Marinus Link Pty Ltd
PO Box 606 Moonah
Tasmania
Australia 7009

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

via website: www.aemc.gov.au
Reference: ERC0343

Dear Anna

Re: Draft Determination – Establishing revenue determinations for Intending TNSPs

Marinus Link Pty Ltd (**MLPL**) welcomes the opportunity to make this submission in relation to the Commission's draft determination on the Intending TNSP Rule change request, which we lodged on 3 March 2022.

MLPL welcomes the Commission's acknowledgement that there are regulatory gaps in making revenue determinations for Intending TNSPs that need to be clarified. The Commission's finding in relation to this key aspect of our Rule change request is especially important in the context of AEMO's 2022 Integrated System Plan (**ISP**), which identified Marinus Link as an urgently needed actionable ISP project. In the absence of a Rule change, MLPL would find itself in the following 'catch 22' situation that creates a potential impasse for the project:

- a revenue determination for MLPL is a key input to making an investment decision to proceed with Project Marinus; but
- the AER cannot commence a revenue determination process until the project is completed and MLPL is providing prescribed transmission services.

In its draft determination, the Commission has developed a preferable Rule rather than adopting MLPL's proposed drafting. A key difference between these two approaches is that MLPL proposed a standard approach to setting the revenue in relation to MLPL, even though the revenue determination would relate to a single actionable ISP project. In suggesting this proposed approach, MLPL was particularly conscious that our expenditure plans should be subject to the same level of scrutiny in the revenue setting process as any other TNSP. In other words, MLPL is not seeking a fast-track process or 'special treatment' that bypasses any part of Chapter 6A.

In its draft determination, the Commission's preferable Rule has recognised that MLPL is essentially a 'single project' TNSP, where that project would ordinarily be treated as a contingent project. Given these circumstances, the Commission has concluded that it would be preferable to apply a tailored version of Chapter 6A which, for example, does not mandate the development of a Framework and Approach paper. The Commission's proposed drafting also creates a link to the contingent project application provisions, which recognises that Marinus Link is an actionable ISP project and, therefore, MLPL should be able to lodge a contingent project application (**CPA**) in accordance with clause 5.16A.5 of the Rules.

MLPL welcomes the Commission's approach, which seeks to provide 'fit for purpose' revenue regulation through a more flexible application of the revenue determination and contingent project provisions in Chapter 6A. While MLPL strongly supports the Commission's approach, we have identified the following implementation issues that ideally should be clarified in the final Rule:

- Project staging and timing of CPAs;
- Pricing provisions;
- Application process and timetable; and
- The timing of the regulatory period commencing.

We address each of these points in turn, which is followed by our suggested 'way forward' that describes how these issues may be resolved in the final Rule.

1. Project staging and timing of CPAs

The draft Rule provides flexibility in the revenue setting process by stating that a CPA may be lodged at the same time as a revenue proposal. The Commission's intention in allowing the CPA and revenue proposal to potentially be lodged at the same time is to reduce the administrative burden on the Intending TNSP and the AER. While we support this intention, it is not clear how the two submissions would relate to one another, noting that under the current Rules:

- Each submission would need to include expenditure forecasts relating to a particular stage of the project; and
- The CPA process is significantly shorter than a revenue determination process.

As an actionable ISP project, Marinus Link is eligible for project staging which would be relevant to the timing and scope of CPAs. For example, the first stage may be defined as 'early works', which comprises the design and approval activities and any pre-construction activities, followed by the second stage, being the construction and commissioning of the 1500 MW interconnector assets and converter stations. From a revenue setting perspective, it will be important to have clarity on how the CPAs for these project stages would dovetail with the revenue determination process.

2. Pricing provisions

The Commission has proposed that Part J of Chapter 6A, which sets out the transmission pricing methodology requirements, should not apply to Intending TNSPs. MLPL agrees with the Commission that a pricing methodology does not need to be submitted in order for the AER to make a revenue determination for an Intending TNSP. However, it will be necessary for a pricing methodology to be approved prior to the commencement of revenue recovery.

It follows that Part J should apply, although it may not be necessary or desirable for a pricing methodology to be submitted at the same time as a revenue proposal. The application of Part J and the timing of the pricing methodology submission, therefore, remain issues to be clarified in the final Rule.

3. Application for a revenue determination

MLPL's proposed Rule set out a process for the Intending TNSP to lodge an application to the AER for a revenue determination in advance of submitting a revenue proposal. In its draft Rule, the Commission has proposed that this process is replaced with the revenue proposal also acting as the application for a determination. The Commission explains that its intention is to increase the burden on the applicant, so that the likelihood of speculative requests for revenue determinations is reduced. MLPL supports the Commission's view that speculative requests for revenue determinations should be avoided.

While MLPL supports the Commission's intention of increasing the burden on the Intending TNSP, it is equally important that any pre-lodgement requirements, including the proposed timetable for the revenue determination, can be agreed prior to commencing the formal review process. The requirement for any pre-lodgement process and engagement could be clarified in the final Rule.

4. Regulatory period commencement

An important issue to be resolved is the timing of commencement of the regulatory period, noting that transmission services will not commence until some years after the revenue determination and the final investment decision. MLPL's current view is that the regulatory period should commence on 1 July following the final investment decision, which would likely be 1 July 2025 in MLPL's case.

