THE HON CHRIS BOWEN MP
MINISTER FOR CLIMATE CHANGE AND ENERGY

MS23-001861

Ms Anna Collyer
Chair
Australian Energy Market Commission
Level 15
60 Castlereagh Street
SYDNEY NSW 2000

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Dear Chair Anna

Please find attached a rule change proposal to amend the National Electricity Rules to improve the workability of the Australian Energy Market Operator's (AEMO) feedback loop assessment.

These necessary changes were recommended in the Australian Energy Market Commission's (AEMC) final report for Stage 2 of its Transmission Planning and Investment Review.

I endorse this rule change request and ask the AEMC progress with its initiation.

Yours sincerely

CHRIS BOWEN

Australian Government
Department of Climate Change, Energy, the Environment and Water

Rule Change Request

Improving the workability of the feedback loop

June 2023

1. Request to make a Rule

1.1. Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

2. Relevant background

2.1. AEMC Transmission Planning and Investment Review

The AEMC established the Review to consider how to ensure that the regulatory framework supports the timely and efficient delivery of major transmission projects, while ensuring investment in these projects are in the long-term interests of consumers.

Stage 2 of the review, which focused on near term solutions and reducing uncertainty for Transmission Network Service Providers (TNSPs), included recommendations to improve the workability of the feedback loop assessment.

2.2. The feedback loop assessment

The feedback loop was first introduced as part of the actionable Integrated System Plan (ISP) reforms as a safeguard for Australian electricity consumers. The feedback loop assessment requires that, after completing a Regulatory Investment Test for Transmission (RIT-T), a TNSP must seek written confirmation from the Australian Energy Market Operator (AEMO) that:

- The preferred RIT-T option addresses the relevant need identified in the most recent ISP and aligns with the optimal development path (ODP) outlined in that ISP, and
- The costs of this option do not change the status of the actionable ISP project as part of the ODP.

This process safeguards consumers by ensuring that only investments in their long-term interest are eligible for regulatory funding. It also ensures this level of funding does not exceed the efficient level by capping the costs that can be sought by a RIT-T proponent in the contingent project assessment (CPA). The Australian Energy Regulator's (AER) Cost Benefit Analysis (CBA) Guidelines provide guidance as to how AEMO should conduct the feedback loop assessment to test the alignment between RIT-T projects and the most recent ISP ODP.

The Commonwealth proposes the AEMC consider this rule change as having been adequately publicly consulted on through the Transmission Planning and Investment Review.

3. Statement of Issue

3.1. Practical difficulties in the application of the feedback loop undermines its ability to effectively safeguard consumers and support timely delivery of transmission projects

There are workability issues that undermine the feedback loop's ability to operate as an effective safeguard while supporting the efficient delivery of ISP projects.

The issues stem from the requirement for the feedback loop to be assessed against the ODP in the 'most recent ISP'. Under the current actionable ISP framework, 'most recent ISP' refers to

the latest final ISP or ISP update that has been published. As such, the feedback loop assessment focuses on the current ODP and not the ODP that will be identified in the next ISP publication. This contrasts with the RIT-T process, which uses AEMO's most recent Inputs, Assumptions and Scenarios Report (IASR), that will underpin the future ODP in the next draft and final ISP.

The ODPs in current and future ISPs will likely be underpinned by different inputs, assumptions, and scenarios. This creates several challenges for AEMO in conducting a feedback loop assessment, including:

- Potentially impacting the accuracy of the assessment's results due to AEMO being unable to use the latest available information and relying on outdated IASR underpinning the ODP in the most recent ISP.
- Increases the potential for inconsistencies between the inputs underpinning the feedback loop assessment and the RIT-T preferred option.
- Creates additional burden for AEMO in its development of the next ISP due to the need to draw on two sets of modelling and inputs – impacting the timeliness of the feedback loop assessment.

This rule change request seeks to address these workability issues by allowing the feedback loop to use inputs that will underpin the ODP in the next ISP. This will be particularly important where there are significant differences between the RIT-T preferred option and the ISP candidate option.

4. Description of the proposed rule

The proposed rule would amend the National Electricity Rules (NER) to implement the rule change recommendations contained in the AEMC's TPIR - Stage 2 Final Report. The proposed amendments – which were prepared by the AEMC and accompanied the Final Report – are attached to this request.

