

Draft rule determination

National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024

Proponent

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About the AEMC

The AEMC reports to the energy ministers. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the energy ministers.

Acknowledgement of Country

The AEMC acknowledges and shows respect for the traditional custodians of the many different lands across Australia on which we all live and work. We pay respect to all Elders past and present and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country. The AEMC office is located on the land traditionally owned by the Gadigal people of the Eora nation.

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Summary

- 1 The Commission has made a more preferable draft rule to enable the benefits of concessional finance provided to transmission and distribution network service providers (NSPs) to be shared with consumers in the form of lower network tariffs.
- 2 The Commission has also revised the name of the rule change to: 'Sharing concessional finance benefits with consumers'. This is to better encapsulate the purpose of the rule change to enable the benefits of concessional finance to be shared with consumers of transmission and distribution NSPs, rather than just a focus on concessional finance for transmission NSPs.
- 3 On 28 October 2022, Energy Ministers endorsed a proposal that the Commonwealth submit a rule change request to the Australian Energy Market Commission (AEMC). The AEMC subsequently received a rule change request from the Honourable Chris Bowen MP, Commonwealth Minister for Climate Change and Energy (Minister), on 11 April 2023.
- 4 The Minister's rule change request is also in the context of the Commonwealth Government's Rewiring the Nation Fund, which commits \$20 billion in concessional finance for the upgrade and expansion of Australia's electricity grids. This finance is intended to facilitate lower costs and delivery of critical transmission and distribution infrastructure.
- 5 We are seeking feedback on our draft determination and rule by **8 February 2024**.

Our draft rule would enable the timely sharing of concessional finance benefits with consumers through lower costs

- 6 The Minister's rule change request detailed an approach to how the National Electricity Rules (NER) could be amended to allow the sharing of concessional finance benefits with consumers, including enabling the AER to allow an agreed benefit, determined through negotiation by the NSP and government funding body (GFB), to be passed onto consumers.
- 7 A rule change is required because the NER does not explicitly allow for the sharing of concessional finance benefits with consumers. The mechanism for sharing of benefits also needs to be set out.
- 8 Our draft rule addresses this by introducing a transparent and predictable mechanism in the revenue-setting framework that facilitates the timely sharing of concessional finance benefits with consumers in the NER and allows for the NSP¹ and GFB to agree to:
 - an amount to be passed through to transmission or distribution network to reduce the Maximum Allowed Revenue (MAR) by specified amounts each year; or
 - reduce the value of specified assets in the Regulated Asset Base (RAB); or
 - combination of both.
- 9 The NSP would be required to provide the AER with an agreement co-signed by the GFB (the agreement) setting out these agreed reductions. This is because it is the GFB's role to determine the concessional finance passed through to consumers.

¹ Our more preferable draft rule applies to transmission network service providers and distribution network service providers, whom we refer to as NSPs. While the rule change request applies to transmission network service providers our more preferable draft rule applies to transmission and distribution NSPs as concessional finance can also be provided to distribution NSPs.

Stakeholder support for transparency and predictability shaped our more preferable draft rule

- 10 Stakeholders supported a mechanism to enable the AER to facilitate the sharing of concessional finance benefits with consumers, as agreed between the GFB and NSP. The rule change request proposed that the NSP be responsible for notifying and providing information to the AER on the concessional finance benefits to be shared with consumers and that the AER consult with the GFB to confirm the intent to share benefits.
- 11 Stakeholders were divided on how the AER should confirm the intent to share the benefits of concessional finance with consumers.
- 12 We consider that our more preferable draft rule strikes an appropriate balance between transparent and predictable provision of information to the AER in the form of the agreement signed by the GFB and NSP that detail the sharing of concessional finance benefits with consumers including the agreed value and mechanism, while also empowering the AER to consult with the relevant NSP and GFB and to ask for the information that it needs to facilitate the sharing of benefits.
- 13 A number of stakeholders proposed expanding the scope of the rule change to the distribution network, in addition to transmission, in order to give effect to the intent of the rule change and concessional finance programs including the Rewiring the Nation fund.²
- 14 Our more preferable rule applies to distribution NSPs, as well as transmission NSPs, and better advances the NEO as it promotes outcomes for consumers through providing clarity and transparency in regulatory arrangements that will enable market participants and investors to make efficient investment decisions.³ with the benefits also shared with consumers.

The Commission considers the more preferable draft rule to be in the long-term interests of consumers

- 15 The Commission has considered the NEO⁴ and the issues raised in the rule change request and assessed the draft rule against four assessment criteria outlined below. We gathered stakeholder feedback and undertook regulatory impact analysis in relation to these criteria.
- 16 The more preferable draft rule would contribute to achieving the NEO by:
 - **Improving outcomes for consumers** – the draft rule, assessed against our assessment criteria ‘outcomes for consumers’, would deliver benefits to consumers by facilitating lower costs from the provision of concessional finance.
 - **Providing a transparent and predictable framework** – consistent with our assessment criteria ‘principles of good regulatory practice’ – the draft rule provides for a simple and transparent mechanism that would provide NSPs, GFBs, and other parties with certainty about what information the AER⁵ requires to facilitate the sharing of concessional finance benefits with consumers.

² ENA, CEFC, AusNet, and Iberdrola’s submission to our consultation paper.

³ Application of the rule change to the distribution network (Chapter 6 of the NER) will also extend the application of the rule change to the Northern Territory. Refer to Chapter 2 for further details.

⁴ Section 7 of the NEL.

⁵ And also, AEMO to facilitate the rule change in Victoria

- **Supporting emissions reduction**⁶ – the draft rule would facilitate the shift to net zero by enabling the provision of concessional finance and the sharing of benefits with consumers to be facilitated in a timely manner to support key infrastructure.
- **Supporting efficient market arrangements** – the draft rule, assessed against our assessment criteria ‘principles of market efficiency’ appropriately allocates the risk on the GFBs and NSPs to agree on the benefits of concessional finance to be shared with consumers and provides certainty to the AER through the disclosure of documented agreement, which forms the basis upon which the AER facilitates the benefits to be shared with consumers.

How the draft rule would work

- 17 Our draft rule requires an NSP to notify the AER where there has been an agreement to share concessional finance benefits with consumers.
- 18 As part of the notification, the NSP will be required to provide the AER with an agreement,⁷ co-signed by the GFB, detailing the sharing of concessional finance benefits with consumers including:
- The name of the GFB that agreed to share benefits of concessional finance with consumers and contact details for that body.
 - A description of the capital expenditure in relation to which the concessional finance is being provided.
 - A statement about whether the benefits of the concessional finance will be passed through as an adjustment to the regulated asset base (RAB), an amount to be passed through to transmission or distribution network users, or both, and the value and timing of those adjustments, and if so, details of those adjustments.
 - If the agreement to share benefits of concessional finance with consumers was agreed to by an entity other than the NSP, any particulars of the arrangements that may be requested by the AER, along with the name and ACN of the entity that is party to the agreement and contact details for that entity.
 - Any other matter the AER considers necessary.
- 19 The AER would adjust the NSP’s RAB and/or pass through an amount consistent with the details of the agreement. This would result in lower revenues to be recovered and in turn lower network tariffs to consumers.
- 20 Our draft rule enables the AER to ask for the information that it needs from the NSP (which must provide it), GFB, or a related party of the NSP to the agreement to share concessional finance benefits with consumers. This prevents confidentiality obligations from hindering the timely sharing of concessional finance benefits with consumers.
- 21 In Victoria, transmission augmentations in the Declared Shared Network (DSN) may be provided through contestable or non-contestable processes. For contestable augmentations, our understanding is arrangements for the sharing of concessional finance benefits will be facilitated through contractual arrangements between AEMO and the successful tenderer, with the concessional finance benefits passed to consumers through a reduction in the overall cost of the tenderer’s bid. For non-contestable augmentations, the draft rule would apply with an additional requirement on the incumbent Declared Transmission System Operators (DTSO) to provide AEMO

⁶ This has replaced the previous assessment criteria ‘decarbonisation’.

