

Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (ESTABLISHING REVENUE DETERMINATIONS FOR INTENDING TNSPS) RULE

Marinus Link Pty Ltd

22 DECEMBER 2022

DETERMINATION

INQUIRIES

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AEMC, Establishing revenue determinations for Intending TNSPs, Rule determination, 22 December 2022

ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

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SUMMARY

- 1 The Australian Energy Market Commission (AEMC or Commission) has made a more preferable final rule that clarifies that the Australian Energy Regulator (AER) has the ability to establish a transmission determination for an Intending Transmission Network Service Provider (ITNSP) in response to a rule change request submitted by Marinus Link Pty Ltd (MLPL). Under the final rule, an ITNSP is defined as an Intending Participant or Market Network Service Provider (MNSP) who intends to provide prescribed transmission services, which includes:
 - a person registered as an Intending Participant intending to construct a new regulated transmission project; and
 - any existing MNSP that intends to reclassify its network services as prescribed transmission services to become a TNSP.
 - 2 The final rule benefits consumers by supporting timely and efficient investment in electricity transmission infrastructure to enable the transition of the National Electricity Market (NEM).
 - 3 On 3 March 2022, MLPL submitted a rule change request that sought to address the following issues that it claimed were a barrier to enabling MLPL's final investment decision for Project Marinus.
 - 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 ITNSPs who do not have a revenue determination.
 - To obtain a revenue determination under the 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 ITNSP that is not yet providing prescribed transmission services.
 - 4 To address these issues, MLPL proposed to amend Chapter 6A of the NER to allow the AER to establish a revenue determination for an ITNSP. In response to the consultation paper, stakeholders generally supported MLPL's rule change request, but raised some issues with it.
 - 5 Our final rule aligns with the general intent of MLPL's proposed rule as it clarifies that a revenue determination can be established for an ITNSP. Our final rule is a more preferable rule for the reasons outlined below.
 - It broadly applies all of Chapter 6A to ITNSPs, but in a more flexible way than proposed by MLPL. It provides the AER with broad discretion around the process and timing to establish a transmission determination for an ITNSP.
 - It makes other amendments to Chapter 6A to address gaps and clarify regulatory matters in the current framework to clarify how a transmission determination can be established for an ITNSP.
- Our final rule addresses gaps and clarifies regulatory matters for ITNSPs**
- 6 The Commission considers that under the current Rules, the AER has the ability to make

transmission determinations for ITNSPs. However, there are gaps and regulatory matters in making transmission determinations for ITNSPs that need to be clarified. Our more preferable final rule clarifies these gaps and regulatory matters by:

- defining terms for Intending TNSP, converting transmission system and proposed prescribed transmission services
- allowing the CPA framework to apply to ITNSPs and allows contingent project costs to be included in a revenue determination
- clarifying matters relating to capitalisation of the return on capital and the application of the RORI for ITNSPs; and
- retained the current rules which provide ITNSPs with the ability to recover revenue.

Our final rule provides flexibility over the process and timing to establish a transmission determination for an ITNSP

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Our more preferable final rule provides flexibility over the process and timing to establish a transmission determination, as outlined below:

- clarifying how ITNSPs may request to commence the process of making a transmission determination and how the AER's assesses such a request
- clarifying how the AER is to provide notification of its decision on whether or not to commence the process of making a transmission determination for an ITNSP
- providing the AER with flexibility to modify the process for making a transmission determination for an ITNSP as set out below:
 - the AER has flexibility to make a transmission determination in one or more stages, to omit a draft decision stage and shorten consultation periods in certain circumstances
 - the AER may omit or defer the step to publish a F & A paper
 - the AER may omit or defer the step where the ITNSP informs the AER of its expenditure forecasting methodology
 - the AER may set a regulatory control period of less than five years
 - the AER may allow the conversion application processes and the transmission determination to be run concurrently for a converting transmission system;
 - the AER may exclude from the transmission determination some of the decisions that the AER would otherwise make under rule 6A.14, if no prescribed transmission services are expected to be provided at any time during that regulatory control period; and
 - the AER may make other modifications to the process for making a transmission determination if the AER considers these relevant in the circumstances.

Our final rule contributes to the National Electricity Objective (NEO)

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Concept of efficiency - it clarifies that a transmission determination can be established for an ITNSP. This provides regulatory certainty, reducing the risk of delays to investment decisions in major transmission projects. It also promotes efficient investment in transmission services and the efficient delivery of electricity services.

- 9** **Timing and uncertainty** - it provides regulatory certainty by addressing gaps in the current framework and clarifying regulatory obligations and timeframes, which supports timely investment and operational decision-making by ITNSPs. It improves timeliness by providing the AER with flexibility to modify the process for making a transmission determination for an ITNSP, compared to the process for an existing TNSP.
- 10** **Risk allocation** - it allocates risk to those parties that are best placed to manage it and balances risks between ITNSPs and the AER.
- It reduces investment risk by clarifying that revenue determinations can be established for ITNSPs.
 - It requires an ITNSP to submit a request to commence the process of making a transmission determination, and provides criteria that the AER may have regard to in assessing whether or not to commence the making of a transmission determination. This provides the AER with a reasonable ability to manage the risk of speculative requests for a transmission determination.
- 11** **Administrative cost and complexity** - while it places an administration burden on the AER to assess applications for transmission determinations from ITNSPs, it reduces the risk of high administrative costs on the AER from numerous parties applying to the AER for revenue determinations for speculative projects.
- Implementation**
- 12** The final rule will be implemented on 20 January 2023, one month after the publication of this final determination and final rule.

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1 WE HAVE MADE A MORE PREFERABLE FINAL RULE

The Commission's final determination is to make a more preferable final rule in response to the rule change request submitted by MLPL about establishing revenue determinations for ITNSPs.

This section explains:

- how our final rule:
 - addresses gaps and clarifies regulatory matters in the current framework to clarify that the AER can make a transmission determination for ITNSPs
 - is flexible as it provides the AER with broad discretion around the process and timing to establish transmission determinations for ITNSPs
- why we have made a more preferable rule that addresses the issues raised in MLPL's proposal
- stakeholder feedback, which considered that the AER should be allowed to make transmission determinations for ITNSPs
- that the final rule supports timely and efficient investment in electricity transmission infrastructure.

Background information on the rule change is outlined in Appendix A.

Additional background information on the ISP, Project Marinus and contingent project applications is set out in Appendix B of the Draft determination.¹

1.1 The final rule addresses gaps in the current framework to clarify that the AER can make transmission determinations for ITNSPs

MLPL have indicated that a revenue determination is a key input into its investment decision in relation to Project Marinus. MLPL suggested that a key issue with the current NER is that the AER cannot commence a revenue determination process until the project is complete and MLPL is providing prescribed transmission services.²

The Commission considers that the AER currently has the ability to make revenue determinations for ITNSPs that are not yet providing prescribed transmission services, however, there are gaps and regulatory matters in the framework that require clarification. Our final rule addresses these gaps to improve regulatory certainty for ITNSPs. For more detail, refer to chapter 3 of this final determination.

1 AEMC, Establishing revenue determination for Intending TNSPs, 4 August 2022, Appendix B.

2 MLPL rule change request, cover letter, p. 1.

1.2 We have made a more preferable rule that addresses the issue raised in MLPL's proposal

MLPL proposed to broadly amend Chapter 6A of the NER to clarify that the AER is allowed to make revenue determinations for ITNSPs. This included, but was not limited to, the following proposed amendments:

- Placing a duty on the AER to make transmission determinations for ITNSPs³
- Clarifying that Chapter 6A applies to ITNSPs.⁴
- Applying Chapter 6A to ITNSPs, such that revenue is set for ITNSPs in the same way as per existing TNSPs⁵
- Allowing the AER to make revenue determinations one or more years before the relevant transmission assets have been constructed and the ITNSP is providing prescribed transmission services⁶

More detail on MLPL's proposed rule is set out in Appendix A.

Our final rule addresses the issue raised in MLPL's proposal as it clarifies that a transmission determination can be established for an ITNSP. Our final rule is a more preferable rule, which better meets the NEO than the rule change proposal, for the reasons outlined below.

- It broadly applies all of Chapter 6A to ITNSPs, however in a more flexible way than proposed by MLPL. It provides the AER with broad discretion around the process and timing to establish a transmission determination for an ITNSP.
- It makes other amendments to Chapter 6A to:
 - address gaps and clarify regulatory matters in the current framework, as explained in Chapter 3 of this final determination; and
 - allow the AER to establish the process and timing for making a transmission determination for ITNSPs, as explained in Chapter 4 of this final determination.

1.3 Stakeholders considered that the AER should be allowed to make transmission determinations for ITNSPs

Stakeholders supported amending Chapter 6A of the NER to clarify that revenue determinations can be established for ITNSPs.⁷ The AER supported provisions that would address uncertainty in the current regulatory framework.⁸

Stakeholders sought clarity on parts of MLPL's proposal:

- the AER noted the need to balance increased certainty for investors against the risk of speculative projects⁹

3 MLPL proposed clause 6A.2.1

4 MLPL proposed clauses 6A.1.1(a) and 6A.1.7(a)

5 MLPL proposed clause 6A.1.7(b).

6 MLPL proposed clause 6A.1.7(b)(3).

7 Submissions to the consultation paper: PIAC, p. 1; AEMO, p. 1; Transgrid, p. 2; Hydro Tasmania, p. 1

8 AER, submission to the consultation paper, p.1.

9 Ibid, p. 2.

- the AER asked the AEMC to consider whether the rules provide flexibility to address different circumstances, for example where the determination of the opening RAB (only) may be sufficient for capital to be raised to finance an investment in a transmission system to provide prescribed transmission services¹⁰
- Transgrid suggested that the rule should be limited to ITNSPs delivering major transmission projects, but it may not be appropriate to limit the rule to ITNSPs delivering actionable Integrated System Plan (ISP) project¹¹

Stakeholders sought clarity on parts of our draft rule determination:

- MLPL and Transgrid suggested broadening the application of chapter 6A to ITNSPs in our draft rule. Transgrid suggested also applying Part J (Transmission pricing) and Part G (Cost Allocation) for ITNSP.¹²
- The AER suggested a single process that allows contingent project costs to be considered as part of a TNSP's first revenue determination.¹³
- MLPL suggested a staged process where the ITNSP lodges a foundational revenue proposal, the AER makes a foundational determination, followed by one or more CPA processes.¹⁴

Other stakeholder feedback is outlined in Chapters 3 and 4 and Appendix C.

1.4 The final rule supports timely and efficient investment in electricity transmission infrastructure

Our final rule clarifies that an ITNSP can request the AER to make a transmission determination, which improves regulatory certainty and supports timely and efficient investment in electricity transmission infrastructure. Our final rule better achieves the NEO than the rule change proposal as it addresses gaps and clarifies regulatory matters in the current framework and provides the AER with broad discretion around the process and timing to establish a transmission determination for an ITNSP.

There is broad consensus that an unprecedented level of transmission investment is required as the NEM transitions to net-zero. The current regulatory framework was developed to support incremental growth, not the current level of step-change growth set out in the ISP. It is therefore important that the regulatory framework is sufficiently flexible to support the timely and efficient delivery of major transmission projects, while ensuring these investments support the long-term interests of consumers.

