

# ESTABLISHING REVENUE DETERMINATIONS FOR INTENDING TNSPS

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## Acknowledgement of country



# Agenda

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1.	<b>Acknowledgement of country</b>	Danielle Beinart
2.	<b>Competition protocol</b>	Amanda Seethor
3.	<b>Overview of rule change process and purpose of this workshop</b>	John Mackay
4.	<b>MLPL's rule change request</b>	John Mackay
5.	<b>Our draft determination and more preferable draft rule</b>	Andrew Pirie Viashin Govender
6.	<b>Q &amp; A</b>	Facilitator: Danielle Beinart
7.	<b>Recap and Timeframes</b>	John Mackay

# Competition protocol

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The Commission is committed to complying with all applicable laws, including the *Competition and Consumer Act 2010* (CCA). By attending and participating in this workshop, attendees agree to adhere to the CCA at all times and to comply with this Protocol.

During this workshop, attendees **must not discuss, or reach or give effect to any agreement or understanding**, which relates to:

- **Pricing** for the products and/or services that any attendee supplies or will supply, or the terms on which those products and/or services will be supplied (including discounts, rebates, price methodologies)
- **Targeting (or not targeting) customers** of a particular kind, or in particular areas
- **Tender processes** and whether (or how) they will participate
- Any decision by attendees about the purchase or supply of any products or services that other attendees also buy or sell, to not engage with persons or the terms upon which they will engage with such persons, or to deny any persons access to any products, services or inputs they require
- **Sharing competitively sensitive information** such as non-publicly available pricing or strategic information
- **Breaching confidentiality obligations** that each attendee owes to third parties

# Overview of rule change process and purpose of this workshop

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## Overview of the rule change process

- On 3 March 2022, Marinus Link Pty Ltd (MLPL) submitted a rule change request to the Commission.
- On 5 May 2022 we commenced the rule change process by publishing a consultation paper.
- We received 6 stakeholder submissions in the first round of consultation.
- On 4 August 2022 we published a draft determination and more preferable draft rule.
- Stakeholder submissions on the draft determination and draft rule are due by **15 September 2022**.

## Purpose of this workshop

- Outline key features of the draft rule determination.
- Seek stakeholder feedback and discussion on the draft determination and draft rule.

## MLPL's rule change request

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- MLPL rule change request sought to address the following issues that it claimed were a barrier to enabling MLPL's final investment decision for Project Marinus:
  - To obtain a revenue determination under the current National Electricity Rules (NER), a participant must be registered as a TNSP (not be an Intending TNSP) and already provide prescribed transmission services. MLPL considered that the AER does not have the power to make a revenue determination for an Intending TNSP that is not yet providing prescribed transmission services.'
  - While a TNSP that has completed a RIT-T process for an actionable Integrated System Plan (ISP) project can submit a contingent project application (CPA), the CPA does not apply for Intending TNSPs who do not have a revenue determination.
- To address these issues, MLPL proposed to amend Chapter 6A of the NER to allow the AER to establish a revenue determination for an Intending TNSP.
- Stakeholders generally supported MLPL's rule change request, but raised some issues with the proposed approach.

# OUR MORE PREFERABLE DRAFT RULE



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## Our draft rule aligns with the general intent of MLPL's proposal, but makes more preferable amendments


Our draft rule aligns with the general intent of MLPL's proposal as it clarifies that a revenue determination can be established for an Intending TNSP. Our draft rule is a more preferable rule as it:

- does not broadly apply all of Chapter 6A to Intending TNSPs as proposed by MLPL because the issue being addressed in this rule change request is to establish a revenue determination for an Intending TNSP while Chapter 6A contains provisions dealing with the broader economic framework,
- makes other amendments to Chapter 6A to address **regulatory gaps** in the current framework to clarify how a revenue determination can be established for an Intending TNSP.


# Our draft rule does not impose a 'duty' on the AER to make revenue determinations for Intending TNSPs

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While the current NER provides the AER with the ability to make a revenue determination for an Intending TNSP, it does not impose a 'duty' on the AER to make a revenue determination for an Intending TNSP, as it does for TNSPs.



Our draft rule does not impose a duty on the AER to make revenue determinations for Intending TNSPs as this may impose a high administrative burden on the AER if a large number of Intending TNSPs, potentially including speculative investors, sought a revenue determination.



A duty would require that the AER makes a revenue determination for all Intending TNSPs that seek a revenue determination, without providing the AER with discretion to decide whether or not to commence a revenue determination process.

# The AER currently has the ability to make revenue determinations for Intending TNSPs, however there are regulatory gaps that need to be clarified

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## Stakeholder views

Stakeholders supported clarifying in the NER that the AER has the ability to make revenue determinations for Intending TNSPs.