⁷ This agreement may be a schedule to the concessional finance agreement or may be a separate document prepared by the NSP and GFB, and a related party of the NSP, for the purpose of detailing the benefits to be shared with consumers.

with the same notification and information as is required for the AER.

- 22 Concessional finance may be used to support a project option (by changing its ranking or timing) in the economic assessment process and can be facilitated under the Rules and AER Guidelines, but only where the concessional finance is used to reduce the cost of the project option by providing a benefit to consumers in the form of lower network tariffs. Concessional finance cannot be used to support a project option in the economic assessment process where the benefit is retained solely by the NSP as there is no change to the net benefit of the project option (as it is effectively a contribution to the NSP and not to the project). In this way, concessional finance is treated the same as an external funding contribution under the AER's Cost Benefit Analysis (CBA) and Regulatory Investment Test (RIT) Application Guidelines, and we recommend that the AER update the guidelines to explain the treatment of concessional finance in the economic assessment process and to provide a more consistent approach across the Guidelines.
- 23 Where concessional finance is used to support a project option at the economic assessment stage, it is important that AEMO (at the ISP stage) and the AER (for the RIT stage) are certain that financing will eventuate. If the preferred option has changed due to concessional financing and that financing does not eventuate, it may be necessary to re-run the cost-benefit analysis process to identify another preferred option and consider the implications for project timeframes. We recommend that the AER update the CBA Guidelines and the RIT Application Guidelines to provide guidance on the level of funding certainty required before concessional financing can be used to support a project option in the economic assessment process.
- 24 We were asked to consider whether the concessional finance rule change can be applied to concessional finance arrangements entered into before the final rule determination. Our draft determination includes transitional rules to allow concessional finance benefits to be shared with consumers, where they have already been agreed to, consistent with the requirements of the more preferable draft rule.

Related rule change process

- 25 On 14 December 2023, the Commission published draft rule determinations for this rule change on *Sharing concessional finance benefits with consumers (ERC0349)* and a separate rule change on *Accommodating financeability in the regulatory framework (ERC0348)*. These rule changes cover different elements relating to the treatment of concessional finance, that has been provided by GFBs to NSPs, to support investment in network infrastructure.
- 26 The draft rule for Concessional finance (ERC0349) is concerned with concessional finance provided to TNSPs and DNSPs where benefits have been agreed to flow to consumers. It enables the AER to allow an agreed-upon quantum of benefits of concessional finance to flow to consumers via a RAB and/or MAR adjustment.
- 27 The draft rule for Financeability (ERC0348) is concerned with taking into account any financial benefits of concessional finance that flow to TNSPs in a financeability test applied by the AER. This relates to scenarios where:
 - all of the benefits of concessional finance flow to consumers, so that none of the benefits flow to the TNSP; and
 - not all of the benefits of concessional finance flow to consumers, so that some or all of the benefits flow to the TNSP.

How to make a submission

We encourage you to make a submission

Stakeholders can help shape the solution by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and contributes to well-informed, high quality rule changes.

How to make a written submission

Due date: Written submissions responding to this draft determination [and rule] must be lodged with Commission by **8 February 2024**.

How to make a submission: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code **ERC0349**.⁸

Tips for making submissions on rule change requests are available on our website.⁹

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).¹⁰

Next steps and opportunities for engagement

There are other opportunities for you to engage with us, such as one-on-one discussions or industry briefing sessions.

The AEMC will be holding a joint public forum on Friday 15 December 2023 to discuss the draft rule determinations for this rule change on *Sharing concessional finance benefits with consumers (ERC0349)* and the separate rule change on *Accommodating financeability in the regulatory framework (ERC0348)*.

You can also request the Commission to hold a public hearing in relation to this draft rule determination.¹¹

Due date: Requests for a hearing must be lodged with the Commission by 21 December 2023.

How to request a hearing: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code **ERC0349**. Specify in the comment field that you are requesting a hearing rather than making a submission.¹²

For more information, you can contact us

Please contact the project leader with questions or feedback at any stage.

Project leader: Chirine Dada
Email: Chirine.Dada@aemc.gov.au

⁸ If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission.

⁹ See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/our-work-3>

¹⁰ Further information about publication of submissions and our privacy policy can be found here: <https://www.aemc.gov.au/contact-us/lodge-submission>

¹¹ Section 101(1a) of the NEL.

¹² If you are not able to lodge a request online, please contact us and we will provide instructions for alternative methods to lodge the request.

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1 The Commission has made a draft determination

This draft determination is to make a more preferable draft rule. The rule change request proposes amending the NER to enable the benefits of concessional finance, such as low-cost finance provided through the Commonwealth's 'Rewiring the Nation' Fund (RTN Fund), to be passed through to consumers.¹³

We are seeking feedback on this draft rule. The more preferable draft rule is referred to as 'the draft rule' in this determination.

1.1 Our draft rule would support the timely sharing of benefits of concessional finance with consumers

The draft rule creates a transparent and predictable mechanism in the national electricity rules (NER) for the sharing of concessional finance benefits with consumers. Specifically, the draft rule assigns clear roles and obligations to the Network Service Provider (NSP), government funding body (GFB), and the Australian Energy Regulator (AER) and provides guidance to the AER on what information it should rely on and how it can facilitate passing through benefits to consumers.

It does this by:¹⁴

- Requiring the NSP to notify the AER, within 40 business days, where there has been an agreement to share concessional finance benefits with consumers. As part of the notification, the NSP is required to provide the AER with an agreement,¹⁵ that has been entered into with the GFB.
- Specifying that the agreement should detail how the benefit of concessional finance is to be shared with consumers, including whether the benefit sharing is to be facilitated through a regulatory asset base (RAB) and/or maximum allowed revenue (MAR) adjustment and the details of those adjustments, including amounts and timing. The reference to a MAR adjustment has a particular meaning in the Rules in relation to a transmission determination and is being used throughout this draft rule determination to also cover adjustments related to an amount to be passed through to the distribution determination.
- Enabling the AER to ask for the information that it needs from the NSP, GFB and a related party of the NSP to the agreement to share concessional finance benefits with consumers.
- Allowing the AER to adjust the NSP's RAB and/or MAR consistent with the details of the agreement within 40 business days of receiving the agreement. This ensures the timely sharing of concessional finance benefits with consumers.
- Requiring the AER to include guidance and worked examples on external funding contributions in its Cost Benefit Analysis (CBA) Guidelines and Regulatory Investment Test (RIT) Application Guidelines, and recommending that this includes concessional finance.
- Facilitating the sharing of concessional finance benefits with consumers in the NT and Victoria (for non-contestable augmentations).
- Facilitating the sharing of concessional finance benefits with consumers where these have been agreed between the date of the draft rule determination and the commencement of the final rule, under a transitional rule.

¹³ The RTN fund commits \$20 billion in concessional finance for the upgrade and expansion of Australia's electricity grids.

¹⁴ Detailed explanation of how our draft rule would work is discussed in Chapter 3.

¹⁵ This agreement may be a schedule to the concessional finance agreement, or may be a separate document prepared by the NSP and GFB, and a related party of the NSP, for the purpose of detailing the benefits to be shared with consumers.

1.2 Stakeholder support for transparency and predictability shaped our determination

The views expressed by stakeholders in response to our consultation paper and in submissions to the Transmission Planning and Investment Review (TPIR) Stage 3 Draft Report shaped our determination.¹⁶

There was wide support from stakeholders for the AEMC to develop guidance on how the concessional finance benefits to be shared with consumers are to be treated, including some stakeholders who suggested that the rule change also consider changes to distribution NSPs.¹⁷ We share these stakeholder views and consider that our draft rule facilitates the intent of the agreement to share the benefits of concessional finance with consumers, as agreed by the GFB and transmission and distribution NSPs.