By commencing the regulatory period shortly after the final investment decision is made, capital expenditure will be incurred by MLPL during construction of the project, with the knowledge that a regulated weighted average cost of capital (**WACC**) and calculation method would apply to that expenditure in those years prior to providing transmission services.

If the start of the regulatory period was delayed until the provision of transmission services commenced, then the regulated WACC would not be established until several years after the major capital expenditure was incurred and the associated debt funding provided. As a result, a significant amount of expenditure and debt would already have been incurred over a number of years before the regulated WACC and associated return on debt allowance was determined.

In addition, it is unclear how any operating expenditure incurred during the years prior to providing transmission services would be recovered if the start of the regulatory period was delayed until the provision of transmission services commenced.

MLPL's view is that commencing the regulatory period prior to providing transmission services will provide greater certainty regarding the regulatory treatment of expenditure incurred prior to transmission services commencing. In addition, it will also mean that annual regulatory reporting to the AER will begin sooner, which will promote transparency. It should be noted that despite the regulatory period commencing earlier, and as outlined in the Commission's draft determination, revenue recovery would not commence until provision of transmission services had also commenced.

In relation to the drafting of the final Rule, MLPL suggests that the Commission provides flexibility regarding the commencement of the regulatory period, rather than 'locking in' a particular approach. In making this suggestion, MLPL notes that the issues to consider may vary for different Intending TNSPs.

5. Potential way forward

In this section, MLPL sets out its views on how the Commission's approach could be clarified to address the issues described in the previous sections.

- **A 'foundation' revenue proposal, followed by CPAs**

  In accordance with the Commission's preferred approach, a foundation revenue proposal could act as an application for a revenue determination and commence the process for subsequent CPAs as the relevant project stages are triggered.

  In contrast to a 'standard' revenue proposal, a foundation revenue proposal would provide:

  - detailed background on the project, including project staging;
  - the Intending TNSP's proposed approach to key matters that are ordinarily addressed in the AER's Framework and Approach paper;
  - the likely timing of the CPAs;
  - the overall timetable for the regulatory process, including the proposed timing of the regulatory period and approach to stakeholder engagement;
  - the proposed averaging periods for the purposes of establishing the rate of return;
  - the likely timing for the commencement of prescribed transmission services; and

- any other matters relevant to the making of the revenue determination.

The AER would make a determination on the foundation revenue proposal, which would establish the determination framework to allow subsequent CPAs to be lodged. MLPL expects that a shorter timeframe could apply as no expenditure forecasts would be reviewed or revenues determined.

- **Benefits of this approach**

  A foundation revenue proposal would provide the following additional benefits compared to the draft Rule:

  - the AER will be able to assess the expenditure forecasts in the same way as other actionable ISP projects;
  - the AER will be able to resolve important regulatory framework issues in much the same way as it might through a Framework and Approach paper; and
  - stakeholder engagement in relation to the proposed project can be conducted in the context of a well-defined regulatory timetable, which is consistent with the project staging.

The following steps describe how our proposed approach could apply to MLPL.

- **Step 1: MLPL lodges a foundation revenue proposal**

  In the foundation revenue proposal, MLPL would provide the background and framework information, including the proposed project timing and MLPL's proposed approach to stakeholder engagement.

- **Step 2: AER makes a foundation revenue determination**

  The AER's foundation revenue determination would make a decision on whether the proposal for a revenue determination should be accepted, and if so:

  - the regulatory timetable, including the likely project staging;
  - the application of the incentive schemes and other regulatory matters, similar to the role of the Framework and Approach paper in a standard revenue setting process;
  - the (confidential) averaging periods for the purposes of establishing the rate of return; and
  - the start date and duration of the regulatory period.

It should be noted that the foundation revenue determination would not include any decisions relating to expenditure allowances or transmission revenues. Accordingly, the assessment process for this determination could be conducted in a relatively short timeframe.

- **Step 3: MLPL lodges a CPA in relation to early works**

  The CPA in relation to early works could follow shortly after the AER makes a foundation revenue determination. This approach is consistent with the role of CPAs, which is to amend an existing revenue determination.

- **Step 4: AER makes a decision on the early works CPA**

  The AER makes a decision on the costs of the early works phase which would then form the first part of the Regulated Asset Base and future revenue allowance for MLPL.

- **Step 5: MLPL lodges a CPA in relation to the construction of the project**

  Following the competitive tendering process for the construction phase and further refinement of project cost estimates during the early works phase, a CPA could be submitted to cover the construction costs of the project.

  A key benefit is that more accurate project cost information will be known at the time of this CPA, as opposed to when the foundation revenue proposal is submitted. The AER will be assisted by receiving better quality cost information, as will stakeholders and electricity consumers. This approach would be consistent with the CPA process for other actionable ISP projects.

- **Step 6: AER makes a decision on the CPA for construction of the project**

  This decision will establish the balance of the Regulated Asset Base and future revenue allowance for the project that will facilitate the final investment decision on the project.

- **Step 7: MLPL makes a final investment decision, with a revenue determination in place**

  MLPL will be able to make a final investment decision, providing that the revenue determination is in place and the revenue allowances through the CPA processes have been settled.

- **Step 8: The regulatory period commences**

  The regulatory period commences in accordance with the AER's foundation revenue determination and following the final investment decision by MLPL.

6. Conclusion

While MLPL notes that the suggested approach outlined in this submission would require a final Rule that differs from the draft Rule, we consider that the process benefits described would justify the proposed amendments.

We very much look forward to working with the Commission as it progresses towards its final Rule determination. 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