For the purposes of this rule change, the Commission considers major transmission projects to be projects of a significant size, scale and scope such that they are associated with greater uncertainty relative to business as usual investments. These can be ISP or non-ISP projects.

¹⁰ Ibid, p. 2.

¹¹ Transgrid submission to the consultation paper, p. 1.

¹² Submissions on the draft determination: MLPL, p. 3; and Transgrid, p. 2.

¹³ AER, submission on draft determination, p. 4.

¹⁴ MLPL submission on draft determination, p. 6.

This final rule is part of our broader program of work to ensure that the regulatory framework can support the timely and efficient delivery of major transmission investments. This broader work program includes the *Transmission planning and investment review*¹⁵

¹⁵ For more information, please visit the Reviews project page [here](#).

2 WHY THE FINAL RULE CONTRIBUTES TO THE NEO

This chapter sets how our more preferable final rule contributes to the NEO.

2.1 Achieving the NEO and the revenue and pricing principles

Under the NEL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).¹⁶ This is the decision-making framework that the Commission must apply.

The NEO is:¹⁷

to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

The Commission may make a more preferable rule according to the NEL. For more detail, see Appendix B.

We have also considered the revenue and pricing principles¹⁸ which apply when making rules with respect to transmission system revenue and pricing.¹⁹

Our final determination clarifies that a transmission determination can be established for ITNSPs, as explained in Chapters 3 and 4. This improves regulatory certainty and provides that ITNSPs will have a reasonable opportunity to recover at least the efficient costs incurred by providing direct control network services.²⁰ Further, as discussed in section 2.2 below, we consider that our final rule provides ITNSPs with effective incentives in order to promote economic efficiency with respect to direct control network services.²¹

2.2 How our final rule better contributes to the NEO

2.2.1 Concept of efficiency

Our final rule is aligned with the general intent of MLPL's proposal as it clarifies that a transmission determination can be established for an ITNSP, which includes a person registered as an Intending Participant that is intending to construct a new regulated transmission project and any existing MNSP that intends to re-classify its network services as prescribed transmission services. This provides regulatory certainty, reducing the risk of delays to investment decisions on major transmission projects. This supports the NEO by

¹⁶ Section 88 of the NEL.

¹⁷ Section 7 of the NEL.

¹⁸ Section 7A of the NEL.

¹⁹ Section 88B of the NEL.

²⁰ Section 7A (2)(a) of the NEL.

²¹ Section 7A (3) of the NEL.

promoting efficient investment in transmission services and the efficient delivery of transmission investment.

Our final determination providing regulatory certainty that any part of Chapter 6A may apply to an ITNSP. This clarifies that revenue and pricing matters can be decided for an ITNSP before it starts providing prescribed transmission services.

The final rule better meets the NEO than MLPL's proposal because the final rule enables transmission determinations to be established in a more flexible way. It also allows transmission determination to be established for other registered participants (MNSPs), that were not included in MLPL's proposal.

2.2.2 **Timing and uncertainty**

Our final rule provides regulatory certainty by addressing gaps in the current framework, including how to commence the process of making transmission determinations for an ITNSP. Our final rule clarifies regulatory obligations and timeframes around the AER's assessment of the request to commence this process. This supports timely investment and operational decision-making by ITNSPs.

Our final rule improves timeliness as it provides the AER with flexibility to modify the process for making a transmission determination for an ITNSP, compared to the process for an existing TNSP. Our final rule provides the AER with discretion to, for example:

- make a transmission determination in one or more stages, to omit a draft decision stage and shorten consultation periods in certain circumstances
- omit or defer the step to publish a F & A paper and the step where the ITNSP informs the AER of its expenditure forecasting methodology; and
- allow the conversion application processes and the transmission determination to be run concurrently for a converting transmission system.

There may be other modifications to the process for making a transmission determination that the AER considers relevant in the circumstances. The final rule provides the AER with the ability to specify how it will undertake the process.

2.2.3 **Risk allocation**

The final rule allocates risk to those parties that are best placed to manage it and balances risks between ITNSPs and the AER.

- It reduces investment risk by clarifying that revenue determinations can be established for ITNSPs.
- It requires an ITNSP to submit a request to commence the process of making a transmission determination, and provides criteria that the AER may have regard to in assessing whether or not to commence the making of a transmission determination. This provides the AER with a reasonable ability to manage the risk of speculative requests for a transmission determination.

2.2.4 **Administrative cost and complexity**

While the final rule places an administrative burden on the AER to assess applications for transmission determinations from ITNSPs, it reduces the risk of high administrative costs on the AER from numerous parties applying to the AER for revenue determinations for speculative projects. It does this by applying criteria that the AER may have regard to in assessing whether or not to commence the process of making a transmission determination for an ITNSP.

Our final rule provides the AER with flexibility to modify the process for making a transmission determination for an ITNSP, compared to the process for an existing TNSP. It reduces administrative burden as it allows the AER to, for example:

- make a transmission determination in one or more stages, such that the AER only consults and decides on the specific revenue and pricing elements that it considers appropriate to consider, at each stage of the transmission determination process;
- to omit a draft decision stage and shorten consultation periods in certain circumstances;
- omit or defer the step to publish a F & A paper and the step where the ITNSP informs the AER of its expenditure forecasting methodology;
- allow the conversion application processes and the transmission determination to be run concurrently for a converting transmission system; and
- exclude from the transmission determination some of the decisions that the AER would otherwise make under rule 6A.14, if no prescribed transmission services are expected to be provided at any time during that regulatory control period.

There may be other modifications to the process for making a transmission determination that the AER considers relevant in the circumstances. The final rule provides the AER with the ability to specify how it will undertake the process.

3 THE FINAL RULE CLARIFIES REGULATORY MATTERS FOR INTENDING TNSPs

This chapter sets out our final decisions and analysis, and stakeholder views, in relation to clarifying regulatory matters for ITNSPs. This section sets out the following:

- How the AER currently has the ability to make transmission determinations for ITNSPs, however regulatory gaps need to be clarified.
- How our final rule broadly applies all of Chapter 6A to ITNSPs in a flexible manner.
- How our final rule defines terms for Intending TNSP, converting transmission system and proposed prescribed transmission services
- How our final rule allows the CPA framework to apply to ITNSPs and allows contingent project costs to be included in a revenue determination
- How our final rule clarifies matters relating to capitalisation of the return on capital and the application of the RORI for ITNSPs
- How we have retained the current rules which provide ITNSPs with the ability to recover revenue.
- The final rule will be implemented on 20 January 2023.

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

3.1.1 Our final determination

We consider that the AER has the ability to make revenue determinations for ITNSPs under the current regulatory framework in Chapter 6A of the NER, however, stakeholders have identified regulatory gaps that create uncertainty over the revenue determination process for ITNSPs. Our final rule addresses these regulatory gaps to clarify the process for transmission determinations to be established for ITNSPs.

Our final rule promotes the NEO by enabling more efficient outcomes

Our final rule is aligned with the general intent of MLPL's proposal as it clarifies that a transmission determination can be established for an ITNSP. This provides regulatory certainty, reducing the risk of delays to investment decisions on major transmission projects. This supports the NEO by promoting efficient investment in transmission services and the efficient delivery of transmission investment.

3.1.2 Stakeholder views

In submissions to the consultation paper, stakeholders supported clarifying in the NER that the AER has the ability to make revenue determinations for ITNSPs.²²

²² Hydro Tasmania submission on consultation paper, p. 1

- MLPL and the AER considered that the AER cannot commence a revenue determination process until the project is completed and MLPL is providing prescribed transmission services²³
- AEMO, Transgrid and PIAC supported addressing gaps in the NER by including explicit provisions to confirm that the AER is empowered to make revenue determinations for ITNSPs²⁴

3.1.3

Our analysis

We consider that the existing NER enables the AER to make a revenue determination for an ITNSP as detailed below.

- **Chapter 6A of the NER** is primarily concerned with revenue and price regulation in respect of the provision of prescribed transmission services. While Chapter 6A does not currently refer to ITNSPs, it has currently been drafted to accommodate both:
 - existing TNSPs that are already providing prescribed transmission services and therefore have a current revenue determination, and
 - TNSPs that will be the subject of 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. Nonetheless, we note there are regulatory gaps and matters that should be addressed to provide clarity, as outlined in Section 3 and 4.
- **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:** This schedule of rights and obligations of Intending Participants is made under rule 2.7(d) of the NER. This schedule provides that an Intending Participant may exercise 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".²⁵

While the current NER provides the AER with the ability to make a revenue determination for an ITNSP, the current NER does not impose a 'duty' on the AER to make a revenue determination for an ITNSP, as it does for TNSPs.²⁶ Our final rule does not impose a duty on the AER to make revenue determinations for ITNSPs as this may impose a high administrative burden on the AER if a large number of ITNSPs sought a revenue determination. This is because a duty would require that the AER makes a revenue

²³ MLPL rule change request, p. 1 and AER submission on consultation paper, p.1.

²⁴ Submissions on consultation paper: AEMO, p. 1; Transgrid, p. 1; PIAC, p. 1.

²⁵ AEMO, *Schedule of Rights and Obligations of Intending Participants*, Version 5.0, 10 February 2022.

²⁶ Clause 6A.2.1 of the NER

determination for all ITNSPs that seek a revenue determination, without providing the AER with discretion to decide whether or not to commence a revenue determination process²⁷

Instead, our final rule introduces explicit provisions which address gaps and matters in the regulatory framework, to provide clarity around the process to make transmission determinations for ITNSPs. These provisions will be discussed in chapters 3 and 4.

3.2 Our final rule broadly applies all of Chapter 6A to an ITNSP in a flexible manner

3.2.1 Our final determination

Our final rule broadly applies all parts of Chapter 6A to an ITNSP, however in a more flexible way than proposed by MLPL. It provides the AER with flexibility in making a transmission determination for an ITNSP, compared to how the AER makes a transmission determination for an existing TNSP.

The objectives of our final determination

We consider that the AER, in implementing the final rule, should be guided by the following objectives:

- to promote efficiency and flexibility where necessary, to accommodate a wide range of transmission projects, while also maintaining consistent outcomes, and
- to provide certainty to ITNSPs and other stakeholders about the process for making a transmission determination in respect of proposed prescribed transmission services, and
- to discourage speculative requests for transmission determinations for proposed new transmission systems.

Our final determination better promotes the NEO

- Our final determination provides regulatory certainty that any part of Chapter 6A may apply to an ITNSP. This clarifies that revenue and pricing matters can be decided for an ITNSP before it starts providing prescribed transmission services.
- The objective to discourage speculative requests for a transmission determination reduces the risk of speculative requests placing a high administrative burden on the AER, which contributes to the NEO better than the rule change proposal.