While most stakeholders agreed that the NSP is best placed to notify the AER of the decision to share concessional finance benefits with consumers and to provide the necessary information, some stakeholders commented that both parties to the agreement should notify the AER and that this is likely to occur in practice.¹⁸ Many stakeholders commented that the regulatory framework should enable the AER to consult with the GFB to determine the concessional finance benefits to be shared with consumers.¹⁹

Our draft rule ensures that the AER is provided with information that is agreed upon by both parties, in the form of a concessional finance agreement entered into by the NSP and GFB, that quantifies and details the particulars of how benefits will be shared with consumers. Our draft rule also enables the AER to ask for information from the NSP and GFB. This provides a means for the AER to consult with the GFB, if it needs to.

Most stakeholders supported the Rules allowing two mechanisms to be used to facilitate the sharing of concessional finance benefits with consumers, a RAB and/or MAR adjustment, and most agreed that the mechanism should be agreed to by the NSP and GFB to avoid the need for the AER to develop guidelines and exercise discretion in its determination. Our draft rule allows for both RAB and MAR adjustments to be used, providing flexibility to the negotiating parties, and requires the AER to treat the benefits of concessional finance benefits to be shared with consumers consistent with the agreement between the parties. This provides for a transparent and predictable process for the GFB, NSP, and AER.

Some stakeholders asked us to consider how the rule change would apply to Victoria and how the rule change interacts with AEMO's role in Victoria (as the jurisdictional transmission planner).²⁰

In Victoria:

- For projects procured through contestable processes, arrangements for the delivery of concessional finance will be determined between the GFB and AEMO, with the concessional finance benefits passed to consumers through a reduction in the overall total cost of a tenderer's bid.
- For projects procured through non-contestable processes, the proposed approach for the NEM applies in Victoria and, to accommodate AEMO's role as the jurisdictional transmission

¹⁶ A summary of stakeholder submissions to the TPIR Stage 3 Draft Report on concessional finance is detailed in Appendix A of our consultation paper.

¹⁷ ENA, CEFC, AusNet, Iberdrola, and the Tasmanian Small Business Council's submission to our consultation paper.

¹⁸ AGL and ECA&EUAA's submission to the TPIR Stage 3 Draft Report.

¹⁹ Iberdrola, AER, CEFC, Origin, AEC, AEMO, and Woodside Energy's submission to our consultation paper. AGL, CEC, Energy Australia, FFI, and PIAC's submission to the TPIR Stage 3 Draft Report.

²⁰ Iberdrola, CEFC, AusNet, and AEMO's submission to our consultation paper.

planner, the incumbent declared transmission system operator will also be required to provide the same notification²¹ to AEMO to enable it to reflect any value of the concessional finance benefit in its transmission use of service charges.

A couple of stakeholders asked us to consider how concessional finance interacts with the planning and/or economic assessment framework.²² Our draft determination is that concessional finance can be used to support a project option in the economic assessment process (and change its ranking or timing) only where the benefits of the concessional finance flow through to consumers in the form of lower network costs. We consider the value of the benefit provided through concessional finance to be the same as an external funding contribution (such as a government grant). Our draft rule requires the AER to develop guidance and worked examples on external funding contributions in its CBA Guidelines and RIT Application Guidelines, and we recommend the AER include concessional finance in its guidance and worked examples.

Our draft rule and draft determination aims to ensure that obligations and expectations around how the benefits of concessional finance can be shared with consumers are clear for transmission and distribution NSPs, and aims to increase transparency and predictability of how the AER can facilitate the benefits to be shared with consumers. This is consistent with the intention of the rule change request. In making our draft determination we assessed the regulatory impact of the proposed changes. Our draft rule would not impose any material costs on consumers, NSPs, or other market participants.²³ We do not consider that there would be significant costs in implementing our draft rule.²⁴ However, we do consider that there are significant benefits to making our draft rule.

1.3 Our determination would support the energy transition by ensuring consumers can benefit from the provision of concessional finance

The rule change request is one of the priority actions that was agreed to by Energy Ministers on 28 October 2022.²⁵ A change to the rules is required to enable funds such as Rewiring the Nation to provide benefits to consumers when intended, and to provide clarity on the treatment of concessional finance to improve investor confidence and facilitate the timely delivery of infrastructure that supports the energy transition.

Our draft rule and determination focus specifically on facilitating the sharing of concessional finance benefits with consumers, as agreed between the NSP and GFB.

Our draft determination creates certainty through increased transparency and predictability around how concessional finance benefits can be shared with consumers to lower their network costs and reduce bill impacts to consumers arising from significant infrastructure investment. Our draft determination provides a mechanism that ensures the timely sharing of benefits of concessional finance with consumers, in a manner similar to a cost pass-through event, by enabling the AER to reduce a NSP's RAB or MAR by the intended value of the benefit and for that benefit to flow through to consumers when intended.

Our draft rule and determination complement the draft rule and determination [Accommodating financeability in the regulatory framework](#) which has considered how concessional finance benefits

21 Including a copy of the concessional finance agreement detailing the sharing of benefits with consumers.

22 CEFC and AEMO's submission to our consultation paper.

23 See appendix B for an overview of our regulatory impact analysis.

24 Chapter 3 discusses our draft rule in more detail.

25 [Energy Ministers Meeting Communique – 28 October 2022](#)

provided to consumers and/or a TNSP should be treated for the purpose of assessing
financeability of actionable ISP projects.

2 The rule would contribute to the energy objectives

The draft rule and determination provides regulatory guidance about the treatment of concessional finance by a government funding body where there is an intent to share benefits of concessional finance with energy consumers.

The regulatory guidance provides clarity and transparency in the rules to facilitate efficient decision-making by market participants and investors. This, in turn, supports the efficient and timely delivery of major transmission projects in the NEM, consistent with the NEO.

2.1 The Commission must act in the long-term interests of energy consumers

The Commission can only make a rule if it is satisfied that the rule will or is likely to contribute to the achievement of the relevant energy objectives.²⁶

For this rule change, the relevant energy objective is the NEO:²⁷

The NEO is:²⁸

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; and
- (c) the achievement of targets set by a participating jurisdiction—
 - (i) for reducing Australia’s greenhouse gas emissions; or
 - (ii) that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The targets statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NEO.²⁹

2.2 We must also take these factors into account

2.2.1 We have considered whether to make a more preferable rule

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 is likely to better contribute to the achievement of the NEO.³⁰

For this rule change, the Commission has made a more preferable draft rule. The reasons are set out in section 2.3 below.

²⁶ Section 88(1) of the NEL.

²⁷ The NEO was updated on 21 September 2023 with the introduction of the Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023. We have applied the updated NEO in this draft determination in line with that Act. This is a change from the consultation paper which referenced the old NEO.

²⁸ Section 7 of the NEL.

²⁹ Section 32A(5) of the NEL.

³⁰ Section 91A of the NEL.

2.2.2 We have considered the revenue and pricing principles for this rule change

We have to take into account the revenue and pricing principles when making rules with respect to the regulation of revenues earned, or prices charged, by owners, controllers or operators of transmission systems, for the provision by them of services that are subject of a transmission determination.³¹

In making this draft rule, we have considered the following revenue and pricing principles:

- A regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in complying with a regulatory obligation or requirement, or making a regulatory payment.³²
- Regard should be had to the regulatory asset base with respect to a transmission system adopted in any previous transmission determination (or other relevant determination) or in the NER.³³
- A price or charge for the provision of a direct control network service should allow for a return commensurate with the regulatory and commercial risks involved in providing the direct control network service to which that price or charge relates.³⁴

2.2.3 We have considered how the rule would apply in the Northern Territory

When we published the consultation paper, we noted that the proposed rule would not apply in the Northern Territory as it would amend provisions in Chapter 6A of the NER which has no effect in the Northern Territory.³⁵ To the extent any network assets in the Northern Territory are at transmission voltages, they are regulated as distribution assets under the Northern Territory NER.³⁶

Several submissions to the consultation paper asked us to consider extending the scope of the rule change to cover the distribution network, which is regulated under Chapter 6 of the NER. As Chapter 6 applies in the Northern Territory, any changes to Chapter 6 of the NER will, by default, apply in the Northern Territory. We have also made amendments to Chapter 5 of the NER (relating to the matters required to be included in the CBA Guidelines and RIT Application Guidelines) which also apply to the NT.