The proposed amendments will improve the feedback loop assessment by ensuring the process is workable and fit for purpose, while also providing a clear and consistent regulatory framework to efficiently deliver ISP projects.

4.1. Aligning the feedback loop assessment with the publication of a draft or final ISP would improve workability issues

Aligning the feedback loop assessment with the draft or final ISP will address workability issues by allowing AEMO to consider the most up to date information in its assessment process.

The proposed amendments to the NER seek to:

- Enable the feedback loop assessment to be based on the inputs that will underpin the ODP in a draft ISP (proposed cl 5.16A.5(b)(1) and (2))
- Align the feedback loop with a draft or final ISP by establishing an exclusion window for the feedback loop and Project Assessment Conclusions Reports (PACRs) between the publication of the final IASR and draft ISP to be implemented through amendments to the AER's CBA Guidelines with discretion for AEMO to undertake the feedback loop during the exclusion window where appropriate given the circumstances of that particular investment (proposed cl. 5.16A.5(c)(4))

Under these amendments, AEMO cannot undertake feedback loop assessments during the window between the final IASR and draft ISP. However, AEMO would retain the discretion to

undertake the feedback loop during the exclusion window where appropriate. The purpose of this discretion is to ensure the exclusion window does not delay regulatory approval in particular circumstances, such as where the feedback loop request:

- is submitted shortly before the exclusion window commences, or
- would be unlikely to involve significant re-modelling (such as where the extent of difference between the ISP candidate option and RIT-T preferred option is minimal).

As part of this rule change, the AEMC should also consider the scenarios exclusion windows are applied, and the need for exclusion windows to apply to PACRs.

4.2. Allowing the feedback loop and CPA process to occur in parallel would reduce potential delays

Amending the NER to allow the CPA process and feedback loop assessment to proceed concurrently will allow for quicker delivery of transmission projects and reduce potential 'bunching' of project assessments around the draft ISP.

The proposed feedback loop amendments will:

- Allow, but not require, the feedback loop and CPA process to occur concurrently to address concerns of the potential for delay due to the bunching of feedback loops around a draft or final ISP (proposed cl. cl 5.16A.5(b)).

This amendment is unlikely to result in additional regulatory burden for TNSPs as the costs sought in the CPA are capped according to the outcome of the feedback loop assessment and running both processes concurrently will remain optional.

4.3. Requiring AEMO to complete a feedback loop assessment within a specified timeframe would improve the timely delivery of transmission projects

The proposed amendments will require AEMO complete a feedback loop assessment within a specific timeframe to ensure timely execution of regulatory process for ISP transmission projects.

The proposed amendment would:

- Require AEMO to complete the feedback loop assessment within 40 business days from the later of the date the request is submitted or additional information is received following an information request issues by AEMO.
- Give AEMO the power to extend the assessment by 60 business days if it determines the assessment involves complexities or difficulties (proposed cl 5.16A.5A).

These amendments to the NER will promote a clear, consistent, and predictable regulatory framework that offers stakeholders transparency on timeframes for the completion of the assessment process.

4.4. There would be transitional arrangements to allow adequate time for the amendments to be put in place while not disrupting existing projects

As this rule may result in significant changes to AEMO's, the AER's and TNSPs' existing processes, transitional arrangements should be developed to allow for smooth implementation that does not adversely impact existing projects.

The proposed transitional provisions would:

- Apply the proposed feedback loop amendments to an existing actionable ISP project if, and only if, the RIT-T proponent has not already requested a feedback loop assessment under existing cl 5.16A.5(b).
- Provide the AER with 12 months to update the CBA Guidelines in line with the proposed feedback loop amendments and allow time for any consultation the AER undertakes for that purpose before the amendments commence.

5. How the proposed rule will address the issue

The proposed rule amendments will address the feedback loop's workability issues by enabling AEMO to use the most recent IASR that underpins the upcoming ISP. This will prevent the practical challenges currently impacting the feedback loop assessment process, while also ensuring its results are consistently accurate when assessing RIT-T preferred projects against ISP candidates.

The proposed rule amendments will also provide flexibility for AEMO to time the feedback loop assessment to the circumstances of the particular investment to manage the complexities of the energy transition.

