AEMC ERC0325 Draft Rule Determination National Electricity Amendment (Material Change in Network Infrastructure Project Costs)

Introduction and Summary

This is a joint submission from the proponents of the rule change – Energy Users Association of Australia, ERM Power (now Shell Energy), AGL and Delta Electricity – on the Draft Determination ('the Draft') published on 7th July 2022.

We made our initial rule change proposal in January 2021, concerned about the significant increase in the capex for Project Energy Connect. We saw a request for project funding that lacked effective stakeholder consultation and that required consumers to accept a high level of capex risk. We believed that the NEO required much more transparency around the risks of increased capex costs as a project went through the RIT process and which required improved governance so that it was the AER and not the proponent that assessed whether there was a material change in circumstances.

We believed that the proposed improvements in transparency and governance from our rule change would lead to a better risk allocation between proponent and consumers that would further the NEO.

Experience in a wide range of network and non-network projects since then has provided significant further support for there being material capex risks for large network projects. In August 2022 there were reports of a significant blowout in cost overruns and timetable slippage for Snowy 2.0. We also observed Humelink capex for the preferred option 3C increasing from $1.35b in the PADR (January 2020)[1] to $3.32b on the PACR (July 2022)[2] – a 146% increase.

Since our rule change was submitted, we have also seen the emergence of community social licence and supply side constraints as significant drivers of large increases in capex and project timetable. Transgrid's application to the AER for early works expenditure for Humelink assumed 30% of the route would be acquired by compulsory acquisition[3]. The PADR for VNI West published in July 2022 added a further $300m contingency to the capex estimate published in June 2022 in the Final ISP to cover[4]:

> "…a change in the level of line cost contingency provisioned in the Victorian component of the project to account for remediation of social and environmental concerns"

[1] See p. 3 https://www.transgrid.com.au/media/xrzd0jv4/transgrid-hume-link-padr-amended.pdf
[2] See p. 29 https://www.transgrid.com.au/media/rxancvmx/transgrid-humelink-pacr.pdf
[3] See p. 2 https://www.aer.gov.au/system/files/EUAA%20HumeLink%20Stage%201%20CPA%20General%20Questions.pdf
[4] See p. 72 https://www.transgrid.com.au/media/p1vdgjuu/vni-west-project-assessment-draft-report-1.pdf

Throughout consideration of our rule change we have sought to emphasise that we support the timely construction of the transmission network required to facilitate the NEM transition with consumers bearing the efficient costs determined by a rigorous analysis of costs and benefits. The Draft seems to have the same objective. It comes to its view of the balance based with a qualitative judgement that we interpret as timeliness as more important than rigour.

The fundamental proposition in this submission is that an appropriate level of rigour is possible without sacrificing timeliness, particularly in the context of our view that it is community social licence that is driving timeliness, not the rigour of the RIT process.

We see the result of a lack of rigour as a major risk to the efficient transition of the NEM. Consumers are seeing more and more risk being placed on them on the basis of other parties' assessment of what is in consumers' interests. Yet consumers are the least able to control or mitigate that risk. Continued inequitable allocation of costs and bill spikes will lead to evaporation of 'consumer social licence' for the transition.

Our focus in this submission is the RiT-T process, as the impact of the Draft on RiT-D projects is likely to be minor.

We welcome the following conclusions in the Draft:

- the positive obligation on all RiT proponents to consider whether there has been a material change in circumstances
- the proposed application of reopening triggers to projects above $100m to help identify circumstances on which the preferred option may no longer be the most net beneficial option
- the requirement on proponents to inform the AER if they consider there has been a material change in circumstances and propose a course of action that is reviewed, and can be rejected, by the AER
- the proponent to state in their CPA whether or not there has been a material change with supporting evidence, and
- amending the guidelines to require sensitivity analysis and illustrate boundary values, provide clarity on cost estimate and contingency classification systems and accuracy levels and consider whether they should be binding on RIT proponents.

However, we submit that the preferable rule change still falls short of what it should achieve for 'consumer social licence':

- the transitional provisions which mean the rule does not apply to a project that has completed its PADR, mean that it is very unlikely it will apply to any major projects for the next decade
- the decision is based on a Commission judgement that timeliness dominates rigour when we would submit that we can have the appropriate level of rigour and governance without sacrificing timeliness
- the current situation of an information asymmetry in favour of the proponent due to the proponent being the decision maker as to whether a material cost change has occurred, is effectively retained contrary to what we regard as good governance principles

and we propose a number of improvements to the Draft that increase rigour without sacrificing timeliness:

- setting the reopening triggers at the PACR or early works stage to expand the application to projects that will be applying for AER approval prior to 2030

