Clean Energy Investor Group

50 Camberwell Road Hawthorn East VIC 3123

18 August 2022

Mr Patrick Loughrey
Project Leader
Australian Energy Market Commission
Lodged on AEMC website

Dear Mr Loughrey,

Response to *draft rule determination on Material change in network infrastructure project costs (ERC0325)*

On 7 July 2022, the Australian Energy Market Commission (AEMC) published a draft rule determination on *Material change in network infrastructure project costs*[1] (Draft Determination) in response to a rule change request from ERM Power, Energy Users Association of Australia, Major Energy Users Inc., AGL and Delta Electricity. The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback on the Draft Determination.

CEIG represents domestic and global renewable energy developers and investors, with more than 11GW of installed renewable energy capacity across more than 70 power stations and a combined portfolio value of around $24 billion. CEIG members' project pipeline is estimated to be more than 18GW. CEIG strongly advocates for an efficient transition to a clean energy system from the perspective of the stakeholders who will provide the low-cost capital needed to achieve it.

KEY POINTS

- CEIG urges the AEMC to keep the focus of transmission reform towards expedited and efficient transmission investment.
- CEIG supports the intention and key features of the AEMC's preferable draft rule.
- CEIG welcomes the AEMC's guidance on what constitutes a material change in circumstances.
- CEIG welcomes increased flexibility for proponents to write triggers and determine the course of action in response to triggers.

[1] AEMC (2022) *Material change in network infrastructure project costs,* Draft rule determination, (7 July)

- CEIG welcomes the AEMC's recommendation that re-opening a Regulatory Investment Test should be a last-resort action.
- CEIG welcomes the direction that the Australian Energy Regulator develops consistent guidelines for cost estimation.
- CEIG welcomes that the rule change would apply to future projects.

Overview

Australia's energy sector is undergoing a major transformation which will require timely transmission investment that will in turn stimulate investment in new clean energy and storage capacity. CEIG encourages the AEMC to prioritise expediting transmission planning and investment, within a framework that delivers rigorous planning and economic regulation.

The AEMC has stated that it will integrate this rule change with the ongoing work of its *Transmission planning and investment review.* CEIG welcomes this coordination as it will help reduce uncertainty and complexity. CEIG views the AEMC's preferable rule as outlined in the Draft Determination as a sensible response to the issues raised in the rule change request, which would improve the economic regulation of transmission investments.

The purpose of the original rule change request was to strengthen regulatory oversight of cost increases in approved transmission projects. The rule change proponents defined the problem as being that '[a]llowing capital costs to significantly increase after the application of the RIT [Regulatory Investment Test] is a poor outcome from a governance perspective and negatively impacts consumer and stakeholder confidence'.[2]

The proponents' rule would change the RIT process by requiring a reapplication of the RIT analysis and consultation processes, if transmission project costs are projected to increase by more than 10% for large projects or 15% for small projects, unless exempted by the Australian Energy Regulator (AER).

Defining an appropriate material change of circumstances

The key issue for this rule change is to determine clear principles for what constitutes a material change in circumstances and the process by which it is assessed.

As AEMO noted in its submission to the AEMC's *Transmission Planning and Investment Review* consultation paper, whether or not a Network Service Provider (NSP) chooses to declare a cost increase as related to a material change, the ultimate decision-making authority still lies with the AER, which has regulatory oversight 'as to whether the RIT

[2] EUAA et.al. (2021) *RE: Material Change in Network Infrastructure Project Costs Rule Change*, (20 January).

reapplication obligation has been met'.[3] If an NSP reports a cost increase that stakeholders believe is material and makes the project no longer preferable and prudent, they are free to communicate this to the AER and it can review whether the NSP has failed to meet its RIT reapplication obligation.

In practice, no NSP has ever reapplied the RIT in response to a material change in circumstances.[4] However they do typically publish an updated cost-benefit analysis when there is a material change. This is done voluntarily, to 'demonstrate the economic viability of projects and continued stakeholder support'.[5]

The purpose of the rule change proposal is to make the AER the sole decision maker with respect to a material change in circumstances. The National Electricity Rules would be amended so that when the NSP reports a cost increase above a set threshold, that would automatically cause the AER to determine if a reapplication of the RIT is required.

