

Rule determination

National Electricity Amendment (Improving the workability of the feedback loop) Rule 2024

Proponent

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To cite this document, please use the following:

AEMC, Improving the workability of the feedback loop, Rule determination, 7 March 2024

Summary

- 1 The Commission has decided to make a more preferable final rule (final rule) to improve the operation of the feedback loop by clarifying the required inputs and timing to conduct a feedback loop assessment. This is in response to the rule change request submitted by the Honourable Chris Bowen MP, Minister for Climate Change and Energy.
- 2 The final rule will promote the efficient, timely, and consistent operation of the feedback loop in its role as a consumer safeguard. Improving the workability of the feedback loop will support the efficient delivery of major transmission projects by Transmission Network Service Providers (TNSPs).¹ It will also help to ensure that the significant expenditure expected to be spent on delivering the Integrated System Plan (ISP) is in the long-term interests of consumers.
- 3 Compared to the draft rule, the requirement for the Australian Energy Regulator (AER) to provide guidance on the timing for Project Assessment Conclusion Reports (PACR) has been removed and some minor clarifying changes have been made following stakeholder feedback to the draft determination.
- 4 The rule change request seeks to implement recommendations made as part of the stage 2 workstream in the *Transmission planning and investment review* (TPIR) which focused on near term reforms.
- 5 The rule change request has been fast tracked reflecting the extensive consultation carried out on these issues in TPIR.
- 6 The rule will commence on 14 March 2024.

The final rule addresses workability issues in the feedback loop process to improve its operation and support the timely delivery of major transmission projects

- 7 The final rule made by the Commission is published with this final rule determination. The key features of the final rule address workability issues with the efficient, timely, and consistent operation of the feedback loop assessment process. Specifically, the final rule clarifies the required inputs and timing for the feedback loop assessment which will improve its operation as a consumer safeguard by making it more efficient and transparent.
- 8 The final rule supports the efficient and timely functioning of the regulatory framework for actionable ISP projects while maintaining robust assessment of projects in the long-term interests of consumers. The improvements the final rule makes to the workability of the feedback loop will also help to ensure that the significant expenditure expected to be spent on delivering the ISP is in the long-term interests of consumers.
- 9 The final rule also provides greater transparency for RIT-T proponents regarding timeframes for feedback loop assessment decisions by the Australian Energy Market Operator (AEMO) and supports the efficient delivery of major transmission projects by TNSPs. It will also reduce AEMO's administrative burden.

The Commission has considered stakeholder feedback in making its decision

- 10 Stakeholder input and feedback helped shape the final determination. There was broad support

¹ The RIT-T proponent for an actionable ISP project is the relevant TNSP. RIT-T proponent and TNSP are used interchangeably in this final determination.

across market bodies and TNSPs for the intent of the rule change in their responses to the draft determination. The Centre for Independent Studies (CIS) and private individuals were not supportive of the intent of the rule change and also critiqued the assessment criteria. This is discussed further in Chapter 2

- 11 In their submissions to the draft determination, the CIS, ENA, Transgrid and a private individual proposed alternative solutions to the workability of the feedback loop which address their concerns. The Commission considers that the final rule is more preferable and delivers better outcomes in the long-term interests of consumers as it promotes a clear, consistent and predictable regulatory framework that takes the most up to date information into account. The Commission does not consider that the proposed alternative solutions would address the workability issues that undermine the feedback loop’s ability to operate as an effective consumer safeguard and would not support the efficient delivery of ISP projects. These alternative solutions, other stakeholder feedback and the Commission’s responses are discussed further in chapter 3.
- 12 The Energy Networks Australia (ENA) and Transgrid were not supportive of the AER providing guidance on the timing of feedback loop requests or a specified timeframe for AEMO to complete its feedback loop assessment. No stakeholders supported including guidance on the timing of a PACR publication in the AER’s Cost Benefit Analysis (CBA) guidelines. This is discussed further in chapter 3.
- 13 The final rule and determination also builds on the recommendations made in our TPIR – Stage 2 final report. Following broad stakeholder consultation, this review recommended a rule change process to improve the workability of the feedback loop.
- 14 The Commission considers that the final rule is better than the proposed alternative solutions as it addresses the identified issues with the workability of the feedback loop and enables the feedback loop to function in a way that improves its role as a consumer safeguard. The proposed alternative approaches do not adequately resolve the identified workability issues with the feedback loop because they fail to address concerns raised in the rule change request which relate to its function as a consumer safeguard. They also do not address the ability of the feedback loop to support timely delivery of actionable ISP projects or relieve the existing administrative burden on AEMO.