In developing the draft rule, the Commission has considered how it should apply to the Northern Territory according to the following questions:

- Should the NEO test include the Northern Territory electricity systems? For this rule change request, the Commission has determined that the reference to the “national electricity system” in the NEO includes the local electricity systems in the Northern Territory.
- Should the rule be different in the Northern Territory? The Commission has determined that a uniform rule should apply to the Northern Territory.

See Appendix C for more detail on the legal requirements for our decision.

31 NEL Schedule 1 items 15 to 24.

32 Section 7A of the NEL.

33 Section 7A(4) of the NEL.

34 Section 7A(5) of the NEL.

35 Under the NT Act and its regulations, only certain parts of the NER have been adopted in the Northern Territory. The version of the NER that applies in the Northern Territory is available on the AEMC website at <https://www.aemc.gov.au/regulation/energy-rules/northern-territory-electricity-rules>

36 See rule 6.0A of the NER (NT).

2.3 How we have applied the legal framework to our decision

The Commission must consider how to address the treatment of concessional finance, when there is an intent to share benefits with consumers, against the legal framework.

We identified the following criteria to assess whether the proposed rule change, no change to the rules (business-as-usual), or other viable, rule-based options are likely to better contribute to achieving the NEO:

- Outcomes for consumers.
- Emissions reduction.
- Principles of market efficiency.
- Principles of good regulatory practice.

These assessment criteria reflect the key potential impacts – costs and benefits – of the rule change request, for impacts within the scope of the NEO. Our reasons for choosing these criteria are set out in section 4.4 of the consultation paper. There is one change from the assessment criteria proposed in the consultation paper. Emissions reduction has replaced the criterion of decarbonisation. This is in line with the changes to the NEO on 21 September 2023.

The Commission has undertaken regulatory impact analysis to evaluate the impacts of the various policy options against the assessment criteria. Appendix B outlines the methodology of the regulatory impact analysis.

The rest of this section explains why the draft rule best promotes the long-term interest of consumers when compared to other options and assessed against the criteria.

2.3.1 Improving outcomes for consumers

Our draft rule improves outcomes for consumers by ensuring they receive the benefit of low-cost financing provided by a government funding body with the intent of reducing the bill impact of investment in electricity network infrastructure.

Currently, if concessional finance is provided, then any direct benefits derived from the concession flow to NSPs, not to consumers.³⁷ If a government funding body wants some, or all, of the benefits of their concessional financing to flow directly to consumers through lower network charges, changes to the rules are required. Our draft rule details a clear and transparent mechanism for transferring the benefits of concessional finance to consumers through lower network costs.

Our draft rule extends the scope of the rule change to include distribution networks and the Northern Territory. We have clarified how concessional finance benefits are shared with consumers in Victoria, which has distinct arrangements for planning and procuring network augmentations.

We have also clarified how concessional finance is to be treated in the economic assessment of project options. Our draft rule permits the use of concessional finance to support a project option in the economic assessment process³⁸ only where the benefits of the concessional finance flow through to consumers in the form of lower network costs.

³⁷ Consumers may still benefit indirectly through the acceleration of new transmission infrastructure, for example through greater inter-regional electricity flows and greater availability of lower cost renewable generation and storage.

³⁸ That is, where the concessional finance is being provided to improve the net economic benefit of a project option to change its ranking or timing.

2.3.2 Supporting emissions reductions

Our draft rule helps achieve Commonwealth and state government greenhouse gas emissions reduction targets, for example, the Commonwealth's 2030 target of 43% below 2005 levels. It also helps achieve Commonwealth and state government renewable energy targets, for example, the Commonwealth's commitment to a national renewable target of 82% by 2030. It does this by supporting the timely delivery of critical transmission infrastructure required to facilitate the transition to a net zero energy system. Our draft rule provides a clear framework for treating concessional finance according to the intention of the GFB. This allows government funding (for example, from the Commonwealth's RTN program) to be used effectively to accelerate the delivery of critical transmission infrastructure and reduce the bill impacts of this investment.

2.3.3 Promoting principles of market efficiency

Our draft rule supports more efficient market arrangements by ensuring that the risks of managing the delivery of concessional finance are appropriately allocated to the parties best able to manage them and is consistent with their roles and responsibilities in the NEM.

Where there is an intent to share the benefits of concessional financing with consumers, then the GFB and NSP are best placed to agree on the value of the benefit to be shared with consumers and how those benefits will be distributed. The NSP is best placed to provide the details of this agreement to the AER as the GFB is not a clearly identifiable party under the rules and rules cannot be made requiring the GFB to provide the agreement to the AER. In Victoria, for non-contestable transmission projects,³⁹ the NSP⁴⁰ will also be required to provide the details of the concessional financing agreement to AEMO Victorian Planning (AVP) because of its role as the jurisdictional transmission planner (throughout this document, AVP refers to AEMO in its Victorian Planning role).

The AER's role is simply to give effect to the agreement to share benefits and to adjust revenues and charges accordingly. Our draft rule ensures that the information in the concessional finance agreement that is provided to the AER (and, where relevant, AVP) is enough for the necessary adjustments to be made. However, we have also provided the AER (and AVP) with the ability to seek clarification from the NSP when needed.

2.3.4 Promoting principles of good regulatory practice

Our draft rule promotes good regulatory practice by providing a simple and transparent mechanism for notifying and capturing consumer benefits from concessional finance in the revenue setting framework in the NER.

The draft rule:

- Provides the AER, AVP, NSP, investors, and financiers with clarity on the regulatory treatment of benefits from concessional finance.
- Enables the intent of the financier to be reflected in the regulatory treatment of the concessional finance.
- Enables benefits to flow to energy consumers, where intended.

³⁹ For contestable projects in Victoria, arrangements for the delivery of concessional finance benefits will be determined by the GFB and AEMO, with the benefits passed to consumers through a reduction in the overall total cost of a tenderer's bid.

⁴⁰ For non-contestable projects in Victoria, the relevant NSP is the incumbent declared transmission system operator.

The draft rule is consistent with proposed reforms to accommodate financeability in the regulatory framework as it enables some, or all, of the benefit of the concessional finance to remain with the NSP, where that is the GFBs intent.

2.3.5 Our more preferable draft rule better promotes the NEO

The more preferable draft rule better contributes to the NEO than the proposed rule because:

- Our changes streamline the regulatory process and creates a transparent and consistent approach for treating concessional finance, reducing administrative burden. The concessional finance agreement that is provided by the NSP to the AER will contain all the necessary information that the AER requires to make the necessary adjustments to revenues, reducing the need for consultation to determine the intent and details of the necessary revenue adjustments.
- We have clarified the treatment of concessional finance for non-contestable projects in Victoria, where the incumbent declared transmission system operator is also required to notify and provide the same information to AVP (as for the AER) so that AVP can reflect the arrangements in its TUOS charges.
- We have extended the scope of the rule change to cover the distribution network, which also means that the rule change now applies to the Northern Territory and covers the NEM. The regulatory treatment of concessional finance will be consistent across the NEM, further improving the efficiency of the market and promoting good regulatory practice.

3 How our rule would operate

3.1 The draft determination extends the concessional finance rule change to distribution

Box 1: Draft determination - Application of the rule change to the transmission and distribution networks

Our draft determination is to apply the rule change to both transmission and distribution network service providers (TNSP and DNSPs) to enable the sharing of concessional finance benefits with customers.

This ensures that concessional finance benefits agreed to be shared with TNSP and DNSP customers can be facilitated by the AER, with the same information obligations and regulatory mechanism applicable.

Our draft rule applies to distribution, in addition to transmission, in order to give effect to the intent of the rule change and concessional finance programs including Rewiring the Nation fund.

We received a number of submissions to our consultation paper including from the ENA, CEFC, AusNet, Iberdrola, and the Tasmanian Small Business Council, proposing that the scope of the rule change apply to distribution NSPs, in addition to transmission NSPs.