- a positive obligation to report on why there is no material change in circumstances supported by a detailed analysis to support this conclusion which would include a statutory declaration similar to that networks give to the AER as part of their 5 yearly revenue proposal
- improved governance around the selection and operation of the reopening triggers including engagement to reset the PADR triggers post PACR
- to the extent that the current dispute procedures do not allow stakeholders to raise a dispute on the proponent's reporting of no material change, then the dispute provisions to be expanded to allow this within 30 days of publication of both the PACR and CPA application and the AER having 30 days to make a decision
- that the changes in the RIT and CBA guidelines are carried through into the Guidance Note Regulation of actionable ISP projects to ensure these improvements apply at the CPA stage as well
- further suggestions on the coverage of the AER guideline review which should be possible to complete in 9 months rather than 12 months

Our views in this submission draw on our extensive 'lived experience' across many network engagement forums over many years. The Draft assumes a standard of proponent stakeholder engagement that our experience tells us is quite different to what actually happens in practice.

We wish to thank Commission staff for their continued productive engagement over the last 12 months as we have discussed the rule change.

We retain the MEU banner at the top of our submission in honour of our late colleague David Headberry.

The Draft's evidence that it contributes to the NEO is not strong

The Commission believes that the more preferable Draft Rule (p.iii):

> "…is likely to better contribute to the achievement of the National Electricity Objective (NEO), particularly with respect to the efficient investment in electricity services for the long-term interests of consumers of electricity."

It then goes on to explain this is terms of three criteria. Here is our assessment of the Draft against those three criteria:

(i) Promotes economic efficiency

- Draft – it provides the guidance on what is a 'material change in circumstances', to inform proponent decision making; reopening triggers will provide greater certainty as to what circumstances will enable greater transparency to help address stakeholder concerns; AER CPA Guideline will help in the development of the triggers
- Response – any improvement in economic efficiency will be post 2032 at the earliest because of the proposed transitional provisions

(ii) Promotes efficient outcomes for consumers by balancing the timely and economic delivery of network projects through ensuring that reapplication of the RIT is a last resort.

- Draft – proponents having to propose a course of action for the AER to evaluate if they decide there is material change in circumstances is preferable to full reapplication of the RIT (which is

currently the default course of action under the current MCC provisions); the AER will be able to test this proposed course of action to promote the efficient delivery of network projects.

- Response – our original rule change proposed that good governance required the AER to decide if re-application of the RIT was required and it was able to decide that re-application as indeed a 'last resort'; as such the purpose of the rule change was to provide an incentive to the proponent such that the chances of the AER having to make a decision were very low; we saw the best success factor for the rule change was for there never to be any reapplication; but the assumption in the criterion and the Draft's explanation is that the only course of action is re-application; this misrepresents the rule change proposal and also seems to ignore the ability of the Commission as the rule maker to clarify, and if required, change the default position under the rules.

(iii) Minimises practical implementation and compliance costs

- Draft – reflects existing situation where RIT proponents conduct sensitivity testing for key assumptions; and proposed AER role is similar to its current role so no additional administrative burden on the AER
- Response – the Draft certainly meets this criterion; however it is difficult to support the view that a key criterion should be minimising the additional cost burden on proponents, which are the financial beneficiaries of this process, and the AER; the rule change sought to reduce consumers risks in projects that are experiencing cost increases of hundreds of millions of dollars that consumers will pay for over the next 60 years; by comparison it is surprising that the Commission is substantially concerned about a small increase in the administrative costs for proponents and the AER; best practice engagement following the AER's consumer engagement guidelines set out in the Better Resets Handbook[5] is seen by networks as high value for money and not an unnecessary compliance cost.

The dominance of timeliness over rigour led to the transitional provisions

In correspondence with the Commission subsequent to publication of the Draft, staff have characterised the Draft as a judgement call by the Commission on the trade-off between rigour and timeliness. We see the dominance of timeliness over rigour in the proposed transitional arrangements (p. iv):

> "The Commission considers that the rule should commence operation 12 months after publication of the final rule, and that the AER be required to update and publish the RIT application guidelines and CBA guidelines prior to the commencement date, under transitional arrangements. The new requirements of the draft rule relating to reopening triggers would not apply to projects for which a Project Assessment Draft Report (PADR) or Draft Project Assessment Report (DPAR) had already been published by the commencement date."

'Timeliness' seems to mean achieving the 2022 ISP forecast timetable. The just published ESOO refers to the emergence of project commissioning delay risks[6]. When we asked the Commission what quantitative analysis they had undertaken to inform the judgement decision, their response was that some is being prepared but it will not be completed in time to have an influence on the rule change.