Running the CPA concurrently with the feedback loop and requiring AEMO to complete its assessment within 40 business days from application (or an additional 60 business days should complexities arise) will also ensure a transparent and predictable regulatory framework that can facilitate timely project delivery.

The proposed rule change will ensure consumers are protected while not unduly delaying major transmission investment through the regulatory process.

6. How the proposed rule will or is likely to contribute to the achievement of the National Electricity Objective

The national electricity objective (NEO), as set out in section 7 of the National Electricity Law, is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity with respect to –

(a) price, quality, safety, reliability, and security of supply of electricity; and

(b) the reliability, safety, and security of the national electricity system.

The relevant aspect of the NEO for present purposes is the promotion of efficient investment in electricity services for the long-term interests of consumers of electricity with respect to price, quality, safety, reliability, and security of the supply of electricity.

The proposed feedback loop amendments advance the NEO in the following ways:

1. Allowing AEMO to consider inputs from upcoming ISPs will promote more efficient decision-making by AEMO and help ensure the feedback loop operates as an effective safeguard for consumers.
2. Managing the timing of feedback loop requests in the CBA Guidelines enables AEMO to develop a tailored approach to feedback loop assessments.
3. Allowing the CPA process and feedback loop assessment to proceed concurrently will manage potential bunching of assessments around the publication of a draft ISP, thereby promoting efficient decision-making by AEMO.
4. Incorporating a timeframe for AEMO to complete the feedback loop promotes a clear, consistent, and predictable regulatory framework by providing clarity and transparency to TNSPs and other stakeholders regarding when the outcome of the feedback loop will be known.

7. Expected costs, benefits and impacts of the proposed rule

7.1. Expected benefits

The proposed feedback loop amendments will improve the workability of the feedback loop for AEMO and improve its ability to operate as an effective safeguard for consumers while also supporting timely delivery of ISP projects.

It will also reduce administrative and regulatory burden.

7.2.Expected costs

The proposed amendments are not expected to impose any significant new costs on TNSPs or consumers.

However, there may be additional costs for AEMO and the AER during the initial implementation of the proposed amendments and associated consultation. Any additional costs in during implementation will likely be offset by the benefit of improved feedback loop workability, improved consumer protection and minimised regulatory delays of transmission projects.

7.3. Expected impacts

The proposed amendments may impact project timelines for TNSPs wishing to conduct a feedback loop and CPA. However, the benefits of improved timeliness of this process and limited chance of significant divergence between the RIT-T option and the ISP candidate option are expected to outweigh potential costs. AEMO will also have the discretion to undertake feedback loop assessments within this exclusion window where it is appropriate given the circumstances of the particular investment which will mitigate the impact.

AEMO will be required to adjust its processes in the information it uses to assess RIT-T preferred options against the ISP ODP, as well as ensure the feedback loop assessment is completed according to the proposed timelines. However, it is expected that the benefits for AEMO through reduced administrative burden and an overall quicker process via less onerous modelling and rework will exceed the costs of these changes.

Attachment A – Proposed changes to the National Electricity Rules as recommended by the AEMC in Stage 2 of the Transmission Planning and Investment Review

Feedback loop

5.16A.2 Cost Benefit Analysis Guidelines

(a) The *Cost Benefit Analysis Guidelines* developed and *published* by the *AER* in accordance with clause 5.22.5 must include guidelines for the operation and application of the *regulatory investment test for transmission* to *actionable ISP projects* in accordance with rule 5.15A and this rule 5.16A.

(b) The *Cost Benefit Analysis Guidelines* must in relation to the application of the *regulatory investment test for transmission* by a *RIT-T proponent* to an *actionable ISP project*:

(1) give effect to and be consistent with rule 5.15A and clauses 5.16A.3, 5.16A.4 and 5.16A.5; and

(2) specify requirements for *actionable ISP projects* on:

(i) the operation and application of the *regulatory investment test for transmission*;

(ii) the process to be followed in applying the *regulatory investment test for transmission*; and

(iii) how disputes raised in relation to the *regulatory investment test for transmission* and its application will be addressed and resolved.