## Our draft determination

The Commission considers that the current NER enables the AER to make a revenue determination for an Intending TNSP:

- **Chapter 6A of the NER** – while Chapter 6A does not currently refer to Intending TNSPs, it has been drafted to accommodate TNSPs that will be subject to a revenue determination for the first time. For example, Schedule 6A.2 provides for the establishment of an opening regulatory asset base for a transmission system for the first regulatory control period.
- **Under Rule 2.7(d) of the NER** - as a Registered Participant, an Intending Participant may exercise such rights and is bound by such obligations under the NER as are specified by AEMO (on the basis of whether the Intending Participant intends to become a Customer, Generator, Network Service Provider (NSP) or Special Participant) and approved by the AEMC.
- **AEMO's Schedule of Rights & Obligations of Intending Participants – NEM – under NER rule 2.7(d):** This schedule includes that, under Chapters 6 and 6A, the "Rights and obligations applicable to a Network Service Provider in respect of services proposed to be provided by means of the Intending Participant's distribution system or transmission system".

We recognise that there are regulatory gaps in the current regulatory framework in chapter 6A that create uncertainty. Our draft rule addresses these **regulatory gaps** to clarify the process for revenue determinations to be established for Intending TNSPs. In doing so the draft rule also makes abundantly clear that the process applies to Intending TNSPs.

# Our draft rule addresses regulatory gaps to clarify the revenue determination process for Intending TNSPs

## Request to commence a revenue determination process

Chapter 6A does not outline how to commence a revenue determination process for an Intending TNSP. Our draft rule allows an Intending TNSP to request that the AER commence the process of making a revenue determination by submitting a Revenue Proposal. Our draft rule does not specify a timeframe before the start of the regulatory control period that an Intending TNSP needs to submit a Revenue Proposal.

## Assessing whether to commence a revenue determination process

Our draft rule:

- requires that the AER *must* decide whether or not to commence a revenue determination process as soon as practicable
- sets out the matters the AER *may* consider in deciding whether or not to commence a revenue determination process.

## Issues Paper

If the AER decides to commence a revenue determination process for an Intending TNSP, our draft rule requires that the AER must publish an issues paper within 40 business days of making this decision.

## Framework and approach (F&A) paper

Our draft rule provides the AER with discretion regarding whether or not to make and publish a F&A paper for an Intending TNSP. The AER may publish a F&A paper if it considers it necessary or desirable to do so.

## Our draft rule applies specific elements of Chapter 6A for Intending TNSPs that are relevant to establishing a revenue determination

- MLPL proposed to broadly apply all of Chapter 6A to Intending TNSPs.
- Our draft rule does not broadly apply all of Chapter 6A and instead applies the following specific elements of Chapter 6A to an Intending TNSP that are relevant to establishing a revenue determination:
  - **Part C - Regulation of revenue - Prescribed Transmission Services:** this relates to elements such as allowed revenue from prescribed transmission services, revenue determinations, and the Building blocks approach
  - **Part E - Procedure - Revenue determinations and pricing methodologies:** this relates to matters such as the submission of a revenue proposal, the AER's draft decision and consultation, submission of a revised revenue proposal, and the AER's final determination.
  - **Part F - Information disclosure:** this relates to matters such as information to be provided by TNSPs to the AER and the AER's Information guidelines.
  - **All relevant definitions and provisions referred to in Parts C, E and F of Chapter 6A.** This captures, for example, references to Schedule 6A.1 and Schedule 6A.2.

### Questions:

- Is this approach of applying specific Parts of Chapter 6A appropriate?
- Are there any other parts of Chapter 6A that stakeholders consider should apply to Intending TNSPs?

# Our draft rule defines 'Intending TNSP' in the NER

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- Our draft rule defines an 'Intending TNSP' as:  
    "A Registered Participant who intends to provide prescribed transmission services."
- This means that an Intending TNSP includes both:
  - a person registered as an Intending Participant that intends to provide prescribed transmission services, and
  - an existing MSNP that intends to re-classify its network services as prescribed transmission services.
- This definition enables a broader group of relevant participants to be defined as an Intending TNSP than that proposed by the rule change request.
- An Intending TNSP would subsequently be registered as a TNSP, once it has been registered by AEMO as a NSP under clause 2.5.1 of the NER and is providing prescribed transmission services.

## **Question:**

Do stakeholders have any issues or comments related to the definition of Intending TNSP?

# Our draft rule clarifies arrangements for incorporating contingent projects into the first revenue determination for an Intending TNSP – slide 1 of 2

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## **Current arrangements**

- A TNSP may submit a Contingent Project Application (CPA) to the AER during a regulatory control period for the AER to amend the TNSP's revenue determination for that regulatory control period to reflect the expenditure that the AER considers reasonable to undertake a contingent project.
- As contingent projects are identified within a regulatory control period, the CPA framework only applies to TNSPs that have a revenue determination and does not apply to Intending TNSPs that do not have a revenue determination.