[5] https://www.aer.gov.au/networks-pipelines/better-resets-handbook

[6] See p.6 https://aemo.com.au/-/media/files/electricity/nem/planning_and_forecasting/nem_esoo/2022/2022-electricity-statement-of-opportunities.pdf?la=en

Given this clear preference for timeliness in the Draft, it is difficult to understand what the Commission means by this reference to Stage 3 of the wider Transmission review (p.iv):

> "Stage 3 of the Review is examining, amongst other things, whether there is the potential to improve the balance of timeliness and rigour in the economic assessment process including an examination of issues related to the assessment of costs and benefits of major investments. Accordingly, the RIT- T and CPA process and associated guidelines will be examined further under the Review. When considering possible alternatives to the economic assessment process, the Review will be cognisant of the changes proposed in this draft determination."

If the precedent in this Draft is retained in the final determination, then it is unclear how Stage 3 could change that timeliness and rigour balance. Perhaps the results of the quantitative analysis will then be available.

The transitional provisions mean that the rule change will have little, if any, impact before 2032

Our focus here is on projects with an estimated cost of greater than $100m – both contingent and ISP. We agree with the proposed differential application to projects below (no reopening triggers) and above $100m (reopening triggers). There are two categories – ISP projects and other major contingent and non-contingent projects

ISP Projects

The transitional provisions mean that none of the 'actionable' projects in the 2022 ISP will be covered because they have all completed their PADR. So in terms of ISP projects, only 'future' projects will be covered. The table summarises the timetable for these projects under the Step Change scenario in the 2022 ISP[7].

	Actionable Projects $m	**Step change scenario timing**			
		$m Before 2030	$m 2030-2035	$m 2035-2045	$m After 2045
Humelink	3,315				
VNI West	2,942				
Marinus	2,782				
Central to south Qld		55		476	
Darling Downs REZ		43		580	580
South east SA REZ		57			949
Gladstone reinforcement			408		
QNI major			1,253		
Power to central Qld			137	816	
Mid north SA REZ				340	582
SW Victoria REZ			930		
New England REZ				1,237	
Far north Qld REZ				1,264	
Total estimated capex $m	**9,039**	**155**	**2,728**	**4,713**	**2,111**

[7] Data from https://aemo.com.au/-/media/files/major-publications/isp/2022/2022-documents/a5-network-investments.pdf?la=en

Given the recent trend of State Governments derogating away from the national rules, there is a high chance that the only future ISP project that could be covered by the new rules is 'QNI major' and only the Queensland portion. That project is not due to be commissioned until 2032-33.

Major contingent and non-contingent projects

We are not aware of any projects that might be covered. Transgrid's 2023-28 revenue proposal had four major projects >$100m - Supply to the North West Slopes project (indicative cost $168.4m) Stage 1 of Supply to Bathurst, Orange and Parkes (indicative cost: $117.4m), Managing risk on Transmission Line 86 (Tamworth – Armidale - indicative cost: $331.1m and Improving stability in south-western NSW (indicative cost $127.1m). All four will be excluded because they have published their PADR[8].

Table 17-2: Key milestones in the RIT-T process

Proposed contingent project	PSCR Published	PADR Published / Expected	PACR Expected
Managing risk on Line 86 (Tamworth – Armidale)	December 2021	May 2022	July 2022
Improving stability in south-western NSW	July 2020	September 2021	March 2022
Supply to North West Slopes	April 2021	February 2022	June 2022
Supply to Bathurst, Orange and Parkes Stage 1	March 2021	February 2022	June 2022

We consider there can be a lot more rigour through expansion in coverage of the preferred rule and still achieve the 2022 ISP timetable

Setting triggers at the PACR stage for projects that have already completed their PADR

It seems that the transitional provisions decision to exclude projects that have completed their PADR was driven by the current rules with the PADR being the last stage where there is consumer engagement. Hence consultation on the reopening triggers would need to occur then. We understand and agree that it would not be in consumers' interests for an ISP project that has competed its PACR to then go back and redo the PADR simply to enable engagement on the triggers.

Given that the Commission makes the rules, we suggest that it should not be bound by the existing rules on when consultation can take place in the RIT process. We would submit that it is much better to have the consultation on the reopening triggers at the PACR and pre-CPA stages. We would suggest that this is much more useful in ensuring the transparency the Draft is seeking on cost accuracy and material change.