3.2.2 Stakeholder Views

Stakeholders considered the application of Chapter 6A to ITNSPs in the draft rule was too narrow:

- MLPL noted that while a pricing methodology does not need to be submitted in order for the AER to make a revenue determination for an ITNSP, a pricing methodology is to be approved prior to the commencement of revenue recovery. Therefore, MLPL suggested that Part J should also apply to ITNSPs.²⁸

²⁷ See section 4.2 for information on how the AER makes this decision in the final rule.

²⁸ MLPL, submission to the draft determination, p. 3.

- Transgrid suggested broadening the draft rule to also apply Part J (Transmission pricing) and Part G (Cost Allocation) to ITNSPs.²⁹

3.2.3 Our analysis

Our draft rule only applied Parts C, E and F of Chapter 6A, as well as relevant definitions and provisions referred to in Parts C, E and F, to an ITNSP.³⁰

Our final rule is broader than our draft rule as it provides regulatory certainty not only over the establishment of a revenue determination, but the broader process of establishing a transmission determination. We incorporated stakeholder feedback on our draft rule that, while other parts of Chapter 6A are not required to establish a revenue determination (e.g. pricing methodology), they are required to be applied before an ITNSP can start providing prescribed transmission services. This clarifies the regulatory framework that applies for ITNSPs up until an ITNSP becomes a TNSP and starts recovering revenue.

3.3 Our final rule defines terms for Intending TNSP, converting transmission system and proposed prescribed transmission services

Our final rule defines Intending TNSP, proposed prescribed transmission services and converting transmission system.

The definitions are necessary to clarify the circumstances and relevant parties to which the final rule applies.

3.3.1 Definition of Intending TNSP

Our final rule defines an 'Intending TNSP' as:³¹

- an Intending Participant who intends to provide prescribed transmission services by means of its proposed transmission system; or
- a MNSP who intends to provide prescribed transmission services by means of its converting transmission system,

To apply for a transmission determination under the provisions set out in clause 6A.9 of the final rule, an entity must be registered with AEMO as an Intending Participant or a Network Service Provider under Chapter 2 of the NER.

Stakeholder views and our analysis

Stakeholders were supportive of our proposed definition of 'Intending TNSP' under the draft rule.³²

The AER considered it appropriate to clarify that our final rule applies to MNSPs.³³ While the draft rule would have applied to MNSPs, the drafting of the definition of ITNSP has changed

²⁹ Transgrid, submission to the draft determination, p. 2.

³⁰ Draft rule, clause 6A.10.2(e).

³¹ Final rule, clause 6A.9.1 (b).

³² PIAC, submission to the draft determination, p.1.

³³ AER, submission to the draft determination, p3.

between the draft rule and final rule. Our draft rule defined an 'Intending TNSP' as "a Registered Participant who intends to provide prescribed transmission services".³⁴ The change between the drafting of the definition of ITNSP from the draft rule to the final rule was necessary to expressly clarify that the final rule applies to MNSPs and to accommodate other changes in our final rule.

Further, the definition of ITNSP in the final rule clarifies that if an Intending TNSP begins providing prescribed transmission services and is registered as a TNSP part way through a revenue determination made under this rule, the revenue determination is still valid in respect of the newly registered TNSP. Subsequent revenue determinations would then be made under the existing arrangements.

This definition in the final rule enables a broader group of relevant participants to be defined as an ITNSP than in the rule change proposal. This, together with other amendments in the final rule, enables ITNSPs to seek a revenue determination, which better supports the NEO by promoting efficient investment in transmission services and the efficient delivery of electricity services.

3.3.2 **Definition of proposed prescribed transmission services and converting transmission system**

Our final rule defines 'proposed prescribed transmission services' as prescribed transmission services to be provided by means of:³⁵

- a proposed transmission system; or
- a converting transmission system.

Our final rule defines converting transmission system as a transmission system that provides market network services and in respect of which the MNSP has applied to the AER to determine the service to be a prescribed transmission service.³⁶

These definitions of 'proposed prescribed transmission services' and 'converting transmission system' are included in the final rule as they support the operation of the rule.

3.3.3 **Definition of commencement and process paper (CPP)**

Our final rule defines a 'commencement and process paper' as a document prepared and issued as such under clause 6A.9.2(g). Please see Section 4.3 for further details.

3.4 **Our final rule allows flexibility for the CPA framework to apply to ITNSPs and allows contingent project costs to be included in a revenue determination**

3.4.1 **Our final determination**

Our final rule:

³⁴ Draft rule, definition of ITNSP in chapter 10 of the NER.

³⁵ Final rule, clause 6A.9.1 (b).

³⁶ Final rule, clause 6A.9.1 (b).

- allows a CPP to provide modifications to the process for making transmission determinations, such as allowing an ITNSP to submit a CPA before the start of a regulatory control period³⁷; and
- clarifies that a revenue determination for a proposed transmission system may include amounts determined under the CPA framework.³⁸

Our final rule contributes to the NEO as outlined below:

- **Regulatory certainty:** over the application of the CPA framework for ITNSPs and the ability of an ITNSP to propose early works costs in a transmission determination.
- **Timeliness:** It supports timely decisions by not requiring an ITNSP to wait until the start of a regulatory control period to submit a CPA, if this is provided for by the AER in the CPP.

3.4.2

Stakeholder views

In submissions to the draft determination stakeholders expressed the following views:

- Stakeholders expressed concern over running the CPA process concurrently with the revenue determination process given that:³⁹
 - the CPA process runs at a shorter time frame to the revenue determination process, and
 - a concurrent process may create stakeholder confusion.
- The AER considered that a single process for the assessment of both the ITNSP's first revenue determination and any contingent projects may provide for a more streamlined and effective approach for stakeholder engagement.⁴⁰
- MLPL considered that there should be greater clarity around how the final rule accommodates CPA staging.⁴¹
- The AER suggested that it is unclear whether a CPA could apply to costs incurred prior to the provision of prescribed transmission services if the regulatory control period has not commenced before the provision of prescribed transmission services.⁴²

3.4.3

Our analysis

Our final rule clarifies that the CPA framework applies for ITNSPs

- Currently the CPA framework only applies to existing TNSPs that have an existing revenue determination; it is not available to ITNSPs as they do not have a revenue determination.
- Our final rule broadly applies all of Chapter 6A to ITNSPs. Contingent projects are covered under Part C of Chapter 6A, so this allows the CPA framework to apply to Intending TNSPs, with flexibility around the timing of submitting the CPA.

37 Final rule, clause 6A.9.3(d)(3).

38 Final rule, clause 6A.9.4(b)(2).

39 Submissions to the draft determination: MLPL, p. 2; AER, p. 4; Transgrid, p. 1.

40 AER, submission to the draft determination, p. 4.

41 MLPL, submission to the draft determination, pp. 2-3.

42 Ibid.

Our final rule allows a CPP to provide that an ITNSP may submit a CPA before the start of a regulatory control period

We consider that an ITNSP should be able to submit a CPA (for example for construction costs) before the start of a regulatory control period if the AER has made a final decision on the ITNSP's revenue determination. This means that if the AER makes a revenue determination a number of months before the start of the regulatory control period, the AER could provide in the CPP that the ITNSP does not have to wait until the start of the regulatory control period, and can instead submit a CPA immediately after the AER's decision on the revenue determination. This provides regulatory certainty and supports timely decision-making.⁴³

Our final determination does not allow for transmission determination and CPA processes to occur concurrently

Our draft determination proposed to allow the CPA process to occur concurrently with the regulatory and consultation processes associated with the AER making a revenue determination for an ITNSP.⁴⁴

Stakeholders did not support concurrent CPA and revenue determination processes.

- The AER noted that it may result in stakeholder confusion over the processes applicable for certain issues.⁴⁵
- The AER, Transgrid and MLPL noted that there is a shorter timeframe for making a contingent project determination, compared to making a revenue determination, in the Rules.⁴⁶

Based on stakeholder feedback, we consider that enabling a CPA process to run concurrently with a transmission determination process may create practical difficulties, as a CPA must be made in a shorter period of time than a transmission determination. Therefore, we do not propose such concurrent processes in this final rule determination. Instead, our final rule enables flexibility for a more streamlined process described below.

Our final rule provides a streamlined process by allowing contingent project costs to be included in an ITNSP's revenue determination

Our final rule allows contingent project expenditure for an actionable ISP project to be included in a revenue determination for a proposed transmission system.⁴⁷ This means that, for example, early works costs for an actionable ISP project may be assessed by the AER in a transmission determination, while the remaining costs relating to that actionable ISP project are assessed in a separate CPA.

For example, under the final rule an ITNSP may seek to include early works costs in its revenue proposal for costs that are:

43 Final rule, clause 6A.9.3(d)(3).

44 AEMC, Establishing revenue determinations for Intending TNSPs, Draft determination, p. 15.

45 AER, submission on draft determination, p. 4.

46 Submissions on draft determination: AER, p. 4; MLPL, p. 2; and Transgrid, p. 1

47 Final rule, clause 6A.9.4(b)(2).

- already incurred and may be included in the opening RAB.⁴⁸
- not yet incurred and may be rolled into the RAB over the regulatory period.⁴⁹

This allows for the assessment of contingent project expenditure and a revenue determination in a single streamlined process. We note that an ITNSP would also have the option to submit a separate CPA for early works costs after the first stage of a multi-stage transmission determination.

3.5 Our final rule clarifies matters relating to capitalisation of the return on capital and the application of the RORI for ITNSPs

3.5.1 Our final determination

Under our final rule:⁵⁰

- the return on capital, earned in regulatory years prior to the provision of prescribed transmission services, may be capitalised into the RAB.⁵¹
- the return on capital must be calculated for an ITNSP by applying the prevailing RORI.

Our final rule enables the AER to specify the arrangements to apply, which may be to amend or not apply existing models or methodologies, to give effect to the capitalisation of return on capital amounts.⁵²

This is consistent with the NEL revenue and pricing principles⁵³ as it provides ITNSPs with a reasonable opportunity to recover at least their efficient costs.

3.5.2 Current arrangements

During a regulatory control period, TNSPs incur capital financing costs. As per the building block approach, a TNSP is entitled to a return on capital which forms part of its revenue allowance.⁵⁴ The return on capital allowance enables a TNSP to recover capital financing costs.

The return on capital is calculated by multiplying the allowed rate of return⁵⁵ by the value of the opening RAB.⁵⁶

Where an asset is still under construction, an existing TNSP may:

- recover a return on capital
- not recover a return of capital (depreciation) as the asset's operational life has not yet commenced.

⁴⁸ Appendix C discusses how the opening RAB may be established and how the opening RAB may include early works.

⁴⁹ Appendix C discusses how the RAB is rolled forward and may be adjusted over time to account for contingent project expenditure.

⁵⁰ Final rule, clause 6A.9.4(a).

⁵¹ Appendix C discusses how the opening RAB is established and adjusted over time under existing arrangements.

⁵² Section 4.2 further explains how the AER may amend or not apply existing models under final rule, clause 6A.9.3(b)(4).

⁵³ Section 7A of the NEL.

⁵⁴ Clause 6A.5.4 of the NER.

⁵⁵ This is calculated using the applicable RORI.

⁵⁶ Clause 6A.6.2 of the NER.