The AEMC has described the percentage cost increase threshold in the rule proposal as a 'deterministic' trigger. In the Draft Determination, the AEMC has proposed an alternative design which it terms a 'reopening trigger approach'. In this approach the NSP would design a bespoke trigger regime appropriate to their project. These triggers can include flexible thresholds such as are already used in the AER's Cost Benefit Analysis Guidelines for actionable ISP projects and in several RITs including Humelink and Project EnergyConnect.[6]

One of the key differences between the proponents' rule change proposal and the AEMC's Draft Determination is that there is a simple cost trigger in the deterministic approach but the reopening approach could have multiple triggers to cover changes in different factors, such as load growth, supply chain constraints, social license problems that delay permitting timelines and so on.

This greater diversity of factors points to the other key difference between the approaches which is that the AEMC's reopening triggers would consider both costs and benefits.[7] The deterministic trigger considers only cost in isolation.

The AEMC cites the current global supply chain crisis which provides a very good example of a situation where the deterministic trigger may not be as practical as the reopening trigger. Global supply chain factors are increasing costs across the economy. These are not specific to any transmission project. If all options face similar input cost increases, that does not change the relative merit of competing options or the ultimate cost benefit. The reopening triggers would be proposed by NSPs and consulted on within the original RIT process. Stakeholders would have the opportunity to help co-design the triggers for each project.

[3] AEMC, p.14
[4] AEMC, p.12
[5] AEMC, p.14
[6] AEMC, p.17
[7] AEMC, p.16

CEIG supports the more nuanced and targeted reopening triggers model outlined in the Draft Determination. This would reduce unnecessary re-prosecution of cost assessments but equally importantly, it would allow NSPs to adapt a project appropriately to changing circumstances.

Outcomes of a material change in circumstances

The next key issue is to determine what happens when an NSP declares that a material change in circumstances has occurred, as defined under the reopening triggers approved by the AER in the original RIT.

The rule change proponents intended that a new RIT would be required if a cost increase reached the predetermined threshold. The AER would have discretion to determine how much of the RIT process should be repeated. CEIG agrees with the AEMC that the automatic trigger of a RIT is onerous and would lead to unnecessary delays and costs.

CEIG supports the model in the Draft Determination that the triggers written by the NSP will include specific courses of action. These should be open enough to allow flexibility in the face of unforeseen circumstances. Stakeholders and the AER would have the opportunity to have input into these during the original RIT consultation process.

Cost estimation: consistency across transmission approvals

A secondary issue in the rule change request related to the cost estimation methodology used by proponents in the RIT process. The AEMC proposes there should be 'good, consistent standard of cost estimate accuracy' across the actionable ISP process as well as the RIT.[8]

The AEMC proposes that the AER should provide guidance about the cost estimation methodology that should be used for RIT and ISP processes. The AER would be able to specify binding and non-binding parts of the cost estimation methodology.

CEIG welcomes the idea of a consistent cost estimation that would apply across these transmission assessment processes. Any increase in consistency across the planning and regulation of transmission infrastructure will reduce uncertainty and make it easier for investors to compare changes in cost estimation at different stages of the process and across different projects.

Not retrospective: improves investor confidence

The AEMC intends for the rule to commence 12 months after publication of the final rule and that the reopening triggers part of the rule would not apply retrospectively to projects for which the Project Assessment Draft Report or Draft Project Assessment Report have been published.

[8] AEMC, p.31

CEIG welcomes this decision to only apply the trigger to future projects. It is important to progress the delivery of transmission investments that are already approved and not increase uncertainty for investors.

CEIG thanks the AEMC for the opportunity to provide feedback on the draft rule change and looks forward to continued engagement on those issues. Our Policy Director Ms. Marilyne Crestias can be contacted at marilyne.crestias@ceig.org.au if you would like to further discuss any elements of this submission.

Yours sincerely,

Simon Corbell
Chief Executive Officer and Chairperson
Clean Energy Investor Group Ltd
w: www.ceig.org.au