We assessed the final rule against four assessment criteria using regulatory impact analysis and stakeholder feedback

- 15 The Commission has considered the NEO² and the issues raised in the rule change request and assessed the final rule against four assessment criteria outlined below. We gathered stakeholder feedback and undertook regulatory impact analysis in relation to these criteria.
- 16 The final rule will contribute to achieving the NEO by:
- **Contributing to emissions reduction** – by promoting a clear, consistent and predictable regulatory framework through clarifying the operation of the feedback loop. This in turn will facilitate timely delivery of projects and the realisation of their anticipated emission reduction benefits as new renewable energy generation connects to the national electricity market.
 - **Promoting principles of market efficiency** – by striking the appropriate balance between improving the efficient, timely, and consistent operation of the feedback loop in its role as a consumer safeguard while not unnecessarily delaying the progression of actionable ISP

2 Section 7 of the NEL.

projects through the regulatory framework. It does this by maintaining the key consumer protection elements of the feedback loop, that is:

- requiring confirmation that the preferred option from the Regulatory investment test for transmission (RIT-T) addresses the relevant identified need and aligns with the ISP
- requiring the cost of the preferred option to not change the status of the project as part of the Optimal Development Path (ODP)
- requiring the costs sought as part of the contingent project application (CPA) to not exceed those assessed in the feedback loop.
- **Achieving timely implementation** – by introducing timely reform that is relatively simple to implement as the changes to the rules primarily provide flexibility or clarity for market bodies and TNSPs in the application of the existing framework.
- **Promoting principles of good regulatory practice** – by providing certainty of process with flexibility where appropriate. It also improves the efficiency, predictability and transparency of the feedback loop assessment process in the regulatory framework.

17 The final rule better contributes to the NEO, than the proposed rule, because it more clearly outlines the obligations of market bodies and TNSPs in the feedback loop assessment, particularly where it interacts with other parts of the economic assessment process, such as the CPA. A clear and consistent regulatory framework increases the likelihood that projects are delivered on time which would result in better outcomes for consumers and more timely emissions reduction. See section 2.3 for further discussion on the assessment criteria.

18 The Commission considers that the final rule would not impose any material costs on TNSPs or other market bodies.

The final rule will improve consistency and clarity in the application of the feedback loop assessment

19 The final rule:

- enables the feedback loop to be assessed against the most recent ODP in a draft or final ISP which is underpinned by the most up-to-date inputs, assumptions and scenarios
- requires the AER to amend its Cost Benefit Analysis (CBA) guidelines³ to provide guidance on the timing of a feedback loop request
- allows, but does not require, the feedback loop assessment and CPA processes to occur concurrently
- requires AEMO to complete the feedback loop assessment within 40 business days from the later of the date the request is received or additional information is received.⁴ AEMO would also have the power to extend its assessment by 60 days if it determines the assessment involves complexities or difficulties.

Transitional rules will help implement the final rule

20 Transitional rules are included in the final determination to:

- provide the AER up to 12 months to update and publish its CBA guidelines and allow prior consultation in anticipation of the amending rule to satisfy the consultation requirements to update the guideline

³ AER, Cost benefit analysis guidelines: Guidelines to make the Integrated System Plan actionable, October 2023.

⁴ Section 3.4 explains the proposed timeframes including if AEMO requests additional information.

- apply the proposed feedback loop amendments to an existing actionable ISP project if the RIT-T proponent has not already requested a feedback loop assessment prior to the commencement of the rule.

Key differences between the draft and final rules

21 We have made some changes to the final rule following stakeholder feedback on the draft determination and draft rule. The final rule:

- no longer includes a provision for the AER to provide guidance on a PACR exclusion window
- requires a RIT-T proponent to inform the AER within one business day of the outcome of a feedback loop assessment in the event the RIT-T proponent has used the concurrent pathway and AEMO has made a decision not to provide written confirmation
- brings the commencement date for the final rule forward one day to 14 March 2024.