The ENA's submission stated that if a GFB provides concessional finance for distribution projects, then equivalent changes in Chapter 6 could also be considered.⁴¹ The ENA stated that, for example, consequential distribution works may be required to facilitate a nationally significant transmission project.

The CEFC's submission stated that while the consultation paper focuses on TNSPs, the CEFC sees merit in extending the rule change to include DNSPs.⁴² There are likely to be opportunities where concessional finance could be used to unlock value in the distribution network, for example, where a REZ project extends to both the transmission and distribution networks.

AusNet's submission stated that it would support a rule change with similar principles and processes for distribution network infrastructure.⁴³ The energy transition requires significant investment in both transmission and distribution infrastructure, and the same rule change benefits expressed in the consultation paper extend equally the regulatory treatment for concessional financing of distribution networks.

Iberdrola's submission stated that while this rule specifically applies to the regulated monopoly TNSPs, it would be envisaged that the regulated monopoly DNSPs will receive concessional support for power lines, as they have for DNSP-owned community batteries.⁴⁴

The Tasmanian Small Business Council (TSBC) submission suggested that we give consideration to the need for similar arrangements to cover concessional finance in relation to the regulation of distribution assets, noting the need for upgrades of distribution systems to complement new transmission links.⁴⁵

41 ENA's submission to our consultation paper, p 4.

42 CEFC's submission to our consultation paper, p 2.

43 AusNet's submission to our consultation paper, p 2.

44 Iberdrola's submission to our consultation paper, p 2.

45 TSBC's submission to our consultation paper, page 3 of response to stakeholder feedback template.

We share these views and consider that our draft rule facilitates sharing of concessional finance benefits with consumers, as agreed and documented by the GFB and transmission and distribution NSPs.

Additional regulatory guidance in Chapter 6 of the NER (Economic Regulation of Distribution Services), in addition to Chapter 6A of the NER (Economic Regulation of Transmission Services), would contribute to the achievement of the NEO by promoting outcomes for consumers and economic efficiency through providing clarity and transparency in regulatory arrangements that will enable market participants and investors to make efficient investment decisions.

3.2 Network service providers have a responsibility to notify the AER and disclose the agreement to share benefits with consumers

Box 2: Draft determination - Defining a concessional finance agreement and introducing obligations on NSPs to disclose the concessional finance agreement to the AER to share benefits with consumers

Our draft determination is to:

- Define a concessional finance agreement as an agreement between a NSP, or a related entity of the NSP, and a GFB which the GFB specifies to be such an agreement for the purpose of sharing concessional finance benefits with consumers.
- Require a transmission and distribution NSP who has entered into a concessional finance agreement that requires any of the benefits of the concessional finance to be shared with consumers, to provide the AER with a copy of that agreement within 40 business days of entering into that agreement.
- Require the NSP to notify the AER in its next regulatory proposal where a concessional finance agreement applies over multiple regulatory control periods.

Our draft determination is to define a concessional finance agreement as an agreement between a NSP and GFB for the purpose of sharing concessional finance benefits with consumers and to require the NSP to notify and provide the AER with a copy of the concessional finance agreement within 40 business days of entering into that agreement. This is because the NSP and GFB will negotiate the terms of the concessional finance and the benefits to be shared with consumers and it is reasonable to expect that the NSP will be able to provide a copy to the AER of the signed agreement shortly after.

Stakeholders, in their submissions to our consultation paper, agree that the NSPs should be required to notify the AER of concessional finance arrangements and to provide the required information. Some stakeholders suggested that both parties, the NSP and GFB, should notify the AER and that the AER should be able to seek information from either party.⁴⁶ We note that rules cannot be made compelling the GFB to provide information, rather, rules can be made requiring the NSP to inform and provide information to the AER.

The draft rule amends the NER to impose an obligation on the NSP to inform the AER of the existence of such an agreement and to provide them with a copy of the agreement. This is because the AER will not usually be aware of the existence of concessional finance but must be aware of and also be provided with a copy to consider an agreement to share benefits with

⁴⁶ AGL and ECA & EUAA's submission to our consultation paper.

consumers. The draft rule also requires the NSP to notify the AER in its next regulatory proposal where an agreement applies over multiple regulatory control periods.

3.3 The concessional finance agreement must include the information detailed in our draft rule for the purpose of sharing benefits with consumers

Box 3: Draft determination - The draft rule prescribes information to be included in the concessional finance agreement for the purpose of sharing benefits with consumers

Our draft determination is to prescribe the information that is to be included in the concessional finance agreement for the purpose of sharing benefits with consumers.

Our draft determination is to prescribe the information that is to be included in the concessional finance agreement for the purpose of sharing benefits with consumers, including:

- The name of the GFB that provided the concessional finance and the contact details for that body.
- A description of the capital expenditure in relation to which the concessional finance is being provided.
- A statement about whether the benefits of the relevant concessional finance will be passed through to consumers as:
 - An adjustment to the regulatory asset base (RAB) of the NSP, and a description of the assets to which the concessional finance applies, as well as the value, timing, and details of the adjustment to be made to the RAB and the relevant asset lives of the associated assets.
 - An amount to be passed through to transmission or distribution network users, and the amount to be passed through in each year of each regulatory control period that the amount is to be passed through.
 - A combination of both mechanisms.

This would create clear and transparent information requirements for NSPs and GFBs and provide guidance to the AER on what information it should rely on and how it can facilitate the benefits of concessional finance with consumers.

Stakeholders, in their submissions to our consultation paper, largely agreed that the information provided to the AER should come from the NSP including the value of the benefits to be shared with consumers and the adjustment mechanism to give effect to the benefits.

Question 1: Is the required information to be included in the concessional finance agreement appropriate?

We are interested in your views on whether we have appropriately captured and detailed the relevant information that should be detailed in the concessional finance agreement and provided to the AER, to enable the concessional finance benefits to be shared with consumers.

3.3.1 The GFB and NSP have the flexibility to choose which adjustment mechanism is to be used, a RAB and/or MAR adjustment, to facilitate the benefits to be shared with consumers

Our draft rule allows for both adjustments to be used, providing flexibility to the negotiating parties, and requires the AER to treat the benefits of concessional finance benefits to be shared with consumers consistent with the agreement between the parties. This provides for a transparent and predictable process for the GFB, NSP, and AER and ensures the timely sharing of benefits.

The majority of stakeholder submissions to our consultation paper supported the Rules allowing two mechanisms, a reduction in the RAB or a reduction in the MAR, to facilitate the sharing of concessional finance benefits with consumers. Some stakeholders commented in their submissions to our TPIR Stage 3 Draft Report that additional guidance on how the determined value should be treated by the AER in the revenue determination process is required, including suggesting alternate methods such as using actual Commonwealth lending rates in the WACC.⁴⁷

Having the mechanism agreed to by the NSP and GFB ensures that benefits are passed through as intended, avoids the need for the AER to develop guidelines and exercise discretion, and also avoids the need for a complex true-up mechanism to account for any windfall gains/losses.⁴⁸

3.4 The AER may ask for the information it needs from the NSP and GFB to facilitate the sharing of concessional finance benefits with consumers

Box 4: Draft determination - Before making an adjustment, the AER may request information from the GFB and consult with the GFB in respect of the concessional finance agreement

Our draft determination is to:

- Require the NSP to provide the AER with such information as the AER requires for the purpose of making an adjustment within the timeframe specified by the AER in a notice provided to the NSP by the AER for that purpose.
- Enable the AER, before making an adjustment, to request information from the GFB and consult with the GFB in respect of the concessional finance agreement.
- Require the AER to treat confidential information it receives as confidential information.

Our draft determination is to enable the AER to receive the information that it requires from the NSP and GFB for the purpose of facilitating the timely sharing of concessional finance benefits with consumers.

Many stakeholders commented in their submissions to our consultation paper that the regulatory framework should enable the AER to consult with the GFB to determine the concessional finance benefits to be shared with consumers.⁴⁹

⁴⁷ VEPC, Tilt renewables, ReAlliance, Energy Australia and Corio Generation's submissions to our TPIR Stage 3 Draft Report.