3.5.3 Stakeholder views

MLPL considered that a regulated weighted average cost of capital (WACC) and calculation method should apply to expenditure incurred in years prior to providing transmission services given a significant amount of debt would be incurred during this time.⁵⁷

3.5.4 Our analysis

The return on capital is capitalised using the RORI during the period before an ITNSP starts recovering revenue for the provision of prescribed transmission services

Under our final rule, ITNSP's can recover a return on capital to reflect the cost of capital financing incurred over the period when it is constructing the asset and not yet providing prescribed transmission services. The AER must apply the prevailing RORI over the regulatory years before an ITNSP starts recovering revenue for the provision of prescribed transmission services. This means that a WACC will apply in years prior to providing transmission services and provide an ITNSP with a return on capital allowance. This is consistent with the current arrangements for existing TNSPs that are able to recover a return on capital for capital financing costs during the construction of an asset.

However, an ITNSP will not receive a return on capital through tariffs over the period when the asset is being constructed. This is because consumers cannot be charged until they start to receive prescribed transmission services from the asset. For this reason, and to achieve outcomes that are consistent with that for existing TNSPs, the return on capital must be capitalised into the ITNSP's RAB. This results in a higher RAB and allows the ITNSP to recover the cost of capital in later years when the ITNSP provides prescribed transmission services through its return on capital and depreciation allowances.

Existing models and methodologies, such as the Post tax revenue model (PTRM), may prevent the AER from capitalising a return on capital for an ITNSP before it starts providing prescribed transmission services. Our final rule therefore allows the AER to specify the arrangements to apply, which may be to amend or not apply existing models/methodologies so that any return on capital amounts, for the period before prescribed services are provided, may be capitalised into the RAB.⁵⁸

Our more preferable final rule better promotes the NEO than the proposed rule

Our final rule clarifies that an ITNSP can recover a return on capital to reflect capital financing costs incurred prior to the provision of prescribed transmission services.⁵⁹ This provides ITNSPs with a reasonable opportunity to recover its efficient costs, in accordance with the NEL revenue and pricing principles. This better promotes the NEO than the rule change proposal which did not address the matter of recovering a return on capital prior to the provision of prescribed transmission services.

⁵⁷ MLPL, submission to the draft determination, pp. 3-4.

⁵⁸ Clause 6A.9.3(b)(4).

⁵⁹ Final rule, clause 6A.9.4(a).

3.6 The existing rules provide ITNSPs with the ability to recover revenue

3.6.1 Our final determination

Under our final rule, a transmission determination for a proposed transmission system or a converting transmission system must specify the date from which prescribed transmission services will commence or the manner in which the date is to be determined.⁶⁰ For example, in the transmission determination for an ITNSP, the AER could set a trigger, such as the commissioning of a new transmission asset, for when the ITNSP will start providing prescribed transmission services and start to recover revenue. This could be at the start of any regulatory year of the regulatory control period.

3.6.2 Current arrangements

A Co-ordinating Network Service Provider (CNSP) must recover revenue on behalf of a TNSP that is not a CNSP

If prescribed transmission services within a region are provided by more than one TNSP, the appointing TNSP (the appointing provider) within that region must appoint a CNSP for that region.⁶¹

The CNSP is responsible for recovering a TNSPs aggregate annual revenue requirement (AARR) for prescribed transmission services and allocating the recovered revenue back to the TNSP.⁶²

Existing TNSPs must publish transmission prices within a specified timeframe

Under the current rules:

- by 15 February, a CNSP must publish details of all modified load export charges to apply for the following financial year in accordance with the pricing methodology guidelines.⁶³
- by 15 March, a TNSP must publish the prices for each of the categories of prescribed transmission services to apply for the following financial year, if the regulatory year which commences after that date begins on the commencement of a financial year,⁶⁴
- by 15 May, a TNSP must publish the prices for each of the categories of prescribed transmission services to apply for the following financial year if the regulatory year which commences after that date does not begin on the commencement of a financial year.⁶⁵

These prices flow onto distribution network service provider (DNSPs) and retailers and apply from 1 July each year.

60 Clause 6A.9.4(c) of the NER.

61 Clause 6A.29.1(a) of the NER.

62 Ibid.

63 Clause 6A.24.2(b) of the NER.

64 Clause 6A.24.2(c) of the NER.

65 Ibid.

TNSPs which are not CNSPs must submit relevant pricing information requested by a CNSP in order for the CNSP to meet existing timeframes to publish transmission pricing.⁶⁶

3.6.3

Our analysis

The current rules enable ITNSPs to recover its revenue allowance. Chapter 6A sets out how the AARR is to be recovered, which applies for ITNSPs.

If an ITNSP starts providing prescribed transmission services on a different date from the date specified in the transmission determination, the current rules provide mechanisms to enable cost recovery for the ITNSP. For example, if a transmission determination specified that the ITNSP is to start providing prescribed transmission services at the start of the third regulatory year of the regulatory control period, but the ITNSP starts providing prescribed transmission services 6 months earlier than that, the TNSP would be able to (under the current rules) provide cost recovery in a later regulatory year.⁶⁷

3.7

The final rule will be implemented on 20 January 2023

We propose that the final rule and transitional rule would commence on 20 January 2023, approximately 4 weeks after the scheduled publication of the final determination for this rule change process.

⁶⁶ Clause 6A.29.1(e) of the NER.

⁶⁷ For example, the AER may apply allow for under-recovery or over-recovery amounts, in a later regulatory year, under clause 6A.23.3 of the NER.

4 HOW THE FINAL RULE PROVIDES FLEXIBILITY OVER THE PROCESS AND TIMING TO ESTABLISH A TRANSMISSION DETERMINATION FOR AN ITNSP

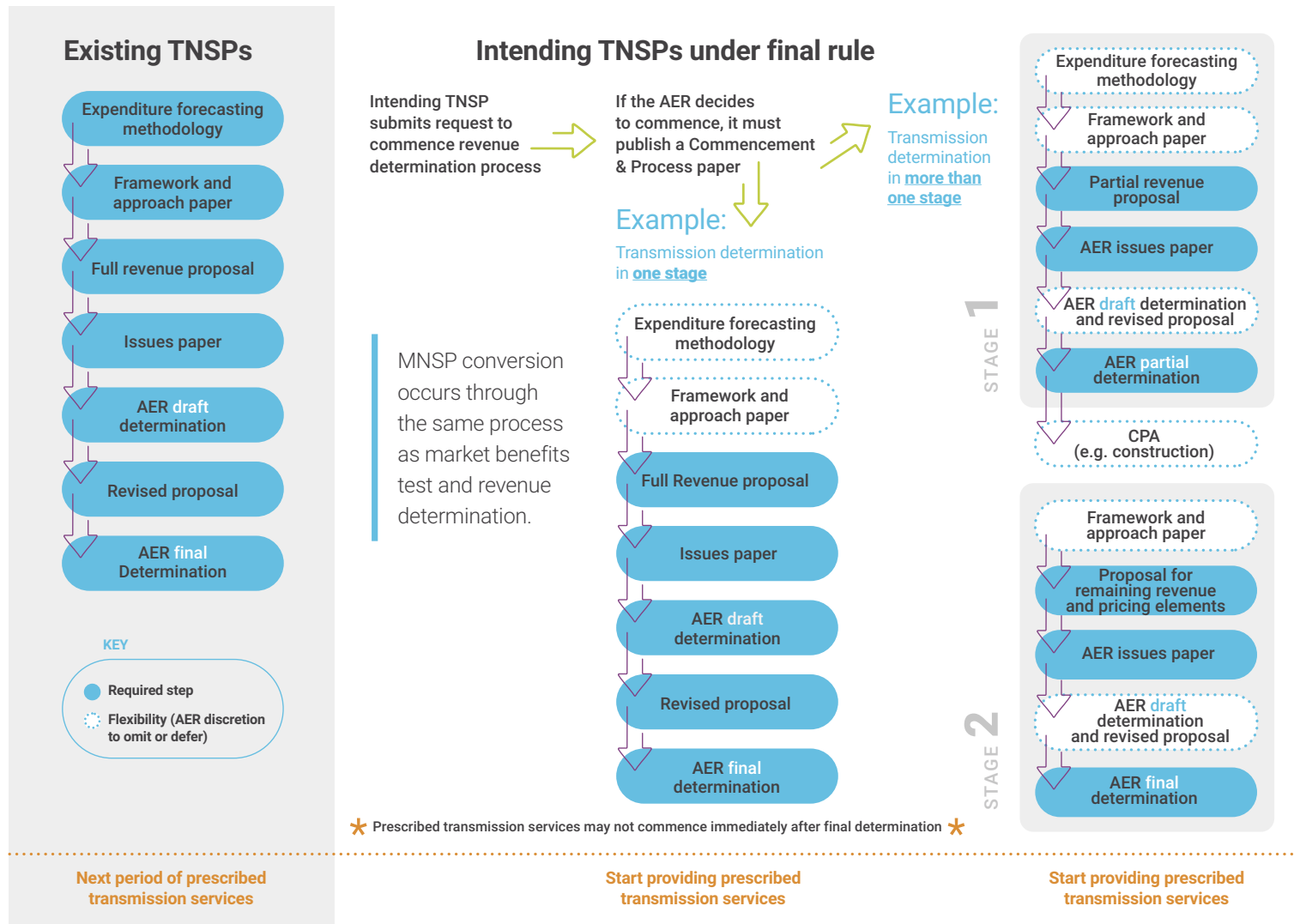
This chapter outlines stakeholder views and our analysis and final determination on the following aspects related to the process and timing to establish a transmission determination for an ITNSP.

- How an ITNSP requests to commence the process of making a transmission determination and how the AER assesses such a request.
- How the AER provides notification of its decision on whether or not to commence the process of making a transmission determination for an ITNSP
- The AER has flexibility to modify the process for making a transmission determination for an ITNSP.
 - The AER has flexibility to make a transmission determination in one or more stages, to omit a draft decision stage and shorten consultation periods in certain circumstances
 - The AER may omit or defer the step to publish a F & A paper
 - The AER may omit or defer the step where the ITNSP informs the AER of its expenditure forecasting methodology
 - The AER may set a regulatory control period of less than five years.
 - The AER may allow the conversion application processes and the transmission determination to be run concurrently for a converting transmission system.

The process flow chart below compares the steps in the transmission determination process for existing TNSPs with an example of:

- indicative steps where the transmission determination for an ITNSP is completed in one stage; and
- indicative steps where the transmission determination for an ITNSP is completed on more than one stage.

There may be other ways in which the transmission determination process is undertaken for an ITNSP. The final rule provides flexibility for the AER to specify the process that would be most appropriate to the ITNSP's circumstances.



4.1 How an ITNSP requests to commence the process of making a transmission determination and how the AER assesses such a request

4.1.1 Our final determination

Under our final rule, an ITNSP may submit a request to the AER to:⁶⁸

- commence the process for making a transmission determination relating to its proposed prescribed transmission services; and
- determine the process to apply when making the transmission determination.