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1 The Commission has made a final determination

This final determination is to make a more preferable final rule in response to a rule change request submitted by The Honourable Chris Bowen, Minister for Climate Change and Energy to improve the workability of the feedback loop. The objective of this rule change is to provide a well functioning and robust transmission infrastructure planning and investment framework for actionable ISP projects that operates in the long-term interest of consumers. The more preferable rule is referred to as 'the final rule' in this determination.

1.1 The final rule will improve the workability of the feedback loop by making its operation more efficient and transparent

The final rule addresses issues with the efficient, timely, and consistent operation of the feedback loop assessment process. Specifically, the final rule clarifies the required inputs and timing for the feedback loop assessment which would improve its operation as a consumer safeguard by making it more efficient and transparent. The final rule supports the predictability and timely functioning of the regulatory framework by providing greater transparency for RIT-T proponents regarding when the outcome of a feedback loop assessment will be known. It also reduces the administrative burden on AEMO.

The final rule does this by:

- enabling the feedback loop to be assessed against the most recent ODP in a draft or final ISP.⁵
- requiring the AER to amend its CBA guidelines to provide guidance on the timing of a feedback loop request.⁶
- allowing, but not requiring, the feedback loop assessment and CPA processes to occur concurrently.⁷
- requiring AEMO to complete the feedback loop assessment within 40 business days from the later of the date the request is submitted and the date it receives any additional information requested. The rule also gives AEMO the ability to extend its assessment by 60 business days if it determines the assessment involves complexities or difficulties.⁸

It also includes transitional provisions to ensure smooth implementation for TNSPs and market bodies. This is consistent with good regulatory practice and will minimise any disruption to existing actionable ISP projects that are already at various stages in the regulatory process.

We have made some changes to the final rule following stakeholder feedback on the draft determination and draft rule. The final rule:

- no longer includes a provision for the AER to provide guidance on a PACR exclusion window
- requires a TNSP to inform the AER within one business day of the outcome of a feedback loop assessment in the event the TNSP has used the concurrent pathway and AEMO has made a decision not to provide written confirmation
- brings the commencement date for the final rule forward one day to 14 March 2024. See section 3.5.1 for more detail.

⁵ Final rule, clause 5.16A.5(b)(1).

⁶ Final rule, clause 5.16A.2(c)(5).

⁷ Final rule, clause 5.16A.5(b).

⁸ Final rule, clause 5.16A.6.

1.2 Stakeholder feedback shaped the final determination

Stakeholder input and feedback helped to shape the final determination. In submissions to the draft determination, a range of stakeholders agree that the feedback loop assessment would be improved by allowing it to be assessed against a draft or final ISP. They also agree that this change would improve the timely delivery of projects while improving the operation of the feedback loop as a consumer safeguard. This is broadly consistent with stakeholder feedback on TPIR.

The CIS and a private individual do not agree with the intent of the rule change and raised concerns about its potential impact on consumers, proposing an alternative solution. The Commission considers that the final rule is better than the proposed alternative solutions as the final rule more effectively addresses the identified issues with the workability of the feedback loop and enables it to function in a way that improves its role as a consumer safeguard. The final rule also balances the need for market bodies to make considered decisions in the long-term interests of consumers with the need for timely delivery of actionable ISP projects. Delivery of the projects identified in the ODP are expected to improve reliability for consumers⁹ and if delivery is delayed then the likelihood of interruptions and higher costs for consumers increases.¹⁰ This is particularly important when the feedback loop is considered in the broader regulatory context of the economic assessment framework for actionable ISP projects. The Commission considers that the alternative approaches proposed would not adequately resolve the identified workability issues with the feedback loop because they fail to address concerns raised in the rule change request which relate to its function as a consumer safeguard. The alternative approaches also do not address the ability of the feedback loop to support timely delivery of actionable ISP projects or relieve the existing administrative burden on AEMO. These views are explored in section 3.1.