⁴⁸ TasNetworks, in its submission to our consultation paper, raised the appropriateness of a true-up mechanism to account for any windfall gains/losses to networks or customers as a result of differences in actual and forecast annual benefits.

⁴⁹ Iberdrola, AER, CEFC, Origin, AEC, AEMO, and Woodside Energy's submission to our consultation paper. AGL, CEC, Energy Australia, FFI, and PIAC's submission to the TPIR Stage 3 Draft Report.

Our draft rule ensures that the AER is provided with information that is agreed upon by both parties, in the form of a concessional finance agreement entered into by the NSP and GFB, that details the particulars of the agreement to share benefits with consumers. Our draft rule also enables the AER to ask for information from the NSP and GFB to share concessional finance benefits with consumers. This may be required so that the AER can be satisfied with whether any of the benefit of the finance was intended to flow to consumers and other relevant information in order to treat the concessional finance as intended. Our draft rule provides a means for the AER to consult with the GFB, if it needs to.

3.4.1 The AER must make an adjustment to the NSP's MAR, RAB or both, consistent with the concessional finance agreement

Box 5: Draft determination - The draft rule requires the AER to make an adjustment to the NSP's MAR, RAB or both consistent with the concessional finance agreement

Our draft determination is to:

- Require the AER to make an adjustment to the NSP's MAR, RAB, or both in accordance with the concessional finance agreement within 40 business days of receiving the concessional finance agreement, unless the AER receives the agreement during the last two regulatory years of a regulatory control period.
- Allow the AER to extend the time limit by a further period of up to 60 business days if it is satisfied that the adjustment involves issues of such complexity or difficulty that the time limit for making the adjustment should be extended.

Our draft determination is to clarify that upon receipt of a concessional finance agreement, the AER is required to facilitate the adjustment consistent with the agreement to enable the benefits of the concessional finance to be shared with consumers.

Given concessional finance may be provided to a NSP at any point in time, and an agreement to share benefits with consumers could be agreed to by a NSP and GFB in the period between revenue determinations, we considered that the AER should be required to make an adjustment to the NSP's MAR, RAB or both in accordance with the concessional finance agreement within 40 business days of receiving the concessional finance agreement, analogous to a cost pass-through event. If the AER receives the concessional finance agreement during the last two regulatory years of a regulatory control period and it is not practicable to implement the adjustment in the current regulatory control period, then the AER would be required to make the adjustment within 40 business days of the AER making the determination in respect of the forthcoming regulatory control period or do so as part of the determination itself.

Treating concessional finance benefits in this manner would facilitate the timely sharing of benefits with distribution and transmission network users in the regulatory control period that the concessional finance was provided. If the AER is satisfied that making an adjustment involves issues of such complexity or difficulty that the time limit for making the adjustment should be extended, the AER may extend that time limit by a further period of up to 60 business days, provided that it gives written notice to the NSP of that extension not later than 10 business days before the expiry of that time limit. If the AER gives a written notice to the NSP stating that it requires information from a GFB in order to make an adjustment, then, for the purpose of calculating elapsed time, the period between when the AER gives that notice to the NSP and when the AER receives that information from that GFB is to be disregarded.

3.5 We have clarified how the benefits of concessional finance are treated in the economic assessment process

Box 6: Draft determination - Consumers receive the benefit of concessional finance if it is used to support a project option in the economic assessment process

Our draft determination is:

- That concessional finance can only be used to support a project option in the economic assessment process if the benefit of the concessional finance is shared with consumers through lower network costs.
- To clarify that the value of the benefit provided through concessional finance is to be treated as an external funding contribution in the economic assessment process.
- To amend the rules to require the AER to include guidance and worked examples on external funding contributions in the CBA Guidelines and RIT Application Guidelines and to recommend that this includes concessional finance .
- To recommend the AER update its CBA Guidelines and RIT Application Guidelines to provide guidance on when concessional finance (and external funding contributions more generally) can be treated as 'expected' and relied on in the economic assessment process.

Our draft determination ensures that consumers benefit from decisions to prefer a specific option in the economic assessment process through the provision of concessional finance.

3.5.1 Using concessional finance to improve the net economic benefit of a project option

Our draft determination is that concessional finance can only be used to support a project option in the economic assessment process where the benefits of the concessional finance flow through to consumers as lower network costs.

We consider that the value of the benefit provided through concessional finance should be treated in the same way as any type of external funding contribution (such as a government grant). External funding contributions can be provided to support a network project that would not otherwise occur by improving its net economic benefit in the cost-benefit analysis at the ISP and/or RIT stages. Used in this way, it can change the ranking of a specific option so that it becomes the preferred option, or it can bring forward the delivery of a specific option (if the option only demonstrates a net benefit in the future).

Only one stakeholder, AEMO, expressed a view on how concessional finance should be treated in the economic assessment process. AEMO noted that the net impact of concessional finance can be in the form of a reduction in the capital amount, or as a reduction in the WACC. AEMO recommended adopting a flexible approach for using concessional finance to support a project option.

Where concessional finance is provided to address a financeability issue, the benefit is retained by the NSP entity as a reduction in its actual borrowing costs. In this instance, we do not consider that there is any impact on the net economic benefit of the project as there is no change in the future cash flows of the project apart from a contribution to the NSP. Consequently, if the intent of providing concessional finance is for the benefits to be retained solely by the NSP to address financeability, then the same concessional finance cannot be treated as support to a project in the economic assessment process.

For the concessional finance to have an impact on the net economic benefit of a project, we consider that the concessional finance must reduce the costs of the project (i.e. a reduction in the capital amount) with the benefit flowing to consumers as lower network costs. This means that concessional finance can only be used to support a project option in the economic assessment process if the benefit of that finance flows through to consumers in the form of lower network costs.

Our draft determination ensures that consumers do not pay for a project that would not otherwise have proceeded (but for the concessional finance).

3.5.2 Concessional finance should be considered as an external funding contribution

Concessional finance may take several forms. For example, it may be provided to a NSP in the form of a government grant, below-market rate finance, as finance over a longer term, subordinated debt, or other forms that provide the same level of risk to below market rate loans. Where the concessional finance is being used to support a project option in the economic assessment process, then it is necessary to determine the value of the benefit to the project so that it can be passed through to consumers in the form of lower prices.⁵⁰ We consider this benefit to be the same as the benefit provided under any other type of external funding contribution (for example, a government grant) that reduces the cost of a project.

The AER currently provides guidance on how external funds should be treated in the economic assessment of project options in the CBA Guidelines and RIT Application Guidelines, although there is no requirement in the rules to do so.⁵¹

Our draft rule inserts a new requirement for the AER to extend the guidance and worked examples in its CBA Guidelines and RIT Application Guidelines to include external funding contributions. We recommend the AER include the treatment of concessional finance in its guidance and worked examples for external funding contributions. Treating concessional finance in the same way that external funding contributions are currently treated in the guidelines provides a consistent approach and promotes good regulatory practice.

3.5.3 Providing guidance on expected funding commitments in the guidelines

Our draft determination is to recommend that the CBA Guidelines and RIT Application Guidelines provide guidance on when concessional finance can be treated as 'expected' and relied on by AEMO and the AER to support its inclusion in a cost benefit analysis.

The CBA Guidelines currently state that external funding contributions can affect the calculation of costs or market benefits under the ISP, but only where AEMO expects funding commitment. If expected funds do not eventuate, AEMO must consider whether a subsequent ISP update is required to remove this from the CBA. There is no guidance on what AEMO should rely on to satisfy itself of an expected funding commitment.

The RIT Application Guidelines do not address the matter.

There will often be a degree of uncertainty as to whether concessional finance arrangements will be applicable to a given project. It is unlikely that the GFB and NSP will have entered into binding contractual agreements for the provision of concessional finance at the time that the cost benefit analysis for the ISP and the RIT is undertaken. It is more likely that these contractual agreements

⁵⁰ For example the difference between the interest payable under concessional and market finance on a below market-rate loan.