Consider the hypothetical case where the Draft was in operation for Humelink. The PADR capex for Option 3C was $1.35b and a reopening trigger might have been if capex increased by 20% or more ie ~$270m. The PACR capex was $3.32b and the preferred project remained as Option 3C but $270m is only 8% of the PACR cost whereas 20% of the PACR cost is $664m. So either the trigger at the PACR stage has to be in $ terms ($270m increase in capex over the PADR capex in this example) rather than percentage terms or it is better to set the triggers at the PACR stage and they apply form then on including the CPA stage. Triggers at the PADR stage will be significantly less relevant at the PACR or certainly at the CPA stage given the significant capex cost increases we are seeing at each successive stage.

[8] See p. 164 https://www.aer.gov.au/system/files/Transgrid%20-%202023-28%20Revenue%20Proposal%20-%2031%20Jan%202022%20-%20PUBLIC%20-%20NEW.pdf

We propose setting the triggers to give a much greater sense of transparency and robust analysis with no loss of timeliness:

- for projects that have yet to complete their PACR – as part of the PACR engagement rather than PADR stage
- for projects that have completed their PACR and are undertaking early works, as part of the early works scope

The Draft seems to agree (p.23):

> "The Commission considers that the CPA process can be leveraged with. The RIT proponent being required to state in its CPA that no reopening triggers had been triggered and to provide supporting analysis, which would be consulted on as part of the CPA consultation process. This would act as a check on RIT proponents, encouraging them to ensure that a material change in circumstances has occurred (such as whether a reopening trigger has been triggered) are defensible. This approach avoids creating an additional consultation process, which would add time and cost to the project delivery process."

This will not compromise timeliness

We would submit that triggers being set at the PACR or early works stage would not compromise timeliness because:

- the dominance of social licence in driving the timetable, not any requirement for more robust analysis from more accurate cost estimates[9]
- engagement on triggers for projects undertaking early works can be done in parallel with other parts of the early works

On the former, the Commission acknowledges that it is a key factor[10]:

> "The Commission recognises that building social licence is a significant issue and that obtaining community acceptance of major transmission projects is critical for their timely and efficient delivery. The Commission agrees with stakeholder submissions to the consultation paper that social licence considerations should be a priority area for this Review."

On the latter consider the following two examples where we think increased rigour, including the ability of stakeholders to dispute a proponent's decision to the AER, would not have adversely impacted on timeliness.

(i) Victorian Western Renewables Link

[9] We note that Project Energy Connect timetable has moved out 12 months from the last timetable forecast. See p. 47 https://aemo.com.au/-/media/files/electricity/nem/planning_and_forecasting/nem_esoo/2022/2022-electricity-statement-of-opportunities.pdf?la=en&hash=AED781BE4F1C692F59B1B9CB4EB30C4C

[10] See p. iii AEMC Transmission Planning and Investment Draft Report Stage 2 https://www.aemc.gov.au/sites/default/files/2022-07/Transmission%20planning%20and%20investment%20review%20-%20Stage%202%20draft%20report.pdf

This project completed its PACR in July 2019[11]. The 2020 ISP described the project as a 'committed' project with[12]:

> "The short-term augmentation is expected to be complete by 2021, and the medium-term augmentation, which is currently on track, is to be commissioned by 2025."

The 2022 ISP said:

> "This project is classified as an anticipated project, and is expected to be completed in mid-2026."

The project's website has a sort of timeline but does not have any dates[13]. It appears to have no public position on when it expects the State and Commonwealth approvals and stakeholder engagement to be completed to allow construction to start:

It does say that:

> "This is a complex project which will be developed over several years with ongoing engagement with landholders, communities, industry and government during that time"

The revised costs for this project are yet to be published but we would expect a considerable increase from the 2019 PACR estimate of $370m. There has been and appears will be plenty of time to develop reopening triggers and then apply them to the project.

(ii) Humelink

Transgrid expects Humelink early works will not be completed until mid-2024 which gives plenty of time for consultation on reopening triggers to be done as part of the early works scope.

It is not unreasonable to suggest that completion of Humelink's early works may be delayed by social licence concerns. As we noted above, Transgrid's early works application to the AER assumed that 30% of the route would be acquired through compulsory acquisition – a very significant part of the route that may lead to extended legal disputes. Our discussions with landowners as part of preparing our submission on Transgrid's early works application suggests strong and widespread opposition to the Transgrid proposed route. The Humelink Community Consultation Group's response[14] to the recently published report[15] Transgrid commissioned on the cost of undergrounding

[11] https://aemo.com.au/en/initiatives/major-programs/western-victorian-regulatory-investment-test-for-transmission/reports-and-project-updates
[12] See p. 19 https://aemo.com.au/-/media/files/major-publications/isp/2020/appendix--3.pdf?la=en
[13] https://www.westernrenewableslink.com.au/planning-and-approvals/
[14] See https://www.transgrid.com.au/media/mwafmnbb/ccgsc-position-on-humelink-undergrounding-study_20220824.pdf
[15] See https://www.transgrid.com.au/projects-innovation/humelink#Project-update

is illustrative of that opposition. This response pointed to their view of a large number of outstanding concerns that were not addressed in the report.