In this request, the ITNSP must:

- Include information addressing the matters that the AER may have regard to in determining whether or not to commence the process of making a transmission determination.⁶⁹
- Include the ITNSP's proposed timetable for the matters to be determined by the AER in accordance with clause 6A.9.3 and supporting information⁷⁰
- Any other information⁷¹ required by the AER, in accordance with any guidance that the AER may publish for this purpose.⁷²
- Identify any parts of the request that the ITNSP claims to be confidential and wants suppressed from publication on that ground in accordance with the AER's Transmission Confidentiality Guidelines.⁷³

In response, the AER must assess whether or not to commence the process for making a transmission determination. In making this decision, the AER may have regard to any matters it considered appropriate, including the criteria set out in clause 6A.9.2(e) of the final rule.

These are:

- whether the ITNSP intends to deliver an actionable ISP project or a project that is not an actionable ISP project but has been subject to the regulatory investment test for transmission;⁷⁴
- the likelihood of the ITNSP delivering that project;⁷⁵ and
- in the case of a converting transmission system, the ITNSP's application to the AER to determine the service to be a prescribed transmission service.⁷⁶

68 Final rule, clause 6A.9.2(a)

69 Final rule, clause 6A.9.2(b)

70 Final rule, clause 6A.9.2(b)(1)

71 The ITNSP may provide in its request, proposed modifications to models or methodologies, such a modified PTRM that allowed a return on capital to be capitalised before it starts providing prescribed transmission services, that would be assessed by the AER.

72 Final rule, clause 6A.9.2(b)(2)

73 Final rule, clause 6A.9.2(c).

74 Final rule, clause 6A.9.2(e)(1)

75 Final rule, clause 6A.9.2(e)(2)

76 Final rule, clause 6A.9.2(e)(3)

Our final rule meets the NEO:

- **Regulatory certainty** - it addresses gaps in the regulatory framework to clarify how a transmission determination process commences for an ITNSP.
- **Risk allocation** - it provides the AER with criteria that it may have regard to in assessing whether or not to commence the making of a transmission determination. This provides the AER with a reasonable ability to manage the risk of speculative requests for a transmission determination.

4.1.2 Stakeholder views and our analysis

We note that there are gaps in the current framework. Chapter 6A of the NER does not outline how to commence a revenue determination process for an ITNSP that is not providing prescribed transmission services.

Stakeholders noted the risk that the AER may be required to undertake revenue determinations based on speculative submissions for transmission determinations by ITNSPs, that ultimately do not proceed.⁷⁷ MLPL considered that this risk was minimised by applying the standard Chapter 6A process, as per MLPL's proposed rule. The AER considered that the rule change should balance increased certainty against the risk of speculative projects and should only apply to investments that generate net benefits such that ITNSPs should be subject to the Regulatory Investment Test for transmission (RIT-T) process.⁷⁸

Our draft rule addressed gaps in the current framework as outlined below.

- It allowed an ITNSP to submit a request to commence the process of making a revenue determination by submitting a revenue proposal. We considered that the commitment required from an ITNSP to develop a revenue proposal would reduce the risk of speculative requests to commence the process of making a revenue determination.
- It required the AER, upon receiving a request from an ITNSP to commence a revenue determination process, to decide whether or not to commence a revenue determination process, including the criteria that it may apply.

In response to our draft determination:

- The AER supported our draft rule as it increased certainty in the regulatory process that a revenue determination can be commenced and made for an ITNSP.⁷⁹
- MLPL suggested that ITNSP should not have to submit a revenue proposal to commence the process of making a revenue determination, and should instead submit a foundational proposal, which provides background and framework information, including the proposed timing for stakeholder engagement.⁸⁰

Our final rule made amendments to our draft rule, as explained below:

⁷⁷ Submissions to the consultation paper: MLPL, p. 2; Hydro Tasmania, p. 2; AER, p. 2.

⁷⁸ AER, submission to the consultation paper, p. 2.

⁷⁹ AER, submission on draft determination, p. 1.

⁸⁰ MLPL, submission on draft determination, p.5.

- An ITNSP is to request to commence the process of making a transmission determination by submitting a request that addresses the criteria that the AER must have regard to in clause 6A.9.2(e) and other relevant information outlined above, as opposed to submitting a revenue proposal. We consider that the regulatory framework should be flexible to enable the timely delivery of actionable ISP projects and other major transmission projects that are central to the NEM transition. We consider that the risk of speculative requests can be managed by the discretion provided to the AER in deciding whether or not to commence the process, and that an ITNSP proposing to build an actionable ISP project would have already had to demonstrate commitment by completing a RIT-T.
- In its request, the ITNSP must propose a timetable for the matters to be determined by the AER in accordance with clause 6A.9.3 and include supporting information. The proposed timetable may include proposed modifications to the process in Chapter 6A that may be relevant to the ITNSP's circumstances. We consider that this flexibility enables the timely delivery of actionable ISP projects and other major transmission projects as allows an ITNSP to suggest the most appropriate process for making a transmission determination based on its circumstances, while noting that the AER ultimately must make the decision on the relevant process to apply.
- The AER may, but is not required to, publish guidance as to the kinds of information that an ITNSP's request must include. If the AER publishes guidance, then an ITNSP's request must contain the information specified by the AER in the guidance. This supports regulatory certainty and transparency.
- A request submitted by an ITNSP must identify the parts of the request the ITNSP claims to be confidential and wants suppressed from publication in accordance with the Transmission Confidentiality Guidelines. This clarifies that the AER's existing framework for confidentiality in Chapter 6A applies to the ITNSP's request.
- We added an extra assessment criteria that the AER may consider, in the case of a converting transmission system, the ITNSP's application to the AER to determine the service to be a prescribed transmission service.⁸¹

4.2 How the AER provides notification of its decision on whether or not to commence the process of making a transmission determination for an ITNSP

Section 4.1 above sets out how an ITNSP may request to commence the making of a transmission determination, and how the AER assesses whether or not to commence. This section explains how the AER must then notify parties of its decision to commence or not commence the making of a transmission determination for an ITNSP.

4.2.1 If the AER decides to commence the process of making a transmission determination

Under our final rule, if the AER decides to commence the process of making a transmission determination for an ITNSP, it must publish a notice of its decision, the application and a CPP.

⁸¹ Final rule, clause 6A.9.2(e)(3)

If the ITNSP has identified any part of its application to be confidential, then the AER must publish a notice setting out the fact that the application contains information over which a claim of confidentiality has been made. The notice of the AER's decision to commence a transmission determination process may be included in the CPP. The contents of the CPP, and timing of when the AER must publish the CPP, are set out below in Box 1.

BOX 1: THE AER'S COMMENCEMENT AND PROCESS PAPER

A CPP must include the following contents:

- the commencement date for the first regulatory year of the regulatory control period to which the transmission determination will apply, which must coincide with the start of a financial year*;
- any modifications to the process for making a transmission determination under Chapter 6A, as explained in section 4.3**;
- where the AER decides to complete the transmission determination in one or more stages:
 - which of the matters in rule 6A.14 the AER will determine in each stage; and
 - any related changes to the obligations of the ITNSP to provide information to the AER under chapter 6A***.
- the dates for when (as applicable):
 - the ITNSP is to submit its full revenue proposal (if a single stage transmission determination) or partial revenue proposal (if a multi-stage transmission determination)****
 - the ITNSP is to submit its initial proposed pricing methodology^
 - the ITNSP is to submit its Expenditure forecasting methodology (the AER may omit this step, as explained in section 4.3.3)
 - the ITNSP is to publish a F & A paper (the AER may omit this step, as explained in section 4.3.2)
 - the AER is to publish an Issues paper
 - the AER is to publish its Draft decision (the AER may omit this step, as explained in section 4.3.1)
 - the ITNSP is to submit its revised revenue proposal (the AER may omit this step, as explained in section 4.3.1)
 - the AER is to publish its Final decision.
- for a proposed transmission system (new asset), specify the arrangements to apply, or methodologies to be used or how those methodologies are to be determined, to provide for the capitalisation of return on capital (calculated using the allowed rate of return) in respect of any period in a regulatory control period prior to the date on which prescribed transmission services are first provided^^.

The AER must publish the CPP within 40 business days of receiving a request from an ITNSP to commence the process of making a transmission determination⁸². The AER may, with the agreement of the ITNSP, extend the period of time to publish the CPP⁸³.

Source: AEMC

Note: *Final rule, clause 6A.9.3(b)(1)

Note: **Final rule, clause 6A.9.3(b)(3)

Note: ***Final rule, clause 6A.9.3(c)

Note: ****Final rule, clause 6A.9.3(b)(2)(i)

Note: ^Final rule, clause 6A.9.3(b)(2)(ii)

Note: ^^Final rule, clause 6A.9.4(a)

Note: ^^^Final rule, clause 6A.9.2(g)

Note: ^^^^Final rule, clause 6A.9.2(h)

Our final rule is different from our draft rule which did not include a step for the AER to publish a CPP. Stakeholders, including the AER, supported the inclusion of the CPP in our final rule.⁸²

A CPP must specify certain matters described above that are determined by the AER, including the commencement date for the first regulatory year of the regulatory control period to which the transmission determination will apply which must coincide with the start of the financial year. The AER is not required to set out in the CPP more detailed matters such as the duration of the first regulatory control period, any timeframes relating to a later stage of a multi-stage transmission determination process or the start date or duration of the second regulatory control period. The AER has the flexibility to determine these matters later on in the transmission determination process.

The CPP must also specify the date or the manner in which the date is to be determined, by which the ITNSP must submit its initial revenue proposal and where applicable, its initial proposed pricing methodology.⁸³ This provides flexibility for the AER to determine when it would be appropriate to commence these process, in the circumstances of the ITNSP.

Further details about the modifications to the transmission determination process are discussed in section 4.3 below.

The final rule also provides additional time for the AER to publish a CPP with the agreement of the ITNSP.⁸⁴ This may be required, for example, if the AER needs further information from the ITNSP in order to set out the matters to be included in the CPP. Circumstances may arise throughout the transmission determination process which requires a CPP to be amended. The AER may amend a CPP in these circumstances on the application of the relevant ITNSP and if it does so, the AER must promptly publish any amended CPP.⁸⁵

We consider that a CPP provides regulatory certainty for the ITNSP and interested stakeholders over the process steps and timing to apply for the transmission determination,

82 AER and MLPL, meetings with AEMC staff in October and November 2022.

83 The may not be required in the first stage of a multi-stage transmission determination.

84 Clause 6A.9.2(h)

85 Final rule, clause 6A.9.3(f) and (g)

including where this may include modifications from the process that applies for existing TNSPs under chapter 6A.

4.2.2 **If the AER decides not to commence the process of making a transmission determination**

Under our final rule, if the AER decides to not commence the process of making a transmission determination, the AER must publish a notice of this decision and reasons for the decision within 40 business days of receiving the request to commence from the ITNSP.⁸⁶

The AER must also publish the ITNSP's application and, if the ITNSP has identified any part of the application to be confidential, the AER must publish a notice setting out the fact that the application contains information over which a claim for confidentiality has been made.⁸⁷

This is an amendment from our draft rule. This provides transparency and regulatory certainty that the AER will provide notification of its decision to not commence the process of making a revenue determination for an ITNSP, with reasons for its decision.