## **Our draft rule**

Our draft rule amends aspects of Chapter 6A relating to contingent projects:

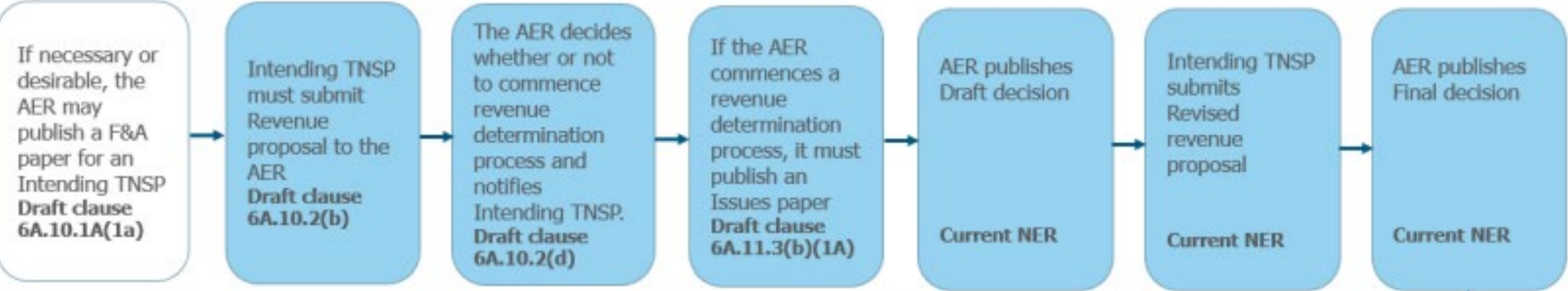
- If the AER decides to commence the process of making a revenue determination for an Intending TNSP then Part C of Chapter 6A applies. As contingent projects are covered under Part C, this allows contingent projects to apply to Intending TNSPs.
- It allows an Intending TNSP to apply to the AER to include a contingent project in its first revenue determination. If the AER determined that a trigger event has occurred, the AER must include the amounts of expenditure determined by the AER.

Our draft rule provides flexibility by allowing the CPA process to occur:

- concurrently with the regulatory and consultation processes associated with the AER making a revenue determination, or
- through a separate process, after the first revenue determination has been established.

# Our draft rule clarifies arrangements for incorporating contingent projects into the first revenue determination for an Intending TNSP – slide 2 of 2

## Revenue determination process



## CPA process



First regulatory control period commences

### Question:

The intent of our draft rule is to clarify that the CPA framework applies to Intending TNSPs that do not have a revenue determination. Are the draft changes to cl. 6A.8.2 suitable? Do stakeholders consider that they adequately reflect this intent?

# Our draft determination clarifies arrangements for establishing the opening RAB for an Intending TNSP

## **MLPL's issues with the current arrangements and proposed changes**

- MLPL considered that it was unclear how the opening RAB is to be established for an Intending TNSP as current schedule 6A.2.1(d)(2) refers to the value of assets 'used' by the TNSP, but only to the extent that they are used to provide prescribed services.
- MLPL considered that a new clarifying clause is required to confirm that expenditure incurred prior to the start of the first regulatory control period should be included in the opening RAB, provided that it was prudent and efficient.

**Stakeholder views** were mixed on MLPL's proposed changes relating to the RAB.

## **Our draft determination**

Our draft determination notes that we consider that current clause 6A.2.1 is clear and it is not necessary to include MLPL's proposed new schedule 6A.2.1(d)(2), for the reasons outlined below:

- current schedule 6A.2.1(d) is clear that the opening RAB is based on the prudent and efficient value of the assets used by the TNSP to provide prescribed transmission services
- in the case where an Intending TNSPs intends to construct an actionable ISP project, the AER would determine the opening RAB and contingent project capex by taking into account:
  - the prudent and efficient value of assets to be used to provide prescribed transmission services
  - the prudent and efficient costs incurred by the Intending TNSP prior to it providing prescribed transmission services
  - the previous cost estimate for the project in the RIT-T, and
  - the AER's Guidance around Contingent Project Applications (CPAs).

An Intending TNSP would not be able to recover any costs from customers until it starts providing prescribed transmission services.

### **Question**

Are there any issues or comments relating to establishing the opening RAB for an Intending TNSP?

# The draft rule contributes to the NEO by providing regulatory certainty and supporting timely and efficient investment in electricity transmission infrastructure

## **Concept of efficiency**

- Provides regulatory certainty by clarifying that revenue determinations can be established for Intending TNSPs, which reduces the risk of delays to investment decisions in major transmission projects.
- It promotes efficient investment in transmission services and the efficient delivery of electricity services.

## **Timing and uncertainty**

- It clarifies regulatory timeframes and arrangements related to the revenue determination process for Intending TNSPs, including providing discretion to the AER in relation to publishing a F & A paper.
- It enables the first revenue determination and a contingent project application to occur concurrently through the same regulatory processes for Intending TNSPs.

## **Risk allocation**

- It allocates risk to parties that are best placed to manage it and balances risks between Intending TNSPs and the AER.

## **Cost and complexity**

- While it places an administrative burden on the AER to assess applications for revenue determinations from Intending TNSPs, it reduces the risk of high administrative costs on the AER from numerous parties applying to the AER for revenue determinations for speculative projects.

# QUESTIONS



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# Recap and timeframes

Milestone	Date
<b>Draft determination paper published</b>	<b>4 August 2022</b>
Stakeholder submissions due	15 September 2022
<b>Final determination to be published</b>	<b>27 October 2022</b>
Proposed commencement date for this rule	3 November 2022