The proposed changes – selection of reopening triggers and a positive obligation on the proponent to advise the AER of a material change and suggest a course of action that is reviewed by the AER - are, in our view, unlikely to make much difference in practice

Under the current rules it is the proponent who determines whether a material change has occurred.

However, it is not surprising that this has never happened. Proponents have no incentive to do so given the potential requirement to reconsider and publish a revised PACR. As the Commission noted in the Transmission Planning and Investment Review Consultation Paper in August 2021[16]:

> "The Commission is not aware of any instance in which a proponent has reapplied the RIT in response to a material change in circumstances, nor any determination by the AER to waive the requirement to reapply the RIT. That this provision has not been used raises a threshold question as to whether the current approach is suitable.
>
> Under the current provisions, the requirement to reapply the RIT is only triggered if the project proponent forms the view that circumstances have changed to the point where the preferred option is no longer the preferred option. It is reasonable to assume that a proponent would be reluctant to form this opinion and trigger the reapplication requirement because doing so may involve repeating a lengthy and resource-intensive process. This has important implications for the robustness of this part of the regulatory framework."
> …
>
> "While the proponent will be most familiar with the project's costs and benefits and thus may be best placed to identify if the ranking of the preferred option has changed, it may naturally be reluctant to reapply the RIT or even be seen to have a conflict of interest. By contrast, the AER is impartial and focussed on consumer protection. As such, it may be considered the more objective judge of whether reapplication of the RIT, in some form, is warranted."

We can understand why the Draft would argue that, with various triggers in place:

- Placing an obligation on the proponent to notify the AER of a material change (driven by the triggers) and propose a course of action, and
- Enabling the AER having the opportunity to review that course of action, including requesting further information, and include the ability to direct the proponent to follow an alternative course of action

would be seen as an improvement on the current situation where there are no triggers or positive obligation.

We would submit that this change, from a good governance perspective, would have no practical impact on providing additional incentives to determine and report a material change. This is because the proponent:

[16] See pp. 50-1 https://www.aemc.gov.au/sites/default/files/documents/consultation_paper_-_transmission_planning_and_investment_review_1.pdf

- effectively controls the selection and application of the triggers eg while the proponent will engage with stakeholders, it is the proponents call without any dispute rights for stakeholders
- controls the CBA model and the methodology on what costs and benefits are included and how they are calculated, and
- controls what level of engagement it does with consumers on the CBA methodology.

So while the Commission may be correct in saying that it (p.22):

> "…agrees with stakeholder submissions that the RIT proponent is best placed to determine whether a RIT should be reapplied. The proponent will have the most up-to-date and accurate information on costs, benefits and customer expectations."

the only visibility on what stakeholders have on the CBA 'black box' is what the proponent chooses to disclose. Neither stakeholders, or the AER, have the ability to effectively dispute the proponent's choices regarding inputs or methodology.

The Draft seems to be based on an idealised view of efficient and effective stakeholder engagement rather than what actually happens for these projects. In response to a request from the Commission for an example of why triggers should not apply to projects that have already published their PADR we offer the following case study.

The EUAA's 'lived experience' as a member of both the Transgrid Advisory Council and its sub-committee – the Energy Transition Working Group specifically set up to discuss projects like Humelink - is quite different to the ideal. David Headberry's experience as a member of the corresponding Electranet committee looking at Project Energy Connect was similar to our Transgrid experience. This 'lived experience was recognised by the AER in its decision to approve $321m early works expenditure[17]:

> "Based on our consideration of the issues raised in submissions, it is our expectation that Transgrid will more consistently, transparently and meaningfully engage with its stakeholders and the wider community for the remainder of the HumeLink project. This is important to ensure stakeholder concerns are considered, and to communicate relevant project information to stakeholders as more information is revealed."

If it is assumed that triggers had been developed as part of the PADR (published in January 2020) when the estimated capex for the preferred option was $1.35b the it is reasonable to expect that one of the triggers would be around capex. It is worth noting that Transgrid did not include competition benefits in the PADR[18]:

> "However, in light of the core NPV results, we do not now expect that any competition benefits would be material in terms of identifying the preferred option for this RIT-T. This is on account of the PADR modelling finding that the largest capacity options are preferred, which can be expected to have the greatest impact on any competition benefits, and previous RIT-T findings that competition benefits do not add significantly to gross market benefits."