(c) The *Cost Benefit Analysis Guidelines* must provide guidance as to:

(1) what constitutes a *credible option* for the purposes of clause 5.15A.3(b)(7)(iii)(C);

(2) acceptable methodologies for valuing the costs of a *credible option*; and

(3) how the *RIT-T proponent* must apply the *ISP parameters*.; and

(4) the timing of any request made by a *RIT-T proponent* under clause 5.16A.5(b).

…

5.16A.5 Actionable ISP project trigger event

In order to be eligible to submit a *contingent project* application in relation to an *actionable ISP project* (or a stage of an *actionable ISP project* if the *actionable ISP project* is a staged project) under clause 6A.8.2, all of the following criteria must be satisfied ("**trigger event**"):

(a) the *RIT-T proponent* must issue a *project assessment conclusions report* that meets the requirements of clause 5.16A.4 and which identifies a project as the *preferred option* (which may be a stage of an *actionable ISP project* if the *actionable ISP project* is a staged project);

(b) the *RIT-T proponent* must ~~obtain~~ request written confirmation from *AEMO* that:

(1) the *preferred option* addresses the relevant *identified need* specified in the most recent *Integrated System Plan* , and aligns with the *optimal development path* referred to , in the most recent draft or final *Integrated System Plan*; and

(2) the cost of the *preferred option* does not change the status of the *actionable ISP project* as part of the *optimal development path* ~~as updated in accordance with clause 5.22.15 where applicable~~ in the most recent draft or final integrated system plan.

(c) no *dispute notice* has been given to the *AER* under rule 5.16B(c) or, if a *dispute notice* has been given, then in accordance with rule 5.16B(d), the dispute has been rejected or the *project assessment conclusions report* has been amended and identifies that project as the *preferred option*; and
(d) the cost of the *preferred option* set out in the *contingent project* application must be no greater than the cost considered in *AEMO's* assessment in subparagraph (b).

5.16A Feedback loop timeframes

(a) AEMO must:
  (1) Consider any request made; and
  (2) Make a decision on whether or not to provide written confirmation, under clause 5.16A.5(b), within 40 *business days* from the later of the date *AEMO* receives the request and the date *AEMO* receives any information required by *AEMO* under paragraph (b).
(b) *AEMO* may request by written notice, and the *RIT-T proponent* must provide to *AEMO* within such times as specified in that notice, any additional information *AEMO* considers reasonably necessary to make a decision on a request made by that *RIT-T proponent* under clause 5.16A.5(b).
(c) If *AEMO* is satisfied that making a decision on whether or not to issue written confirmation under clause 5.16A.5(b) involves issues of sufficient complexity or difficulty that the time period fixed in paragraph (a) should be extended, *AEMO* may extend that time period by a further period of up to 60 *business days*, by providing written notice to the *RIT-T proponent* of that extension no later than 7 *business days* prior to the expiry of the relevant period.

...

6A.8.2 Amendment of revenue determination for contingent project

(a) A Transmission Network Service Provider may, during a regulatory control period, apply to the AER to amend a revenue determination that applies to that Transmission Network Service Provider where:
  (1) For a contingent project in a revenue determination, a trigger event for a contingent project in relation to that revenue determination has occurred; or
  (2) For an actionable ISP project, the trigger event under clause 5.16A.5 has occurred.
(a1) An application referred to in paragraph (a) must be made as soon as practicable after the occurrence of the trigger event.
(b) An application made under paragraph (a) must contain the following information (as applicable)
  (1) an explanation that substantiates the occurrence of the trigger event;
  (2) a forecast of the total capital expenditure for the contingent project;
  (3) a forecast of the capital and incremental operating expenditure, for each remaining regulatory year which the Transmission Network Service Provider considers is reasonably required for the purpose of undertaking the contingent project;

(4) how the forecast of the total capital expenditure for the contingent project meets the threshold as referred to in clause 6A.8.1(b)(2)(iii);
(5) the intended date for commencing the contingent project (which must be during the regulatory control period);
(6) the anticipated date for completing the contingent project (which may be after the end of the regulatory control period);
(7) an estimate of the incremental revenue which the Transmission Network Service Provider considers is likely to be required to be earned in each remaining regulatory year of the regulatory control period as a result of the contingent project being undertaken as described in subparagraph (3), which must be calculated:
    (i) in accordance with the requirements of the post-tax revenue model referred to in clause 6A.5.2;
    (ii) in accordance with the requirements of the roll forward model referred to in clause 6A.6.1(b);
    (iii) using the allowed rate of return for that Transmission Network Service Provider for the regulatory control period as determined in accordance with clause 6A.6.2;
    (iv) in accordance with the requirements for depreciation referred to in clause 6A.6.3;
    (v) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph (b)(3); and
(8) if paragraph (n) applies, a forecast of the total capital expenditure and the total incremental operating expenditure for the contingent project for the subsequent regulatory control period.