4.3 **The AER has flexibility to modify the process for making a transmission determination for an ITNSP**

The final rule provides flexibility for the AER to modify the process for a making a transmission determination for an ITNSP, compared to the process that applies for existing TNSPs under chapter 6A, as outlined below:

- The AER has flexibility to make a transmission determination in one or more stages, to omit a draft decision stage and shorten consultation periods.
- The AER may omit or defer the step to publish a F & A paper.
- The AER may omit or defer the step where the ITNSP informs the AER of its expenditure forecasting methodology.
- The AER may set a regulatory control period for less than five years; and
- The AER may allow the conversion application processes and the transmission determination to be run concurrently for a converting transmission system.

These are examples of some of the modifications to the process that the AER may determine are appropriate to the ITNSP's circumstances. The final rule does not limit the modifications that the AER may make to the process. The AER might determine that there are other steps in the transmission determination process for an ITNSP that should be omitted or deferred.

Under the final rule the AER may also determine that there should be changes to the obligations on the ITNSP to provide information to the AER in accordance with Chapter 6A. For example, this may result in the ITNSP not needing to provide duplicative information that the AER has received through another process, or deferring an ITNSP's obligation to provide information to a later step.

⁸⁶ Final rule, clause 6A.9.2(f)

⁸⁷ Final rule, clause 6A.9.2(d)

Under the final rule, the AER may exclude from the transmission determination some of the decisions that the AER would otherwise make under rule 6A.14, if no prescribed transmission services are expected to be provided at any time during that regulatory control period

The final rule contributes to the NEO as outlined below:

- **Concept of efficiency** - it provides the AER with flexibility to make a transmission determination in one or more stages, so the AER makes decisions on revenue and pricing elements for an ITNSP when the AER considers it reasonable to do so.
- **Timing and uncertainty and administrative cost and complexity** - it clarifies regulatory timeframes around transmission determinations for ITNSP's, which improves regulatory certainty and supports timely investment in major transmission projects. It provides the AER with the flexibility to omit or defer steps in the process and allow for shorter consultation periods than apply for existing TNSPs. It clarifies that the process to convert a MNSP to a provider of prescribed transmission services can be run concurrently with the establishment of a transmission determination.

The final rule better meets the NEO than MLPL's proposed rule as it provides:

- flexibility for the AER to determine the process to apply to an ITNSP, which may include making a transmission determination in one or more stages, omitting or deferring the steps for the AER to publish a F & A paper and an ITNSP to inform of its expenditure forecasting methodology;
- flexibility for the AER to set a regulatory control period for an ITNSP for less than five years; and
- the AER with the ability to run conversion application processes and the transmission determination concurrently for a converting transmission system.

4.3.1

The AER has flexibility to make a transmission determination in one or more stages, to omit a draft decision stage and shorten consultation periods

Our final determination

Our final rule provides the AER with discretion to:

- complete a transmission determination for an ITNSP in one or more stages; and⁸⁸
- with the consent of the ITNSP, omit a draft decision stage or shorten consultation periods in Part E of Chapter 6A if the AER is reasonably satisfied that:⁸⁹
 - in the circumstances, the timetable or process would otherwise place a disproportionate administrative burden on the AER or the ITNSP, or
 - there will be no material adverse impact on other stakeholders or the decision-making framework in Part E of Chapter 6A.

⁸⁸ Final rule, clause 6A.9.2(d)

⁸⁹ Final rule, clause 6A.9.2(d)(2)

Stakeholder views and our analysis

Our draft determination set out a process to establish a revenue determination through a process that was similar to that which applies to existing TNSPs.

In response to our draft determination, MLPL suggested a staged approach to the establishment of a revenue determination and CPAs, including the following steps:

- the ITNSP lodges a foundation revenue proposal;
- the AER makes a foundation revenue determination;
- the ITNSP may lodge one or more CPA(s), for example relating to early works and construction;
- the AER makes decisions on the CPA(s)
- the regulatory period commences.

We generally supported the staged approach proposed by MLPL and our final rule is similar to this approach. However, our final rule better meets the NEO as it provides the AER with discretion to make a transmission determination for an ITNSP through either of the process options below:

- **One stage process** - where the AER considers it reasonable to decide on all revenue and pricing elements, to establish a transmission determination, in a single stage process. A single stage process is similar to the process that applies for all existing TNSPs before every revenue determination. A single stage process requires an initial full revenue proposal and a revised proposal from the ITNSP, and a draft and final decision from the AER, including stakeholder consultation.
- **More than one stage** - where the AER considers it more appropriate to only determine some elements of a revenue determination in the first stage (such as the opening RAB and WACC) and determine or redetermine other revenue and/or pricing elements in the second stage of the transmission determination for an ITNSP. Box 2 below provides an example of a two-stage process that the AER could decide to apply for an ITNSP.

BOX 2: EXAMPLE OF A TRANSMISSION DETERMINATION FOR AN ITNSP THAT IS CARRIED OUT IN TWO STAGES AND THE DRAFT DECISION IS OMITTED FROM STAGE ONE

The ITNSP is proposing to construct a major transmission project that is an actionable ISP project and has passed the RIT-T. The project is expected to take at least six years to construct, commission and be able to provide prescribed transmission services. The indicative steps in the process are set out below.

1) ITNSP request to commence a transmission determination: The ITNSP submits a request to commence the process. As the ITNSP initially only seeks approval of early works costs and the WACC, it proposes a two stage transmission determination process, where the first stage is expedited by omitting the need for an AER draft decision.

2) The AER decides to commence and publishes a CPP: the AER agrees with the ITNSP to apply a two stage process that omits the need for an AER draft decision from stage one. Due to the relative immateriality of the stage one decisions, the AER considers that including an AER draft decision would place a disproportionate administrative burden on the AER and the ITNSP, and omitting the AER draft decision will not adversely impact any other stakeholders*.

3) Stage one of the transmission determination:

- The ITNSP submits a revenue proposal that only includes proposed early works costs and the WACC.
- The AER decides on the opening RAB (based on early works costs) and WACC. The AER also decides to apply a shorter regulatory control period of four years so it can later make stage two of the transmission determination, well before the ITNSP is expected to start providing prescribed transmission services and recovering revenue through tariffs.

4) Construction CPA: The ITNSP submits a CPA for construction anytime after the AER has published its decision on stage one of the transmission determination. This may occur before the start of the initial regulatory control period.

5) Stage two of the transmission determination:

- The ITNSP submits a revenue proposal that includes all revenue and pricing elements, as per the process for an existing TNSP and required by the CPP. This includes forecast costs for when the ITNSP is expected to start to be operational and provide prescribed transmission services.
- The AER does not amend the opening value of the RAB (unless it decides to under the current rules, such as through an ex-post review) and re-determines other elements such as the WACC. The AER sets a revenue allowance based on the ITNSP expecting to start providing prescribed transmission services in year three of the second regulatory control period.

6) The ITNSP starts providing prescribed transmission services: the new asset is commissioned and starts providing prescribed transmission services on 1 July of the third regulatory year of the second regulatory control period. The ITNSP starts recovering revenue and customers start paying prescribed tariffs from this time.

Source: AEMC

Note: *Final rule, clause 6A.9.2(d)(2)

4.3.2 The AER may omit or defer the step to publish a F & A paper

Our final determination

Under our final rule, the AER may omit or defer the publication of a F & A paper where the AER is satisfied that the matters in the F & A paper will be addressed, or the information will be provided, in another way.⁹⁰

Current arrangements

For existing TNSPs, the F & A paper is the first step in the process to determine the prices for the supply of electricity transmission services by a TNSP for their upcoming regulatory control period. It facilitates early consultation with consumers and assists TNSP in preparing their revenue proposals. The F & A paper sets out the AER's proposed approach to the economic regulation of a TNSP's revenues for its upcoming regulatory control period, including the AER's proposed application of the following incentive schemes and allowances:⁹¹

- service target performance incentive scheme
- efficiency benefit sharing scheme
- capital expenditure sharing scheme
- small-scale incentive scheme
- demand management innovation allowance mechanism
- expenditure forecast assessment guidelines
- whether depreciation will be based on forecast or actual capital expenditure (capex) in updating the RAB.

Our draft rule

Our draft rule provided the AER with discretion to make and publish a F & A paper that applies in respect of a revenue determination for an ITNSP if the AER considers that it is necessary or desirable to do so.⁹²

Stakeholder views and our analysis

Stakeholder views on our draft rule are summarised below.⁹³

- The AER supported the broad discretion provided to the AER to make and publish a F & A paper⁹⁴
- PIAC supported providing the AER with discretion on whether to make and publish a F & A paper, however requested clarity on the circumstances when a F & A paper was not required.⁹⁵

90 Final rule, clause 6A.9.2(d)(1)

91 NER clause 6A.10.1A(b)

92 Draft rule, clause 6A.10.1A(a1)

93 There were no stakeholder views in response to the matter of the F & A paper in the consultation paper.

94 AER submission on draft determination, p. 4.

95 PIAC, submission on draft determination, p. 2.

- MLPL and Transgrid sought clarity on how the matters that are addressed in a F & A paper for existing TNSPs would be addressed if a F & A paper was not published for an ITNSP.⁹⁶

Our final determination is that the AER should have discretion to omit or defer the need to make and publish a F & A paper. We consider that it would be reasonable for the AER to omit or defer the publication of a F & A paper, for example in the scenarios below.

- Where a MNSP has applied to convert to a provider of prescribed transmission services, the AER could omit publishing a F & A paper and address the matters usually covered in a F & A paper in the CPP and/or the Issues paper.
- Where an ITNSP is proposing to construct a major transmission project and the AER has decided to complete the transmission determination in two stages:
 - in the first stage, the AER could omit publishing a F & A paper and address the matters usually covered in a F & A paper in the CPP and/or the Issues paper.
 - in the second stage, the AER could omit publishing a F & A paper and address the matters usually covered in a F & A paper in an updated CPP and/or an Issues paper.

Our final rule is likely to better contribute to the NEO than the rule change proposal, which did not raise the matter of whether or not to publish the F & A paper as it provides flexibility for the AER to determine a process that is appropriate to an ITNSP's circumstances.

4.3.3

The AER may omit or defer the step where the ITNSP informs the AER of its expenditure forecasting methodology

Under our final rule, the AER may omit or defer the step in the transmission determination process where the ITNSP informs the AER of its expenditure forecasting methodology.⁹⁷ This is consistent with our draft rule that did not require an ITNSP to submit its expenditure forecasting methodology in a separate step from the revenue proposal.

Under the current arrangements, existing TNSPs are required to submit their expenditure forecasting methodology before they submit their revenue proposal.⁹⁸ Transgrid noted these current arrangements, and suggested that it was unclear under the draft rule how this step would occur for ITNSPs.⁹⁹

We consider that the AER should have discretion to omit or defer the need for an ITNSP to submit their expenditure forecasting methodology, before submitting their revenue proposal. An ITNSP is required to set out its methodology for forecasting operating expenditure and capital expenditure in its revenue proposal. If the AER does not consider that it is necessary to pre-approve the expenditure forecasting methodology separately before the revenue proposal, then the AER can omit this additional step.