[17] See p. vi https://www.aer.gov.au/system/files/AER%20-%20Determination%20-%20HumeLink%20-%20August%202022.pdf
[18] See p.18 https://www.transgrid.com.au/media/xrzd0jv4/transgrid-hume-link-padr-amended.pdf

The PACR, published in July 2022, had an estimated capex of $3.32b for the preferred option which it is reasonable to expect may have 'triggered' the capex trigger set as part of the PADR. Then as part of the PACR, without consultation with stakeholders, the proponent assessed competition benefits after all. The significant increase in capex from PADR to PACR meant that the preferred Option 3C just exceeded the net market benefits line when competition benefits were excluded.

Without competition benefits the preferred Option 3C would have only had net benefits of $39m in a project cost of $3.32b which itself was an AACE Class 4 estimate that could increase by 50%[19]. A 1% increase capex wipes out the net benefits excluding competition benefits. A 15% increase in capex wipes our net benefits including competition benefits. As we noted above, capex increased 146% from PADR to PACR.

PV, $millions	Option 1C- new	Option 2C	Option 3C
Total net benefits, with competition benefits	335	399	491
Total net benefits, without competition benefits	(11)	(44)	**39**
Gross benefits	1,778	2,174	2,196
Competition benefits	346	443	451

On these numbers Transgrid could decide that there is no material change and under the Draft, Transgrid would not be required to say anything to the AER on material change. Yet the inclusion of competition benefits was not discussed with the TAC or ETWG. It is unclear to us how the proposed re-opening triggers would have even worked under this example and what triggers will apply and on what cost threshold when the application for final project funding approval is lodged.

While Transgrid was working with its advisor, EY, to develop the methodology for calculating competition benefits, AEMO was undertaking consultation on its 2022 ISP Methodology. This included consideration of whether competition benefits should be included in the analysis. Transgrid made no submissions on the issue over the 8 months consultation period leading up to the publication of the final methodology paper in August 2021. In this final paper AEMO said:

- **Competition benefits:**
  - Competition benefits refer to the increased economic efficiency that may occur from improved competitive behaviours in the market as a result of investments.
  - Quantification of competition benefits is a challenging task even when considering a single investment. Including competition benefits throughout the consideration of alternative DPs on a whole-of-system plan would not be possible, nor would the benefits be expected to be material relative to project costs.
  - AEMO does not by default include competition benefits in the CBA analysis, but they could be included by TNSPs as part of subsequent RIT-T analysis on any actionable projects.

Following publication of the Humelink PACR, AEMO had a hurried consultation on whether competition benefits should be included in the ISP. All submissions, with the exception of Snowy Hydro, either expressed strong reservations about the proposed methodology or opposed their inclusion. AEMO, based on the difficulty in calculating competition benefits with any reasonable level of accuracy, decided not to include these benefits.

[19] See p.3 https://www.aer.gov.au/system/files/EUAA%20HumeLink%20Stage%201%20CPA%20General%20Questions.pdf

Yet Transgrid is able to develop its own methodology, not consult on it and use it to decide whether it has any obligation to inform the AER of a material change. As the AER noted in its decision on Humelink early works[20]:

> "We acknowledge that it would have been good practice for Transgrid to consult on competition benefits given these benefits were not included in the PADR, notwithstanding no disputes were raised on this matter. Though, we also acknowledge submissions that some stakeholders may not have been aware of the dispute resolution aspects of the process in the NER. While RIT-T proponents are not obligated to outline the dispute resolution process in the PACR, we consider it would be good regulatory practice for RIT-T proponents to notify stakeholders of the dispute resolution process in the PACR"

We do not consider the dispute resolution clause in the NER is not a suitable method of forcing a proponent to do proper stakeholder engagement in major transmission projects when it should be doing that in the normal course of best practice stakeholder engagement.

In summary, while the Draft's proposed provisions may seem to provide additional obligations on the proponent, in practice they can be easily circumvented as the proponent retains the call on whether a material change has occurred because of a lack of governance. In that case it is irrelevant what powers the AER might have because our judgement is that, like in the past, they will never be called on to use them.

There are options to strengthen these provisions without sacrificing timeliness

Here are some additional measures we believe would produce increased rigour while still retaining timeliness.

