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2 June 2022

Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2001

Submitted electronically: www.aemc.gov.au
Reference: ERC0343

Dear Anna

Re: Consultation Paper – Establishing revenue determinations for Intending TNSPs

Marinus Link Pty Ltd (MLPL) appreciates the opportunity to make this submission in relation to the consultation paper on the Intending TNSP Rule change request, which we lodged on 3 March 2022. In our view, the consultation paper provides a very clear and helpful summary of the proposed Rule change.

In responding to the consultation paper, we are mindful that the process is principally focused on obtaining views from stakeholders rather than the Rule change proponent. We have therefore limited our responses to those issues raised by the Commission where further information provided by us may assist in clarifying aspects of our proposal. Our responses in that regard are provided in the attachment.

In summary, the issues raised by the Commission can be broadly summarised as covering three areas:

- Is there a problem that needs addressing, given the National Electricity Objective?
- Does the proposed Rule introduce unintended consequences or the risk of unnecessary or speculative revenue determinations?
- Is there a better solution, such as a RAB 'bridging mechanism'?

As explained in the attached submission, our views are:

- Projects such as Marinus Link could not obtain finance from capital markets in the absence of a revenue determination. It is also unlikely that a Final Investment Decision could be made for a

project of this size without sufficient confidence in the revenue stream and resultant business case. Accordingly, there is a clear problem to address because the project cannot proceed as a regulated transmission asset unless a revenue determination is in place.

- Our draft Rule seeks to minimise the risk of revenue determinations being made for projects that ultimately do not proceed, while acknowledging that this risk cannot be eliminated entirely. In relation to unintended consequences, our view is that this risk is minimised by applying the standard Chapter 6A process, as reflected in our proposed drafting.

- Our view is that the RAB 'bridging mechanism' would be more complex to introduce and potentially runs the risk of unintended consequences. A more significant concern, however, is that it would leave several important aspects of the building block calculation unresolved, so investors would have no reasonable basis on which to forecast the future revenue stream. Accordingly, the proposed alternative approach would not address the identified issue.

We very much look forward to working with the Commission as it considers the Rule change request in further detail and considers stakeholder feedback. If you would like to discuss this submission, please contact me at heath.dillon@marinuslink.com.au.

Yours sincerely

Heath Dillon
Executive Manager, Customer and Revenue

Attachment: Marinus Link's response to issues raised by the Commission

Is there a problem that needs addressing, given the National Electricity Objective?

MLPL's position is that providers of debt and equity finance would want to understand the AER's views on each of the building block components before committing funds. While the regulatory framework is stable, its application to a new project such as Marinus Link, with capital costs of approximately $3 billion ($2021), is untested. In the absence of a revenue determination at the time of making an investment decision, the potential losses to investors from a subsequent adverse revenue determination would be highly material. MLPL's position is that it will be unable to make a Final Investment Decision unless the AER's revenue determination is in place.

As explained in the Rule change request, as Marinus Link will deliver substantial net economic benefits to the National Electricity Market, this significant impediment to making a Final Investment Decision would undermine the National Electricity Objective (which, amongst other things, is concerned with promoting efficient investment for the long term interests of consumers).

Does the proposed Rule introduce unintended consequences or the risk of unnecessary or speculative revenue determinations?

The issue raised by the Commission is addressed by our proposed clause 6A.1.8, which requires the Intending Participant to lodge an Application for a revenue determination process. Clause 6A.1.8(d) contains four subclauses that guide the AER in making a decision whether to accept the Application. For example, subclause 6A.1.8(d)(2) requires the AER to consider whether the Intending Participant is expected to provide prescribed transmission services during the proposed regulatory control period.