⁹⁶ Submissions on draft determination: MLPL, p. 5; Transgrid, submission on draft determination, p. 1.

⁹⁷ Final rule, clause 6A.9.2(d)(1)

⁹⁸ NER clause 6A.10.1B

⁹⁹ Transgrid, submission on draft determination, p. 1.

4.3.4 **The AER may set a regulatory control period of less than five years**

Under our final rule, the AER may set a regulatory control period for an ITNSP that is less than five years.¹⁰⁰

Under the current arrangements, a regulatory control period for a TNSP must be not less than five regulatory years.¹⁰¹ The AER could set a regulatory control period for five years or longer.

The final rule therefore provides the flexibility for the AER to set a regulatory control period for an ITNSP for any period of time, which may be shorter or longer than five regulatory years.

This supports the NEO as it provides flexibility and efficient regulatory arrangements. For example, where the transmission determination is made in two stages, the AER could set the first regulatory control period of three years, so that better information will be available to make a full determination of all revenue and pricing elements in the second stage of a transmission determination.

4.3.5 **The AER may allow the conversion application processes and the transmission determination to be run concurrently for a converting transmission system**

Our final determination

For a converting transmission system, our final rule:¹⁰²

- allows the AER to run the conversion application processes and where applicable the transmission determination process concurrently;
- enables information or decisions made for one process to be used, or adopted, for the other; and
- clarifies that the AER may make a transmission determination to accommodate the service.¹⁰³

Stakeholder views and our analysis

This matter was not addressed in the draft determination.

APA¹⁰⁴ supported providing the AER with the ability to run the process to convert an MSNP to a provider of prescribed transmission services with the process to establish a transmission determination.¹⁰⁵

We agree with APA. It is efficient to carry out these processes concurrently as this allows for concurrent stakeholder consultation and AER decision-making on similar matters which are related to the one ITNSP. Further, in relation to the Basslink transmission system, clause 11.6.20 specifies the transitional arrangements that would apply if the service provided by

¹⁰⁰ Final rule, clause 6A.9.4(b)(1)

¹⁰¹ NER clause 6A.4.2(c)

¹⁰² Final rule, clause 6A.9.2(d)(4)

¹⁰³ Final rule, clause 2.5.2(c)

¹⁰⁴ APA is the owner of Basslink.

¹⁰⁵ APA, meeting with AEMC staff, October 2022.

Basslink ceases to be classified as a market network service and is determined by the AER to be a prescribed transmission service. Clause 11.6.20(c) provides that the relevant total revenue cap may be adjusted in accordance with Chapter 6A and clause 11.6.20 to include to an appropriate extent the relevant network elements which provide those prescribed transmission services. Our final rule clarifies that nothing in the existing Basslink transitional provision limits the application of new rule 6A.9, which confirms that the new arrangements for ITNSPs would also apply to Basslink such that the AER could run its conversion decision process concurrently with the establishment of a transmission determination.

It is also consistent with the concurrent processes that were applied to the conversion and establishment of a transmission determination for Directlink and Murraylink.¹⁰⁶

We expect that, if the AER carries out concurrent conversion application and transmission determination processes, that it would be reasonable to complete this through a one stage transmission determination process rather than a multi-stage process. For more detail on the indicative steps that apply in the process flow chart at the start of this Chapter 4.

¹⁰⁶ AER, *Decision - Murraylink Transmission Company Application for Conversion and Maximum Allowed Revenue*, 1 October 2003; and AER, *Decision - Directlink Joint Venturers' Application for Conversion and Revenue Cap*, 3 March 2006.

ABBREVIATIONS

| | |
|-------------|---|
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| Capex | Capital expenditure |
| CNSP | Coordinating network service provider |
| Commission | See AEMC |
| CPA | Contingent project application |
| CPP | Commencement and process paper |
| DNSP | Distribution network service provider |
| ITNSP | Intending transmission network service provider |
| ISP | Integrated system plan |
| F & A paper | Framework and approach paper |
| MCE | Ministerial Council on Energy |
| MLPL | Marinus Link Pty Ltd |
| MNSP | Market network service provider |
| NEL | National Electricity Law |
| NEM | National Electricity Market |
| NEO | National electricity objective |
| NSP | Network service provider |
| Opex | Operating expenditure |
| RAB | Regulatory asset base |
| RIT-T | Regulatory investment test for transmission |
| TNSP | Transmission network service provider |

A THE RULE MAKING PROCESS

This section sets out information on the following:

- MLPL's rule change request, and
- the rule change process.

A.1 MLPL's rule change request

On 3 March 2022, MLPL submitted a rule change request to the AEMC that proposed to amend Chapter 6A of the NER to allow the AER to make a revenue determination for an Intending TNSP.

MLPL considers that having a revenue determination is a pre-requisite for making a final investment decision to proceed in delivering Project Marinus.¹⁰⁷ MLPL considered that there is uncertainty over whether the AER can make a revenue determination for Project Marinus, and other transmission systems that may be proposed by other Intending TNSPs, under current Chapter 6A of the NER. MLPL considered that this may act as a barrier to efficient investment in transmission assets.

MLPL's proposed rule change solution, and the Commission's response to it, are outlined in Chapter 1, 3 and 4 of this final determination.

A.2 The rule making process

On 5 May 2022, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.¹⁰⁸ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 2 June 2022. The Commission received 6 submissions in the first round of consultation.

On 4 August 2022, the Commission published a draft determination and a more preferable draft rule. The Commission received 5 submissions in the second round of consultation.

The issues raised by stakeholders are discussed and addressed in Chapter 3 and 4 and Appendix C.

¹⁰⁷ MLPL rule change request, cover letter, p.2.

¹⁰⁸ This notice was published under s.95 of the NEL.

B LEGAL REQUIREMENTS UNDER THE NEL

This appendix sets out the relevant legal requirements under the NEL for the AEMC to make this final rule determination.

B.1 Final rule determination

In accordance with s.102 of the NEL the Commission has made this final rule determination in relation to the rule proposed by MLPL.

The Commission's reasons for making this final rule determination are set out in Chapter 1, 3 and 4.

A copy of the more preferable final rule is attached to and published with this final rule determination. Its key features are described in Chapters 3 and 4.

B.2 Power to make the rule

The Commission is satisfied that the more preferable final rule falls within the subject matter about which the Commission may make rules. The more preferable final rule falls within s.34 of the NEL as it relates to the activities of persons (including Registered participants) participating in the national electricity market.

Further, the more preferable final rule falls within the matters set out in Schedule 1 to the NEL as it relates to transmission system revenue and pricing because it clarifies the process for making a revenue determination by the AER for an Intending TNSP.

B.3 Making a more preferable rule

Under s. 91A of the NEL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NEO.

In this instance, the Commission has made a more preferable rule. The reasons are set out in Chapters 3 and 4.

B.4 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the rule¹⁰⁹
- its powers to make a more preferable rule¹¹⁰
- the rule change request¹¹¹
- submissions received during first and second round consultation

109 See appendix C.2.

110 See appendix C.3

111 See appendix A.

- the Commission’s analysis as to the ways in which the proposed rule will or is likely to, contribute to the NEO.¹¹²
- the revenue and pricing principles.¹¹³

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹¹⁴

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of Australian Energy Market Operator (AEMO)’s declared system functions.¹¹⁵ The more preferable final rule is compatible with AEMO’s declared system functions because it does not change AEMO’s functions in any respect.

B.5 Making electricity rules in the Northern Territory

Test for scope of “national electricity system” in the NEO

Under the NT Act, the Commission must regard the reference in the NEO to the “national electricity system” as a reference to whichever of the following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed rule:¹¹⁶

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems¹¹⁷
- (c) all of the electricity systems referred to above.

Test for differential rule

Under the NT Act, the Commission may make a differential rule if it is satisfied that, having regard to any relevant MCE statement of policy principles, a differential rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.¹¹⁸ A differential rule is a rule that:

- varies in its term as between:
 - the national electricity systems, and
 - one or more, or all, of the local electricity systems, or
- does not have effect with respect to one or more of those systems

¹¹² See chapter 2.

¹¹³ See chapter 2.1.

¹¹⁴ Under s. 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC’s governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. In December 2013, it became known as the Council of Australian Government (COAG) Energy Council. In May 2020, the Energy National Cabinet Reform Committee and the Energy Ministers’ Meeting were established to replace the former COAG Energy Council.

¹¹⁵ Section 91(8) of the NEL.

¹¹⁶ Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

¹¹⁷ These are specified Northern Territory systems, listed in schedule 2 of the NT Act.

¹¹⁸ Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

A uniform rule is a rule that does not vary in its terms between the national electricity system and one or more, or all, of the local electricity systems, and has effect with respect to all of those systems.¹¹⁹

As the rule relates to parts of the NER that currently do not apply in the Northern Territory, we have not assessed the rule against the additional elements required by the Northern Territory legislation.¹²⁰

B.6 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the Energy Ministers' Meeting that new or existing provisions of the NER be classified as civil penalty provisions.

The final rule does not amend any clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers' Meeting that any of the proposed amendments made by the final rule be classified as civil penalty provisions.

B.7 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the Energy Ministers' Meeting that new or existing provisions of the NER be classified as conduct provisions.

The final rule does not amend any rules that are currently classified as conduct provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers' Meeting that any of the proposed amendments made by the final rule be classified as conduct provisions.

B.8 Review of operation of the rule

The final rule does not require the Commission to conduct a formal review of the operation of the rule. The Commission may however self-initiate a review of the operation of the rule at any time if it considers such a review would be appropriate, pursuant to section 45 of the NEL.

119 Clause 14 of Schedule 1 to the NT Act, inserting the definitions of "differential Rule" and "uniform Rule" into section 87 of the NEL as it applies in the Northern Territory.

120 From 1 July 2016, the NER, as amended from time to time, apply in the NT, subject to derogations set out in regulations made under the NT legislation adopting the NEL. Under those regulations, only certain parts of the NER have been adopted in the NT. (See the AEMC website for the NER that applies in the NT.) National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

C THE CURRENT ARRANGEMENTS ARE CLEAR ON HOW THE RAB IS TO BE ESTABLISHED AND ADJUSTED OVER TIME FOR AN ITNSP

C.1 Our final determination

MLPL considered that it is unclear how the opening RAB is to be established for an ITNSP under current schedule 6A.2.1(d)(2), for example in relation to expenditure incurred by the ITNSP prior to the commencement of its first regulatory control period. We consider that current schedule 6A.2.1(d) is clear on how the opening RAB is to be established and amended for an ITNSP and does not need to be clarified in the final rule.

C.2 Current arrangements

Establishing the opening value of the RAB

Under the current NER, the opening RAB for a transmission system to be regulated under a revenue determination is established under schedule 6A.2.1(d). The opening value of the RAB at the beginning of the first regulatory year of the first regulatory control period is the prudent and efficient value of the assets used by the TNSP to provide prescribed transmission services (but only to the extent that they are used to provide such services), as determined by the AER.¹²¹ In determining this value, the AER must have regard to the matters referred to in clause S6A.2.2.¹²²

Adjusting the RAB

The RAB for the second and subsequent years of the first regulatory control period is adjusted year to year using the roll forward model by the AER under clause S6A.2.4.¹²³

The RAB for the first year of subsequent regulatory control periods is determined by accounting for various factors, including capex related to contingent projects, under clause S6A.2.1(f).