We also received feedback from the CIS and a private individual critiquing the assessment criteria in the draft determination. Both submissions did not consider the assessment criteria or the application of them adequate for the rule assessment. CIS and a private individual also suggested that the Commission include an additional criterion, specifically relating to the long-term interests of consumers.¹¹ The Commission has considered stakeholder feedback and does not agree with the CIS and the private individual's conclusions that the selected assessment criteria are unsuitable. We have selected these criteria for assessing our decisions against the NEO to ensure that the final rule is in the long-term interests of consumers. We consider the selected criteria are appropriate to consider the workability of the feedback loop and its role as a consumer safeguard. Section 2.3 addresses how we have applied the legal framework to our decision to prioritise the long-term interests of consumers and how the chosen criteria have assessed whether the proposed rule change, no change to the rules, or other viable, rule-based options are likely to better contribute to achieving the NEO.¹²

In addition, we received feedback from ENA and TNSPs on the proposal to establish exclusion windows through guidance in the AER's CBA guidelines and on the suggested timeframes for AEMO's decision-making on a feedback loop assessment. We consider that the approach outlined in the final rule better achieves a consistent regulatory framework with clear requirements while also retaining flexibility for AEMO to make its feedback loop assessments sooner, as necessary.

9 AEMO, 2023 Electricity Statement of opportunities, pp. 96 - 99.

10 AEMO, 2024 draft ISP, p. 14.

11 Submissions to draft determination: CIS, p. 4; Mr Morrison, p. 4.

12 The assessment criteria reflect the key potential impacts of the rule request for impacts within the scope of the NEO and consider how the final rule promotes the long-term interests of consumers.

This will provide greater certainty for TNSPs on when feedback loop assessment requests should be submitted and the timeframe in which AEMO will make its decision.

We received consistent stakeholder feedback that establishing an exclusion window for PACRs is unnecessary and would not reduce the risk of misalignment between the RIT-T and ISP. Further, it could contribute to project delays which is inconsistent with the intent of the final rule. This feedback supports AEMO's position which was outlined in the draft determination. We have carefully considered these views and no longer consider a PACR exclusion window would improve the workability of the feedback loop. This change is discussed in section 3.2.1.

Transgrid also raised concerns that the introduction of an optional parallel process for feedback loop assessments and CPAs may result in project delays. We consider the option to undertake the feedback loop assessment and CPA process concurrently appropriately balances flexibility for TNSPs while providing a consistent and transparent framework. However, we have clarified the practical application of the provision in circumstances where a TNSP does not receive written confirmation of a feedback loop request and a CPA has been submitted. This potential gap and resulting administrative burden was identified by the AER in its submission to the draft determination. These views are explored in section 3.3.

The Commission considers that the benefits provided by the final rule outweigh those of the proposed alternative solution because the final rule more effectively provides market participants with a clear and predictable regulatory framework, critical to the feedback loop's operation as a consumer safeguard and the timely delivery of actionable ISP projects. The Commission does not consider that the proposed alternative solutions address the workability issues that undermine the feedback loop's ability to operate as an effective consumer safeguard and would not support the efficient delivery of ISP projects. Overall, we consider the final rule achieves a balance of efficient and timely decision-making with a robust regulatory framework that is consistent and transparent in its application. This best responds to the proponent's request to address issues with the feedback loop that "undermine the feedback loop's ability to operate as an effective consumer safeguard while supporting the efficient delivery of ISP projects."¹³

In making this final determination, we assessed the regulatory impact of the proposed changes. The final rule will not impose any material costs on consumers, TNSPs, or market bodies. We do not consider that there would be significant costs in implementing the final rule. We consider that there are significant benefits to making the final rule as it improves the clarity, consistency and predictability of the regulatory framework, and the operation of the feedback loop.

1.3 The determination will safeguard consumer interests while supporting the timely delivery of major transmission assets

This rule change focuses on improving the workability of the feedback loop so that it can perform its function as a consumer safeguard while supporting the efficient delivery of ISP projects. The Commission's final determination is in line with the recommendations made in the TPIR stage 2 final report.¹⁴ This final determination is part of a broader set of reforms recommended through the TPIR process that work in tandem to support the timely and efficient delivery of major transmission projects which are critical for unlocking consumer benefits highlighted by AEMO in its ISP and for the transition to net zero.

