer.gov.au/industry/registers/resources/reviews/network-alternative-support-payment-guideline>

extend beyond one regulatory period. Commonly, fees are not payable until services commence. However, a TNSP would be bound to make payments once the facility provides the relevant services. In order to make the process available for these contracts, the threshold should be measured at the time full services commence, rather than any earlier period.

- Requiring a separate application for each component, which may be in a single contract may not promote efficiency. This is also inconsistent with the NASP Guideline which applies the monetary threshold to the annual payment caused by an NNO project or portfolio of projects (which, as noted above, can cover multiple contracts), i.e. multiple contracts can be aggregated for the purposes of the threshold. Transgrid recommends that where a contract or a series of contracts (regardless of the number of components) are developed to meet an identified need in a PNIP, they should be able to be assessed as one application.
- If a Network Operator was required to enter into multiple NNO contracts to meet a single need and was restricted from seeking AER review on one of these contracts due to the \$5 million materiality threshold, it would nearly completely remove any value from AER review of contracts for this need above the threshold.

RECOMMENDATION – We encourage the AER to consider:

- Providing further clarification on the ‘NNO Component’ terminology outlined in the revised Draft Guideline. We recommend this refers to all costs associated with the contract.
- Where one or more contracts are entered into to meet a single identified need in a PNIP, they should be assessable through a single application, with the materiality threshold applied to the total expected cost of meeting that need.

3. Eligibility criteria for applications made alongside a revenue proposal

Table 5 in section 8.4 of the revised Draft Guideline requires applications made at the same time as a revenue proposal to demonstrate compliance with the operating expenditure objectives, criteria and factors in clause 6A.7.2A(b)(1)–(3) of the NER. This is not a requirement under clause 6A.6.6A for applications made at the same time as a revenue proposal, and clause 6A.7.2A does not apply to such applications.

The purpose of an application under clause 6A.6.6A is to obtain a determination from the AER that a methodology for a network alternative support payment is consistent with the operating expenditure objectives, criteria and factors. It is inconsistent to require compliance with the operating expenditure objectives, criteria and factors as a precondition to considering an application where the purpose of that application is to determine whether those objectives, criteria and factors are met.

RECOMMENDATION - Requiring compliance as an eligibility condition undermines the intent of the provision. We encourage the AER to remove this criterion from Table 5.

4. Determination of expenditure under Chapter 6A

Under clause 6A.6.6A(a), the revised Draft Guideline limits the AER’s determination to the methodology for a proposed network alternative support payment. It does not include expenditure for a proposed payment under the draft contract.

While Chapter 6A presently limits determinations to the methodology for network alternative support payments, Transgrid considers that the AER’s determination should, at a minimum, opine on whether the associated expenditure is likely to be assessed as prudent, efficient and reasonable if incurred. This would materially

improve regulatory certainty, support informed investment decisions, and reduce the risk of misalignment between methodology approval and subsequent ex post expenditure assessment.

The AER determination on system security network support payments (Transgrid and Snowy Hydro, November 2025 determination) provides a recent and directly relevant precedent for the AER's approach to assessing non-network service payment arrangements and associated payment methodologies, including how the AER frames and tests whether proposed methodologies are likely to result in expenditure that is prudent and efficient.

While made under the system security network support payment framework (NER clause 6A.6.6A), the reasoning is informative for assessing whether ex-ante methodology approvals can support efficient contracting and improve regulatory certainty. For example, the AER notes:

“Enabling TNSPs to seek the AER's view on the prudence and efficiency of financially significant draft SSNS payment contracts provides additional comfort to TNSPs, before signing a contract, about the AER's expectations and approaches to making our ex-post assessment of the expenditures incurred under the executed contract (i.e. as part of the AER's subsequent network support payment (NSP) pass-through determinations).

This should improve TNSPs' confidence when entering into a contract that they will be able to recover efficient operational costs. It should also improve the efficiency and ability of TNSPs to contract SSNS services, and help level the playing field between network and non-network expenditures needed to meet the NEM's system security needs.”²

RECOMMENDATION – We encourage the AER to consider including associated expenditure within the scope of review as it would provide greater regulatory certainty and support more efficient investment decisions.

Conclusion

We appreciate the opportunity to provide feedback and look forward to continued engagement with the AER as the framework is finalised. If you or your staff require any further information or clarification on this submission, please contact Zainab Dirani, Policy and Advocacy Manager at zainab.dirani@transgrid.com.au.

Yours sincerely

A handwritten signature in cursive script that reads "Alex McPherson".

Alex McPherson
General Manager of Regulation & Policy

² AER Determination Transgrid and Snowy Hydro System security network support payments and payment methodologies, p 9