(c) As soon as practicable after its receipt of an application made in accordance with paragraphs (a), (a1) and (b), the AER must publish the application, together with an invitation for written submissions on the application.

(d) The AER must consider any written submissions made under paragraph (c) and must make its decision on the application within 40 business days from the later of the date the AER receives the application and the date the AER receives any information required by the AER under paragraph (h1). In doing so the AER may also take into account such other information as it considers appropriate, including any analysis (such as benchmarking) that is undertaken by it for that purpose.

(e) If the AER is satisfied that:

(1A) the trigger event has occurred~~, and that:~~

(1B) the forecast of the total capital expenditure for the contingent project meets the threshold as referred to in clause 6A.8.1(b)(2)(iii), ~~it must:~~;

(1C) the Transmission Network Service Provider has complied with its obligations under clause 5.16(z5E), and 5.16A.4(t) and 5.16A.4(u) (as applicable); and

[Note: this subclause will commence on 9 October 2023 as part of the Material change in network infrastructure project costs rule change (ERC0325).]

(1D) for an actionable ISP project, AEMO has provided the written confirmation requested clause 5.16A5(b),

Then it must:

(1) determine (as applicable):
    (i) the amount of capital and incremental operating expenditure, for each remaining regulatory year which the AER considers is reasonably required for the purpose of undertaking the contingent project;

(ii) the total capital expenditure which the AER considers is reasonably required for the purpose of undertaking the contingent project;
(iii) the likely commencement and completion dates for the contingent project;
(iv) the incremental revenue which is likely to be required by the Transmission Network Service Provider in each remaining regulatory year as a result of the contingent project being undertaken as described in clause 6A.8.2(e)(1)(i) and (ii), such estimate being calculated in accordance with subparagraph (2); and
(v) if paragraph (n) applies, the total capital expenditure and the total incremental operating expenditure which the AER considers is reasonably required for the purpose of undertaking the contingent project in the subsequent regulatory control period;

(2) calculate the estimate referred to in subparagraph (1)(iv):
(i) on the basis of the capital expenditure referred to in subparagraph (1)(i);
(ii) to include the incremental operating expenditure referred to in subparagraph (1)(i); and
(iii) otherwise in accordance with paragraph (b); and

Transitional provisions

11.[xxx].1.1 Definitions

For the purposes of this part [XX]:

Amending Rule means the National Electricity Amendment ([TPIR Stage 2]) Rule.

Commencement date means the date on which the Amending Rule Commences

11.[xxx].2 Existing Actionable ISP projects prior to the clause 5.16A.5 stage

(a) This clause 11.[xxx].2 applies if, at the commencement date, for an existing *actionable ISP project* the *RIT-T proponent* has requested written confirmation from *AEMO* under clause 5.16A.5(b).
(b) For an existing *actionable ISP project* referred to in clause 11.xxx.2.2(a), rule 5.16A continues to apply as if the Amending Rule had not been made.

11.[xxx].2.3 Cost Benefit Analysis Guidelines

(a) Within 12 months after the commence date, the *AER* must update and publish on its website the *Cost Benefit Analysis Guidelines* required under clause 5.22.5 to comply with the requirements set out in clause 5.16A.2(c)(4), and in doing so must comply with the *Rules consultation procedures*.
(b) If prior to the commencement date, and for the purposes of updating the *Cost Benefit Analysis Guidelines* in anticipation of the Amending Rule, the *AER* undertook consultation or steps equivalent to that as required in the *Rules consultation procedures*, then the consultation or steps undertaken is taken to satisfy the equivalent consultation or steps under the *Rules consultation procedures*.