¹³ Improving the workability of the feedback loop rule change request, p. 1.

¹⁴ AEMC, Transmission planning and investment review: Stage 2 final report, 27 October 2022, pp. 45 - 52.

Progressing these transmission projects in a timely and efficient manner requires a clear, consistent and predictable regulatory framework. The feedback loop was introduced to the transmission planning framework as part of the actionable ISP reforms and is designed as a safeguard for consumers. However, TPIR and Minister Bowen's rule change request highlighted workability issues with the feedback loop that affect its ability to work as intended. In particular, the requirement to assess a feedback loop request against the ODP in the most recent ISP rather than the ODP in the next, or draft ISP. By contrast, the RIT-T process requires TNSPs to use the latest IASR which will underpin the ODP in the next ISP.¹⁵

This has consequences for the timely assessment of significant transmission projects and can impede the feedback loop's operation as an effective consumer safeguard by impacting its accuracy and increasing the potential for inconsistencies. The final rule addresses these workability issues to improve the feedback loop and assists in the timely delivery of major transmission projects while maintaining the integrity of the feedback loop as a safeguard in the long-term interest of consumers.

The Commission acknowledges that some stakeholders have raised issues during the rule change process that go to efficacy of the feedback loop, particularly in relation to its interaction with a future ISP. This has been raised in the context of allowing a feedback loop assessment to be made against the ODP in a draft ISP and therefore during the six-month period between a draft and final ISP. These matters are explored in detail in section 3.1. However, to ensure a holistic view, we consider that the feedback loop and its consumer safeguard function should be considered in the context of the broader transmission planning and investment framework. This final rule change does not alter the requirements of that broader regulatory environment. This includes the economic assessment process¹⁶ and the whole of system plan, or ISP. These processes incorporate a series of distinct but interrelated requirements, governed through the NER and in corresponding AER guidelines or guidance, to achieve power system needs efficiently and in a way that contributes to achieving the NEO.

The Commission noted the balance between these aspects in our consultation paper during the TPIR process and stated:

"The objective of the Review is to ensure that the regulatory frameworks strike an appropriate balance between requiring rigorous assessment, to mitigate the risk of inefficient transmission investment, and the need to facilitate timely investments that deliver beneficial outcomes. Consumers will be paying for these projects for decades into the future and it is therefore important that they are in the long-term interest of consumers. As such, it is imperative that the regulatory framework for assessing and approving them remains fit-for-purpose."¹⁷

In that context, the final determination complements the work being carried out by the Commission as part of a broad set of reforms recommended through the TPIR process. These reforms seek to ensure that the regulatory framework is fit for purpose to safeguard consumer interests while supporting the timely and efficient delivery of major transmission projects.

15 Improving the workability of the feedback loop rule change request, p. 2.

16 Including the RIT-T, feedback loop and CPA processes.

17 AEMC, *Transmission Planning and Investment Review: Consultation paper*, p. 3.
https://www.aemc.gov.au/sites/default/files/documents/consultation_paper_-_transmission_planning_and_investment_review_1.pdf

2 The rule will contribute to the energy objectives

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.¹⁸

For this rule change, the relevant energy objective is the NEO.

The NEO is:¹⁹

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.²⁰

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.²¹

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

2.2.2 We have considered how the rule will apply in the Northern Territory

In developing the final 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.

18 Section 88(1) of the NEL.

19 Section 7 of the NEL.

20 Section 32A(5) of the NEL.

21 Section 91A of the NEL.

In its submission, ENA suggested that any drafting amendments need to be considered in the context of the Northern Territory NER in consultation with the Northern Territory and Power and Water.²²

The Commission considered the ENA's suggestion but confirms that a uniform rule remains appropriate, though it does not have any effect in practice as the ISP framework does not apply in the Northern Territory. On this basis, the Commission is satisfied that there is no need for a differential rule.

See appendix D for more detail on the legal requirements for our decision.

2.3 How we have applied the legal framework to our decision

The Commission must consider how to address a lack of clarity and practical application difficulties with the operation of the feedback loop 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:

- Emissions reduction
- Principles of market efficiency
- Implementation considerations
- 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.