⁵¹ The NER requires the RIT Application Guidelines to provide guidance and worked examples as to what may constitute an externality. While there is no similar requirement for the CBA Guidelines, the AER has done so.

are entered into some time after the completion of the RIT (and for ISP projects, the feedback loop).

Given this, we consider the need for guidance is important, especially in the context of the ISP, because of the potential implications to project timelines should the concessional finance that is used to support a project option not eventuate.

There are likely to be a range of matters that should be considered by AEMO and AER when deciding whether it is appropriate to rely on and include concessional finance in the calculation of costs and benefits of a project option. At least for ISP projects, we consider that there should be a reasonably high prospect that the financing will eventuate before it can be relied on in the economic assessment process to avoid the potential need to re-run or update the ISP.

An expected funding commitment might be demonstrated, for example, by a letter from the GFB to the TNSP outlining whether the GFB expects an agreement to provide concessional finance will be made and the quantum of the benefit expected to be passed through to consumers. The letter might set out the matters to be addressed before an agreement can be made to assist the AEMO and the AER in reaching a decision about the likelihood of funding eventuating. A GFB that did not have sufficient certainty of reaching an agreement is unlikely to provide such a letter.

The requirements for satisfying an expected funding commitment might also differ based on the nature of the project. More stringent requirements might be necessary for ISP projects where delays might have larger consequences.

Question 2: Do the draft rules and our draft determination provide certainty about how concessional finance is to be treated in the economic assessment of project options?

Our amendments seek to strike an appropriate balance between a prescriptive and principles-based approach. We have required the AER to extend the guidance and worked examples in its CBA Guidelines and RIT Application Guidelines to include external funding contributions, and we have recommended that this includes concessional finance. We are interested in your views on whether this provides certainty about how we expect concessional finance to be treated in the economic assessment of project options.

3.6 Application to Victoria

Box 7: Draft determination - The rule change will apply in Victoria

Our draft determination is that:

- For contestable projects, arrangements for the delivery of concessional finance will be determined by the GFB and AVP and will be shared with consumers through a reduction in the overall cost of a tenderer's bid.
- For non-contestable projects, the arrangements for the delivery of concessional finance will be the same as for the NEM but with an additional step where the incumbent declared transmission system operator (DTSO) must provide AVP with the details of its concessional financing arrangement with the GFB.

Our draft rule accounts for Victoria's distinct arrangements while maintaining, as far as practicable, a consistent approach for the treatment of concessional finance across the NEM.

In Victoria, AVP is responsible for planning and directing augmentation on the Victorian electricity transmission Declared Shared Network and performs some of the responsibilities in planning and augmentation carried in other jurisdictions by the TNSP. A different process for accommodating concessional finance applies depending on whether the project is contestable or not.

3.6.1 Contestable projects

For contestable transmission projects, the arrangements for the delivery of concessional finance will be determined by the GFB and AVP and reflected in the contractual arrangements between AVP and the successful tenderer. Consumers will share the benefits of concessional finance through a reduction in the overall cost of the bid.

Most stakeholders supported this approach for applying concessional finance to a contestable project in Victoria.

One stakeholder, Iberdrola, was not supportive citing a possible conflict of interest. Iberdrola's submission stated that a possible conflict of interest arises because AEMO has established a subsidiary (Transmission Company Victoria) to develop and then sell on transmission projects to a successful tenderer in the contestable process. On this basis, Iberdrola stated that concessional finance arrangements should be overseen by VicGrid instead.

We do not consider that there is a potential conflict of interest because:

- the agreement to provide concessional finance is between the GFB and the successful tenderer, and the impact of concessional finance on the project costs would be transparent and reflected as a reduction in the cost of the tenderer's bid, and
- Transmission Company Victoria is a wholly owned subsidiary of AEMO which is a non-profit organisation (and not a commercial entity).

3.6.2 Non-contestable projects

AEMO's submission asked us to carefully consider how the approach for accommodating concessional finance provided to non-contestable projects would work in practice.

In Victoria, non-contestable projects are procured by AVP through a contract with the incumbent DTSO. Terms and conditions (including prices) for network services provided through the non-contestable project are via the contract between AVP and the incumbent DTSO. AVP recovers the cost of network services from users via a TUOS charge.

Non-contestable projects are permitted to be rolled into the service provider's RAB, at which point they become subject to the economic regulatory framework in the rules.

To ensure that consumers receive the benefit of concessional finance (where there is an intent to share benefits) before the asset is rolled into the RAB, our draft rule requires the incumbent DTSO to provide AVP and the AER with the same details of its concessional financing arrangement with the GFB at the time it enters into the arrangement. This ensures that the value of the concessional finance benefit can be reflected in AVPs TUOS charges.

3.7 Including transitional rules will support the timely implementation of our draft rule

Box 8: Draft determination - Including transitional rules to enable the sharing of concessional finance benefits with consumers from the date of our draft rule

Our draft determination is to include transitional rules which:

- Provide the AER until 31 December 2024 to update and publish the following instruments and guidelines to take into account the Amending Rule and in doing so much comply with the standard rules consultation procedures:
 - The CBA Guidelines.
 - The RIT for transmission.
 - The RIT for transmission application guidelines.
 - The RIT for distribution.
 - The RIT for distribution application guidelines.
- Require the NSP to provide the AER with a copy of a concessional finance agreement for the sharing of benefits with consumers, within 40 business days of the commencement date, if entered into between 14 December and the commencement date of the final rule.
- Require a DTSO to provide to AVP the concessional finance agreement provided to the AER for non-contestable projects.

The transitional rules ensure the smooth implementation of our draft rule.

Our draft rule may require updates to the AER's CBA Guideline and RIT instruments for transmission and distribution. To support the AER in updating its CBA Guidelines, we have included the following transitional rules in our draft rule:

- The AER must review its instruments and guidelines to comply with the requirements and our draft determinations to update the CBA Guidelines, RIT for transmission and distribution, and the RIT Application Guidelines, and in doing so must comply with the Rules consultation procedures.⁵² Updated instruments and guidelines must be published on the AER website by 31 December 2024.⁵³
- If the AER undertakes consultation to update any of the instruments or guidelines in respect of our draft rule before its commencement, the consultation may satisfy the necessary requirements under the Rules consultation procedures.⁵⁴

We considered the AER's comments in its submission to our consultation paper which asked us to consider whether the mechanism is able to be applied to concessional finance arrangements entered into before the final rule change, including whether legally permissible and what the process should be.⁵⁵

Our draft determination is to require the NSP to provide the AER with a copy of a concessional finance agreement to enable the sharing of benefits with consumers, within 40 business days of

52 The Rules consultation procedures refer to the procedures for consultation with registered participants or other persons as set out in clause 8.9 of the NER.

53 Clause 11.[XXX].3 (a) of the draft rule.

54 Clause 11.[XXX].3 (c) of the draft rule.

55 The AER's submission to our consultation paper, p 8.

the commencement date. This is if the agreement is entered into between our draft rule, on 14 December 2023, and the commencement date of the final rule. This opportunity is provided because it may be necessary to apply our draft rule to enable the sharing of benefits with consumers prior to the commencement of our final rule.

Question 3: Are the transitional rules appropriate?

We are interested in stakeholder views on whether the transitional rules are appropriate.

A Rule making process

A standard rule change request includes the following stages:

- a proponent submits a rule change request
- the Commission initiates the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a draft determination and draft rule (if relevant)
 - stakeholders lodge submissions on the draft determination and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

You can find more information on the rule change process on our website.⁵⁶

A.1 Minister Bowen proposed a rule to facilitate the sharing of concessional finance benefits with consumers

The proposal seeks an enduring change to the NER that allows:

- The AER to treat some or all of the concessional finance benefits as a capital contribution resulting in a corresponding reduction to a NSP's RAB and/or to adjust a portion of a NSP's revenue (MAR) to reflect the value of the concessional finance benefit.
- For appropriate information provision to the AER regarding the treatment of concessional finance.
- The benefits of concessional finance to be passed through to consumers to reflect the outcome of negotiations between the GFB and the NSP.