Capex is one factor that drives changes to the RAB over time. Chapter 6A accommodates three different frameworks for capex:

- **Forecast capex** - forecast capex is rolled into the RAB year on year during the regulatory control period with the RAB then adjusted for actual capex when determining the opening RAB for the next regulatory control period.¹²⁴
- **Contingent projects proposed by the TNSP** - a proposed contingent project is subject to a trigger event and must have capex exceeding either \$30 million or 5% of the

¹²¹ Clause S6A.2.1(d) of the NER.

¹²² For example, clause S6A.2.2(1) requires that in determining the prudence and efficiency of capital expenditure under schedule 6A.2.1(d), the AER must have regard to the need to provide a reasonable opportunity for the TNSP to recover the efficient costs of complying with all applicable regulatory obligations or requirements associated with the provision of prescribed transmission services.

¹²³ Clause S6A.2.4(a) of the NER.

¹²⁴ Clause 6A.6.7 of the NER.

value of the maximum allowed revenue (MAR) for the relevant TNSP for the first year of the relevant regulatory control period.¹²⁵

- **Contingent projects that are actionable ISP projects** - this is subject to the trigger event under clause 5.16A.5.¹²⁶ This is applicable for ITNSPs that intend to construct actionable ISP projects. It is relevant to MLPL that intends to construct Project Marinus Link, which is an actionable ISP project.

Amending the RAB through a CPA

A TNSP may submit a CPA to the AER during a regulatory control period for the AER to amend the TNSP's revenue determination that applies to that regulatory control period.¹²⁷ A revenue determination can be amended to reflect the capital and operating expenditure that the AER considers reasonable to undertake a contingent project if the AER is satisfied that the trigger event has occurred and the forecast of the total capex for the contingent project meets the threshold.¹²⁸ Any amendments to a TNSP's revenue determination through the CPA framework take effect from the next regulatory year following the CPA decision.¹²⁹

Under the AER's CPA guideline:¹³⁰

"When the AER makes its next revenue determination for the TNSP, it will adjust the regulatory asset base to include the capital expenditure required for the contingent project. If actual expenditure is not available, the AER will increase the regulatory asset base by the amount of estimated capital expenditure it has approved."

Currently, contingent projects are identified within a regulatory control period. This means that the CPA framework only applies to TNSPs that have a revenue determination and does not apply to ITNSPs that do not have a revenue determination.

C.3 MLPL's proposed changes relating to the RAB

MLPL noted that clause S6A.2.1(d) sets out the current arrangements that would apply to the establishment of the opening RAB for an ITNSP, such as MLPL. MLPL considered that current schedule 6A.2.1(d)(2) was unclear as it refers to the value of assets 'used' by the TNSP, but only to the extent that they are used to provide prescribed transmission services. MLPL considered that a new clarifying clause was required to confirm that expenditure incurred prior to the commencement of the first regulatory control period should be included in the opening RAB, provided that it is prudent and efficient. MLPL noted that if no assets were being used by the ITNSP at the commencement of the regulatory period the expenditure already incurred could be excluded from the opening RAB, even if that expenditure was prudent and efficient.¹³¹

¹²⁵ Clause 6A.8.1(b)(2)(iii) of the NER.

¹²⁶ Clause 6A.8.2(a)(2) of the NER.

¹²⁷ Clause 6A.8.2 of the NER.

¹²⁸ Clause 6A.8.2(e) of the NER.

¹²⁹ Clause 6A.8.2(l) of the NER.

¹³⁰ AER, *Process guideline for contingent project applications under the National Electricity Rules*, September 2007, p. 13.

¹³¹ MLPL rule change request, p. 3.

MLPL considered that schedule 6A.2.1(d)(2) was not consistent with good regulatory practice or the revenue and pricing principles in the NEL, which require that a regulated NSP should be provided with a reasonable opportunity to recover its efficient costs.¹³²

To address this, MLPL proposed to add the following new schedule 6A.2.1(d)(4) to Chapter 6A of the NER.¹³³

“For the avoidance of doubt, in applying clause (d)(2) to an Intending TNSP, 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.

C.4 Stakeholder views

In submissions to the consultation paper, stakeholders raised issues in relation to the RAB outlined below:

- AEMO noted the issue raised by MLPL in schedule 6A.2, including the implicit assumption that the relevant TNSP has already undertaken the investment, and supported the establishment of a RAB for ITNSPs.¹³⁴
- The AER noted that construction costs may be considered as a determinant of the opening RAB value. However, there are risks of overspend and underspend compared to forecasts during the construction phase, so there should be scope to address risk-sharing between TNSPs and customers.¹³⁵
- PIAC were concerned about MLPL’s proposal, noting that the inclusion of early works in the RAB should be subject to a requirement that they are assessed as prudent and efficient. If the project does not go ahead, the costs should not be recovered from consumers.¹³⁶

In submissions to the draft determination, stakeholders noted the following:

- PIAC welcomed clarification that early works cost will be subject to the RIT-T¹³⁷
- The AER considered that costs incurred before the start of a regulatory control period will not be forecast expenditure but will rather be reflected in the opening RAB value.¹³⁸

132 MLPL rule change request, p. 3.

133 MLPL rule change request, p. 18.

134 AEMO, submission to the consultation paper, p. 1.

135 AER, submission to the consultation paper, p. 2.

136 PIAC, submission to the consultation paper, p. 1.

137 PIAC, submission to the draft determination, p. 2.

138 AER, submission to the draft determination, p. 4.

C.5 Our analysis

We considered the issue raised by MLPL, MLPL's proposed solution and the issues raised by stakeholders. Our analysis is set out below.

We note the issues raised by MLPL in relation to clause S6A.2.1(d), however, we consider that the current clause S6A.2.1 is clear and it is not necessary to include MLPL's proposed new schedule 6A.2.1(d)(2) in the NER, for the reasons outlined below.

- The current schedule 6A.2.1(d) is clear that the opening value of the RAB is based on the prudent and efficient value of the assets used by the TNSP to provide prescribed transmission services.
- Where the ITNSP is constructing a major transmission project, the AER, in calculating the opening value of the RAB, may include prudent and efficient expenditure incurred prior to the commencement of the regulatory control period where it has been incurred for the purpose of delivering a project which seeks to provide prescribed transmission services (i.e. early works costs). In relation to actionable ISP projects, the AER provides guidance around how the AER will approach the regulatory assessment of actionable ISP projects under the economic regulatory framework set out in the NER, including the assessment of forecast expenditure and cases where the AER would exclude capex from the RAB.¹³⁹
- Our final determination, which does not amend current clause S6A.2.1(d)(2), is consistent with the revenue and pricing principles in the NEL, as it provides a regulated NSP with a reasonable opportunity to recover its efficient costs.

We expect that when the AER establishes the opening RAB for a converting MNSP it may take into account information included in the market benefits test, which may be undertaken by the AER as part of the conversion application process.

Further information on how the RAB for an ITNSP may be amended under our final rule:

- by contingent project costs, such as early works costs, is set out in section 3.4 ; and
- by capitalising the return on capital and the application of the RORI, prior to the recovery of revenue, is set out in section 3.5.

¹³⁹ AER, *Guidance Note - Regulation of actionable ISP project*, March 2021.

D SUMMARY OF OTHER ISSUES RAISED IN SECOND ROUND OF SUBMISSIONS

This appendix sets out other issues raised in the second round of consultation on this rule change, and our response to each issue. If an issue raised in a submission has been discussed in the main body of this document, it has not been included in this table.

Our responses to other issues raised in submissions in the first round of consultation are set out in the Draft determination.¹⁴⁰

Table D.1: Summary of other issues raised in submissions

| STAKEHOLDER | ISSUE | AEMC RESPONSE |
|-------------|---|---|
| AER p.3 | To account for the situation where a revenue determination has been made, but the project is delayed or never completed, it may be desirable for the AER to have the flexibility to set a 'sunset' date by which the revenue determination for an ITNSP must commence, otherwise it is taken to have never been made. | <p>We considered that it was not necessary to include provisions for sunset dates in the final rule. The AER has the flexibility to otherwise manage the possibility of a revenue determination being made, but the project being delayed or abandoned.</p> <p>If a project is delayed, the ITNSP will start providing prescribed transmission services and recovering revenue at a later time than expected, and customers will not start paying until the start of a regulatory year when prescribed transmission services are being provided.</p> <p>If a project is not completed or does not appear to have meaningfully commenced construction by the end of a regulatory control period, the</p> |

¹⁴⁰ AEMC, Establishing revenue determinations for Intending TNSPs, Draft determination, 4 August 2022, Appendix D, p. 27.

| STAKEHOLDER | ISSUE | AEMC RESPONSE |
|-------------|--|---|
| | | <p>revenue determination will expire and the ITNSP will need to apply for a new revenue determination (including a later stage of a multi-part transmission determination). The AER may decide that the ITNSP is not sufficiently progressed to warrant making another revenue determination. We consider that the final rule does not require a sunset date provision for the AER to invalidate a revenue determination.</p> |
| AER p.3 | <p>To account for the situation where a revenue determination has been made, but the project is delayed or never completed, it may be desirable for the AER to have the flexibility to reopen an ITNSPs revenue determination at any time after making and before commencement, where the AER is satisfied that there has been a material change in circumstances that means that the existing determination is no longer appropriate.</p> | <p>The AER currently has the ability to reduce the amount of capital expenditure included in revenue determinations for TNSPs for inefficient expenditure under Chapter 6A, which will apply for ITNSPs. We don't consider that additional provisions are required to allow the AER to reopen revenue determinations for ITNSPs. This would reduce regulatory certainty for stakeholders and investment certainty for ITNSPs.</p> |
| AER p.3 | <p>To account for the possibility of the ITNSP encountering delays while the AER is considering the revenue determination (such as a material change in circumstances), the AER should have discretion to cease or pause considering a revenue proposal for an ITNSP, once started.</p> | <p>If an ITNSP is encountering delays while the AER is considering the revenue determination, the AER can still make a revenue determination and start the regulatory control period for the ITNSP. This may be made on the assumption that the ITNSP does not start providing prescribed transmission services until a later regulatory year in the regulatory control period</p> |

| STAKEHOLDER | ISSUE | AEMC RESPONSE |
|-------------|-------|--|
| | | <p>or does not provide prescribed transmission services at all during that regulatory control period.</p> <p>If the AER has decided that an ITNSP has met the criteria that it may have regard to in assessing whether to commence a revenue determination process, and the AER could subsequently decide to cease or pause making the revenue determination, this would reduce regulatory certainty for stakeholders and investment certainty for the ITNSP.</p> <p>We note that our final rule allows the AER to amend the CPP, which may include amending the start date of a regulatory control period, subject to agreement from the ITNSP.</p> |