In their submissions to the draft determination, the CIS and a private individual did not consider the assessment criteria or the application of them adequate for the rule assessment, suggesting that the Commission should include an additional criterion specifically relating to the long-term interests of consumers. When making or amending the electricity rules the Commission can only do so if it will contribute to the National Electricity Objective (NEO), which refers to several components of the long-term interests of consumers. In considering the NEO in the context of a particular rule change, the AEMC has the discretion to weight each of these components as we consider appropriate in the circumstances. We have developed our assessment criteria for assessing our decisions against the NEO to ensure that the final rule is in the long-term interests of consumers.²³ Accordingly, the Commission considers that it has properly considered the long-term interests of consumers in making its final rule. The section below discusses each of the relevant assessment criteria, outlining how we have considered consumers and their long-term interests.

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 final rule best promotes the long-term interest of consumers when compared to other options and assessed against the criteria.

²² ENA, submission to draft determination, p. 3.

²³ For more information on the AEMC's decision-making framework, please visit <https://www.aemc.gov.au/sites/default/files/2023-09/Publication%20-%20Guide%20to%20AEMC%20decision%20making%20-%20Sep%202023.pdf>

2.3.1 Contributing to emissions reduction

In response to the draft determination, the CIS and a private individual submitted that they do not consider the draft rule suitably meets the emissions reduction criterion. The CIS states that, “the rule makes a change in favour of more rapidly advancing projects at the direct expense of public scrutiny and transparency”.²⁴

The Commission considers the final rule contributes to emissions reduction by improving the operation of the feedback loop and promoting a clear, consistent and predictable regulatory framework. This supports the timely assessment and delivery of transmission infrastructure required to facilitate the transition to a net zero energy system. It does this by establishing clear timing for TNSPs and market bodies on when feedback loop assessments can be requested, and the maximum time in which the assessment by AEMO will be undertaken. This approach also preserves flexibility for AEMO to make decisions sooner based on the characteristics of a particular project.

As generally supported by stakeholders, the final rule clarifies that an exclusion window is not required for PACRs. In line with stakeholder submissions, the Commission considers that the potential risk of delay to a project’s assessment outweighs any benefits of proceeding with this amendment. This approach, along with the inclusion of feedback loop exclusion windows in the AER’s CBA guidelines, strikes a balance between the need for prescription to improve certainty, and the need for flexibility to address the specific circumstances of individual projects. These changes address existing barriers to the efficient operation of the feedback loop and contribute to more timely assessment of actionable ISP projects.

Actionable ISP projects have been demonstrated through the consultative ISP development process to form part of the ODP in the ISP that will meet the power system’s reliability and security requirements and support government emissions reduction policies in the long-term interests of consumers. Improving the operation of the feedback loop and timeliness of assessments will support the delivery of actionable ISP projects consistent with the timeframes set out in the ISP to meet system needs.

Compared to business as usual, this facilitates the emissions reduction benefits of these projects which enable additional renewable energy generation to connect to the national electricity market. This additional generation would contribute to government targets for reducing Australia’s greenhouse gas emissions which are identified in the targets statement published by the Commission.²⁵

2.3.2 Promoting principles of market efficiency

In their responses to the draft determination, the CIS and a private individual did not consider that promoting principles of market efficiency is a suitable assessment criteria. The Commission’s view is that improving the efficiency, predictability and timeliness of the regulatory framework for actionable ISP projects will deliver broader benefits, including efficiency benefits, for other NEM participants. It will also support the efficient and effective operation of the market while protecting the long-term interests of consumers.

The Commission considers that the final rule promotes principles of market efficiency by striking the appropriate balance between improving the feedback loop as a consumer safeguard while not unnecessarily delaying the progression of actionable ISP projects through the regulatory

²⁴ CIS, submission to draft determination, p. 3.

²⁵ AEMC, Emissions targets statement under the National Energy Laws, 1 February 2024.

framework. The feedback loop is one component of the economic assessment process in the transmission planning and investment framework and improvements to it should contribute to the overall efficiency and timeliness of the regulatory framework.