MLPL has explained in the Rule change request that it cannot make a Final Investment Decision in the absence of a revenue determination. Logically, therefore, it must be uncertain whether MLPL, being the Intending TNSP, will provide prescribed transmission services during the proposed regulatory control period. Accordingly, the proposed clause 6A.1.8(d)(2) refers to the AER being satisfied that the Intending Participant is expected to provide prescribed transmission services during the proposed regulatory control period. MLPL's view is that this language is appropriate in balancing the risk of the AER conducting a revenue determination unnecessarily against the need to provide a revenue determination to enable a Final Investment Decision to be made.

The AEMC also asks whether there are any unintended consequences arising from our proposed amendment to clause S6A.2.1(d)(2). For ease of reference, the relevant proposed clause, S6A.2.1(d)(4), is set out below:

> "For the avoidance of doubt, in applying clause (d)(2) to an Intending Transmission Network Service Provider, the value of the regulatory asset base at the beginning of the first regulatory year of the first regulatory control period must include the prudent and efficient expenditure incurred or will be incurred prior to the commencement of the regulatory control period. In determining this value, the AER must have regard to the matters referred to in clause S6A.2.2."

The purpose of this clause is to ensure that the AER is able to include in the RAB the prudent and efficient capital expenditure incurred prior to the commencement of the first regulatory control period. In the absence of this clause, there may be some doubt whether the Rules would allow that capital expenditure to be included in the RAB. This concern reflects the gap in the Rules in that it does not contemplate an opening RAB for an Intending TNSP. Accordingly, this 'for the avoidance of doubt' clause is required to confirm that prudent and efficient capital expenditure should be included in the RAB, even if it was incurred prior to the commencement of the first regulatory control period.

As clause S6A.2.1(d)(4) only applies to Intending TNSPs and only permits prudent and efficient capital expenditure to be included in the RAB, it does not have any unintended consequences.

Is there a better solution, such as a RAB 'bridging mechanism'?

As a result of the Commission raising this issue, the suggestion is that the apparent gap in the regulatory framework could potentially be addressed by creating a new regulatory mechanism as a 'bridge' for Intending TNSPs to establishing a RAB under Schedule 6A.2. In the Commission's view this approach would avoid the need to complicate other parts of the Chapter 6A framework – and avoid the risk of any potential unintended consequences.

MLPL agrees with the Commission that it is important to consider alternative options to addressing the problem raised. In developing the Rule change request, after considering a range of different possible solutions, MLPL concluded that it was important that the standard Chapter 6A revenue setting process should apply to Intending Participants, such as MLPL. By adopting the standard approach, the Rule changes required are limited to those required to commence the AER's revenue determination process without any changes to the standard revenue setting process in Chapter 6A. By maintaining the standard Chapter 6A approach, the risk of any unintended consequences are minimised.

In contrast, the alternative suggestion of a 'bridging' RAB would require new provisions to be drafted in Chapter 6A which details the basis on which the bridging RAB would be set and explain how the bridging RAB would be rolled forward in the subsequent revenue determination. In our view, the introduction of a bridging RAB would be more likely to introduce unintended consequences. This approach would also introduce more complexity in the drafting of the Rule change which could be avoided.

A more significant concern with the 'bridging' RAB concept is that it would not clarify other important aspects of the revenue setting process that investors would need to understand. For example, regulatory depreciation, rate of return and operating expenditure allowance would be not be settled. As a result, investors would not be able to forecast the future revenue stream for the proposed project with any confidence. Our view, therefore, is that the alternative suggestion of a 'bridging RAB' would not address the problem definition.

The Commission also asks whether there are other mechanisms to address the risk of speculative submissions for revenue determinations by Intending TNSPs. MLPL notes that the proposed clause 6A.1.8(b) would require the Intending TNSP to lodge an Application to commence the revenue determination process under Chapter 6A. If the Application fails to satisfy the AER in relation to various matters set out in clause 6A.1.8(d), the AER is able to reject the Application. Given these proposed provisions, we do not believe that there is any risk of a speculative submission for a revenue determination. As an aside, we note that a revenue determination is a resource intensive process and, as such, it is difficult to see what benefit could be gained by embarking on that process unnecessarily.

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