- Stakeholders have the ability to raise a dispute with the AER on key decisions by the project proponents eg the triggers chosen and the proponent's decision that a reopening trigger does not apply; currently a dispute can only be logged at the PACR stage so stakeholders can't dispute decisions regarding re-opening triggers at the PADR stage or the determination of no material change at the project funding stage.
- a positive obligation to report to the AER on why there is no material change in circumstances at the PACR and CPA stages supported by a detailed analysis to support this conclusion
- this detailed analysis is accompanied by the same type of statutory declaration that TNSPs provide in every 5-year revenue reset relating to the provision of historical and forecast information[21];
    - this declaration is a key measure to address the information asymmetry between the TNSP and the AER as the AER assesses a huge amount of information presented in the revenue determination; it would also be a key measure in consumers getting confidence that a material change in circumstances has not occurred
    - we do not see it as an additional regulatory burden; it is a process TNSPs are very familiar with; given they have completed the analysis required to assess whether a

[20] See p.8 https://www.aer.gov.au/system/files/AER%20-%20Determination%20-%20HumeLink%20-%20August%202022.pdf
[21] The statutory declaration provided by Transgrid for its 2023-28 revenue proposal is here - https://www.aer.gov.au/system/files/Transgrid%20-%202023-28%20Revenue%20Proposal%20Statutory%20Declaration%20-%2031%20Jan%202022%20-%20PUBLIC%20-%20redacted.pdf

material change in circumstances has occurred, it is a simple and quick step to warrant their conclusion

- the AER be required to publish the proponent's notification (whether there is or is not a material change and supporting documentation), the AER's decision, information on the proponent's proposed compliance with the AER's decision and the AER's view of this compliance
- requirement for the AER to consult on its decision following a proponent's notification and be able to request additional information from the proponent
- to the extent that the current dispute procedures do not allow stakeholders to raise a dispute on the proponent's reporting of no material change, then the dispute provisions to be expanded to allow this within 30 days of publication of both the PACR and CPA application and the AER having 30 days to make a decision.

We support the application of these material cost change provisions to AEMO's role in Victoria

We support ENA's proposal at the 25th August forum for these MCC provisions to apply to AEMO, notwithstanding there is no CPA process in Victoria.

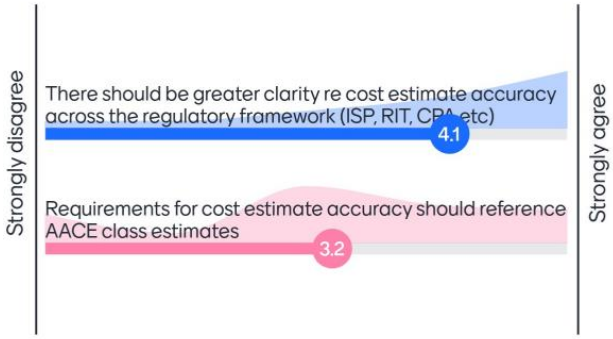
We support the AER Guidelines being strengthened to require more robust cost estimates

In our original rule change we proposed AACR Class 2 level of accuracy for the CPA stage. The Draft notes that:

> "Most submissions on this topic did not support the proponents' proposal to require class 2 AACE cost estimates for the RIT."

We would suggest that using 'numbers of submissions' as a guide to stakeholder views has limited usefulness. There were 28 submissions – 15 were from networks or developers of generation or storage that would connect to that network but would not pay any contribution to its cost. There were five submissions (including the proponents) which represented stakeholders who actually pay for the network. Four of those that expressed a view on the matter, supported the proponents' position. Two other submissions either supported great cost accuracy (EA) or explicitly supported using Class 2 (Origin).

The menti poll results in the February roundtable[22] showed majority support for requiring AACE cost classes with a range of views on what class at what stage – but these results are not mentioned in the Draft.



[22] https://www.aemc.gov.au/sites/default/files/2022-06/cost_estimate_accuracy_roundtable_menti_results_feb_2022.pdf

Our proposition is that our proposal should be assessed on its ability to further the NEO, not a vote by number of submissions or a menti poll[23].

The Draft also notes (p.30) that in our submission on the consultation paper[24] we suggested that the rules should not require a specific cost estimate. Looked at in isolation, this representation may give a misleading view of our submission. Our overall objective, consistently expressed through the rule change process, has been to provide an incentive for more accurate cost estimation, particularly at the PACR/CPA stages. Our original rule expressed the view that this could be achieved by specifying an AACE Class at the PACR stage and then having rules around the cost increase post PACR that would require the AER to decide what additional work the proponent would need to undertake if that cost increase exceeded a specific threshold.

Our submission on the consultation paper suggested an alternative approach to achieve the same objective. Our suggestion that the rules not require a specific class of cost estimate were conditional on the proponent needing to notify the AER whenever the capex increased ≥10% of the PACR cost estimate. As we argued (p.2):

> "We are simply seeking to ensure that the capex used in the PACR cost benefit analysis is within 10% of the capex used for the feedback loop and project funding approval application."