A.2 The proposal addressed a need to establish guidance on the treatment of concessional finance benefits to be shared with consumers

Currently, the NER does not explicitly recognise the treatment of concessional finance. Under the current rules, concessional finance is not prohibited but, if it is provided, the benefits derived from the concession flow to NSPs, not to consumers.

The proposal builds on the findings of the TPIR Stage 3 Draft Report that identified a need for additional guidance to clarify how the benefits from concessional finance to be shared with consumers are treated in the NER. Stakeholders in their submissions to the TPIR Stage 3 Draft Report were widely supportive of the need to develop additional guidance on the treatment of concessional finance benefits to be shared with consumers.

A.3 It proposed to do so by establishing information provisions for the AER and enabling the concessional finance benefits for consumers to flow through as a RAB and/or MAR adjustment

The proposal suggested amendments to the NER in order to clarify how concessional finance benefits agreed to be shared with consumers would flow through to consumers, and what information is required to be provided to the AER and by whom.

⁵⁶ See our website for more information on the rule change process: <https://www.aemc.gov.au/our-work/changing-energy-rules>

The proposed amendments aimed to:

- Enable the AER to allow an agreed upon quantum or proportion of benefit to pass to consumers (determined through negotiation by the NSP and GFB).
- Require NSPs to provide information to the AER about the value of the benefit that the NSP and GFB have agreed should be passed onto consumers.

A.4 The process to date

On 8 June 2023, the Commission published a notice advising of the initiation of the rule making process and consultation in respect of the rule change request.⁵⁷ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 14 July 2023. The Commission received 14 submissions as part of the first round of consultation. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this draft rule determination.

On 21 September 2023, the Commission published a notice of the extension of the draft determination to 16 November in respect of the rule change request.⁵⁸

On 9 November 2023, the Commission published a notice advising of the extension of the draft determination to 14 December in respect of the rule change request.⁵⁹

⁵⁷ This notice was published under section 95 of the NEL.

⁵⁸ This notice was published under section 107 of the NEL.

⁵⁹ This notice was published under section 107 of the NEL.

B Regulatory impact analysis

The Commission has undertaken regulatory impact analysis to make its draft determination.

B.1 Our regulatory impact analysis methodology

We considered a range of policy options

The Commission compared a range of viable policy options that are within our statutory powers. The Commission analysed these options: the rule proposed in the rule change request; a business-as-usual scenario where we do not make a rule; and a more preferable rule featuring a requirement for the agreed benefits to be shared with consumers to be specified in a concessional finance agreement and provided to the AER, who can then flow through the benefits to consumers as a RAB and/or MAR adjustment in line with the agreement.

We identified who would be affected and assessed the benefits and costs of each policy option

The Commission's regulatory impact analysis for this rule change used qualitative methodologies. It involved identifying the stakeholders impacted and assessing the benefits and costs of policy options. The depth of analysis was commensurate with the potential impacts. The Commission focused on the types of impacts within the scope of the NEO.

Table B.1 summarises the regulatory impact analysis the Commission undertook for this rule change. Based on this regulatory impact analysis, the Commission evaluated the primary potential costs and benefits of policy options against the assessment criteria. The Commission's determination considered the benefits of the options minus the costs.

Table B.1: Regulatory impact analysis methodology

Assessment criteria	Primary costs (Low, medium or high)	Primary benefits (Low, medium or high)	Stakeholders affected	Methodology QT = quantitative, QL = qualitative
Improving outcomes for consumers	NSP, GFB and AER implementation through sharing of information to facilitate benefits to be shared with consumers (Low costs)	Consumers benefit through the sharing of concessional finance benefits via lower network costs (Medium benefits)	<ul style="list-style-type: none"> Network consumers 	<ul style="list-style-type: none"> QL: stakeholder feedback to assess all benefits and costs.
Providing a transparent and predictable framework	AER to update guidance notes (Low costs)	The NSPs, GFB, AER and AEMO have certainty of how concessional finance benefits are to be shared with consumers (Medium benefits)	<ul style="list-style-type: none"> Market participants that must comply with new obligations AEMO AER 	<ul style="list-style-type: none"> QL: stakeholder feedback to assess all benefits and costs including no. of guidance documents requiring update by the AER
Supporting emissions reduction	Nil	Rule change facilitates the intent of concessional finance provided to support the infrastructure required for the energy transmission and emissions reduction (Medium benefits)	<ul style="list-style-type: none"> Market participants that must comply with new obligations AEMO AER 	<ul style="list-style-type: none"> QL: stakeholder feedback to assess the impact of the proposed rule on emissions reduction.
Supporting efficient market arrangements	NSPs required to provide a co-signed agreement to the AER detailing the required information set out in the Rules (Low costs)	The NSPs, GFB, AER and AEMO have clear roles and responsibilities to ensure the efficient sharing of concessional finance benefits with consumers (Medium benefits)	<ul style="list-style-type: none"> Market participants that must comply with new obligations AEMO AER 	<ul style="list-style-type: none"> QL: stakeholder feedback to assess all benefits and costs including no. of guidance documents requiring update by the AER.

C Legal requirements to make a rule

This appendix sets out the relevant legal requirements under the NEL for the Commission to make a draft rule determination.

C.1 Draft rule determination and draft rule

In accordance with section 99 of the NEL, the Commission has made this draft rule determination for a more preferable draft rule in relation to the rule proposed by the Minister for Climate Change and Energy.

The Commission's reasons for making this draft rule determination are set out in chapter 2.

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

C.2 Power to make the rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules.

The more preferable draft rule falls within section 34 of the NEL as it relates to section 34(1)(b). Additionally, the more preferable draft rule falls within the matters set out in Schedule 1 to the NEL as it relates to items 15, 20, 21, 25, 26D and 26E because the draft rule relates to: the regulation of revenues by transmission and distribution network services providers; mechanisms which are to be applied and determined by the AER for the purposes of a transmission or distribution determination; and the regulatory asset base for the purposes of a transmission or distribution determination.

C.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the draft rule,
- the rule change request,
- submissions received during first round consultation,
- the Commission's analysis as to the ways in which the draft rule will or is likely to contribute to the achievement of the NEO,
- the application of the draft rule to the Northern Territory,
- the revenue and pricing principles outlined in section 2.2.2, and
- the submissions in response to the Transmission Planning and Investment Review Stage 3 Draft Report.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁶⁰

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 AEMO's declared

⁶⁰ Under s. 33 of the NEL and s. 73 of the NGL 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.

network functions.⁶¹ The more preferable draft electricity rule is compatible with AEMO's declared network functions because it is consistent with AEMO's role as the jurisdictional transmission planner in Victoria.

C.4 Making electricity rules in the Northern Territory

The NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.⁶² Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.

As the more preferable draft rule relates to parts of the NER that apply in the Northern Territory, the Commission is required to assess Northern Territory application issues, described below.

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:⁶³

1. the national electricity system
2. one or more, or all, of the local electricity systems⁶⁴
3. 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.⁶⁵ 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

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.⁶⁶

The Commission's draft determinations in relation to the meaning of the "national electricity system" and whether to make a uniform or differential rule are set out in chapter 2.

61 Section 91(8) of the NEL.

62 These regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations 2016

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

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

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

66 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.

C.5 Civil penalty provisions and conduct provisions

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

The more preferable draft rule does not amend any clauses that are currently classified as civil penalty provisions or conduct provisions under the 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 more preferable draft rule be classified as civil penalty provisions or conduct provisions.

C.6 Review of operation of the rule

The more preferable draft 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.

Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CBA	Cost Benefit Analysis
Commission	See AEMC
DNSP	Distribution network service provider
GFB	Government funding body
MAR	Maximum allowed revenue
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
NGL	National Gas Law
NSP	Network service provider
NT Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015</i>
Proponent	The individual / organisation who submitted the rule change request to the Commission
RAB	Regulatory asset base
RIT	Regulatory investment test
TNSP	Transmission network service provider