We suggested two ways of achieving the same outcome to provide the Commission with options. The primary consideration was that proponents used realistic and appropriate costs in their CBA, by whatever manner the proponents deemed appropriate, to justify approval of regulated network investment by requiring the CBA to be re-opened where the cost increase exceeded a defined threshold. We considered this as the simplest option to improve the governance framework.

We think that the RIT and CBA guidelines that (Draft p.31):

> "…do not specify what level of accuracy cost estimates should have, do not require the development of cost estimates for key cost inputs and that allowances should be included for contingencies, and do not *require* sensitivity analysis."

prevent the achievement of a 'good, consistent standard of cost estimation accuracy' (p.32). So we welcome the Draft's proposal to clarify the rules and ask the AER to amend the guidelines to provide that clarity. It is currently very unclear what level of accuracy the AER expects in CPA2 for Humelink. No indication is given of the expected level of reduction in cost uncertainty, nor the level of cost accuracy expected in the cost used in the feedback loop or CPA2. What it did say in its decision approving the $321m for early works the AER was[25]:

> "The HumeLink Stage 1 (Early Works) will likely reduce cost uncertainty and reduce project risks, which will benefit the subsequent CPA for the construction of the project. If Transgrid undertakes its activities as set out in its proposal, it should also enable AEMO to consider the accurate costs of the full project when it undertakes its next ISP feedback loop…

[23] We did have some concerns about the use of the menti poll. The affiliation question resulted in 43% of respondents saying they were in the 'other' category ie not networks, consumers or consultants. The published results did not assign answers to questions to the initial affiliation response.

[24] https://www.aemc.gov.au/sites/default/files/documents/erc0325_sub_from_euaa_meu_agl_delta_shell_300921.docx.pdf

[25] See pp vi-vii https://www.aer.gov.au/system/files/AER%20-%20Determination%20-%20HumeLink%20-%20August%202022.pdf

> Our expectation is that Transgrid's activities in Stage 1 (Early Works) will result in robust estimates for construction costs in subsequent stages. This will ensure that AEMO has all necessary information when undertaking the ISP feedback loop, and the next CPA includes an accurate forecast for the costs reasonably required to construct the project."

EMCa's report to the AER supporting Transgrid's allocation was confusing on the level of accuracy expected at the end of early works[26]:

> "We expect that for an infrastructure project of this scale, a cost estimate approaching Class 2 following early works (and therefore at FID) would be a reasonable expectation for consumers. In some areas, such as for final compensation for land or environmental offset costs, there may be aspects of the cost that cannot be accurately determined until closer to the time. In broad terms, this means that at FID, the cost estimate should improve to a range approximating +/- 10%."

AACE Class 2 has a range of -5% to +20%, not =/-10%.

The problem for stakeholders wanting to make a submission to the AER on the CAP2 is that they have no benchmark by which to judge whether the cost estimate provided by Transgrid has the required level of accuracy. We will only know that after the AER has made its decision.

So we welcome the Commission's recommendations that the AER amend its RIT and CBA guidelines to

- Require RIT proponents to conduct sensitivity analyses
- Clarify the role of contingency allowances
- Strengthen requirements on TNSPs to use AACE cost estimates
- Consider parts to be binding on proponents

For the avoidance of doubt, we also submit that to be fully effective the AER also needs to amend the Guidance Note Regulation of actionable ISP projects to ensure these improvements carry through to the CPA stage. We look forward to presenting our ideas to the AER's guidelines review.

The Commission proposes that the rule change will apply 12 months after the publication of the final rule (no date is provided). We would propose that, based on the timetable to develop the Guidelines to make the ISP actionable – two completely new guidelines ('Cost benefit analysis' and 'Forecasting best practice') and updates to the existing RIT-T instrument and application guidelines, nine months would be a more suitable timetable post publication of the final rule.

[26] See para 136
https://www.aer.gov.au/system/files/EMCa%20-%20Report%20to%20AER%20on%20Transgrid%20HumeLink%20CPA1%20-%20July%202022.pdf

Milestone	Date
Draft ISP rule changes published (by the ESB)	20 November 2019
AER issues paper published	20 November 2019
Stakeholder workshop held on ESB draft rules and AER issues paper	5 December 2019
Submissions closed on AER issues paper	17 January 2020
COAG Energy Council agreed to the ISP rule change package	20 March 2020
Draft AER guidelines to make the ISP actionable published	15 May 2020
Stakeholder webinar on draft AER guidelines	4 June 2020
Submissions close on draft AER guidelines	26 June 2020
ISP rules commence	1 July 2020
Final AER guidelines to make the ISP actionable published	21 August 2020*

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