The final rule maintains the key features of the feedback loop which form part of the consumer safeguard. The final rule does not alter the requirement for the feedback loop assessment to confirm that the preferred option addresses the relevant identified need specified, and aligns with the ODP, in the ISP. It also maintains the requirement that the cost of the preferred option does not change the status of the actionable ISP project.²⁶ In addition, the feedback loop assessment still determines the maximum costs that can be sought through the CPA process.

The final rule builds on those safeguards by ensuring that AEMO can have regard to the latest available information when it undertakes its feedback loop assessment. This promotes best practice regulatory-decision making where AEMO is able to use updated information from the latest IASR in the draft ISP. This ensures AEMO can account for the latest information that may affect the ODP and therefore the outcome of the feedback loop. This is particularly important in circumstances where remodelling may be required as a result of a material change or changes in the assumptions underpinning the ODP.

The Commission acknowledges that some stakeholders have identified that the ODP could be further refined between the draft and final ISP, including through public consultation on the draft ISP, and therefore the proposed change should not proceed. However, as mentioned above, the feedback loop is one part of the broader regulatory framework which includes multiple stages and requirements in the rules to develop and refine the project and for public consultation during the RIT-T process, as well as specific requirements relating to the development of the ISP.²⁷

Identifying a project as an actionable ISP project triggers the RIT-T process, including the Project Assessment Draft Report (PADR), which includes a minimum six-week consultation period, and PACR, which responds to matters raised in submissions. It is likely by the conclusion of these processes, that the actionable ISP project has been identified in more than one ISP across the ISP development cycle. This is because the timeframes for these processes is not specified and is a function of the individual project's complexity. Once the RIT-T process is complete, the TNSP is then required to seek a feedback loop assessment by AEMO, which caps the costs that can be sought in the CPA. TNSPs must also submit a CPA to assess whether the proposed expenditure is prudent and efficient.

Taking these processes together, it is unlikely that consultation on the draft ISP will result in changes to the status of actionable ISP projects that might request a feedback loop assessment in the six-month window between a draft and final ISP.

In addition, the final rule provides clarity for proponents on the timeframes for completion of a feedback loop assessment and provides the option for a proponent to commence the CPA concurrently with the feedback loop assessment.²⁸ This certainty and flexibility should enable a proponent to efficiently manage its project timeframes and resources, promoting timely investment decisions for actionable ISP projects. The final rule therefore balances the need for rigorous assessment and consultation with the benefit of timely progression through the regulatory process. This provides a predictable and transparent regulatory framework for all market participants so that the demonstrated market benefits of these actionable ISP projects can be realised.

²⁶ Clause 5.16A.5(b) of the NER.

²⁷ Chapter 3 and Appendix D include further detail on the regulatory requirements in the rules for the RIT-T process and ISP development.

²⁸ See section 3.3.

2.3.3 Achieving timely implementation

In their responses to the draft determination, the CIS and a private individual did not consider that timely implementation is a suitable assessment criteria, and stated that they “further reject the use of ‘timely’ in the wording on an assessment criterion in principle”.²⁹ CIS submitted that in their view timeliness is not an inherent goal in and of itself and it needs to be weighed carefully against other considerations, stating that “it should never be considered as inherently beneficial, and a goal in its own right”.³⁰ The Commission’s view is that in this circumstance timely implementation is a key criterion for assessing whether the proposed rule change, no change to the rules, or other viable, rule-based options are likely to better contribute to achieving the NEO. This criterion facilitates the Commission’s consideration of how the proposed rule could be implemented, the potential implementation impacts of the proposed rule and any transitional requirements to facilitate efficient and timely implementation.

The Commission considers the final rule contributes to timely implementation by promoting a clear, consistent and predictable regulatory framework. It does this by providing clarity on when a feedback loop assessment can be requested and the maximum time AEMO can take for a decision. In addition, it introduces flexibility to enable existing sequential processes for the feedback loop and CPA to be undertaken in parallel, if the TNSP elects to do so. This will ensure timely assessment of projects so consumers can realise the demonstrated benefits of the actionable ISP projects while supporting the role of the feedback loop as a consumer safeguard. The final rule makes further changes to the concurrent process to provide clarity by requiring AEMO to advise a TNSP of its decision and requiring TNSPs to advise the AER if AEMO decides not to provide it with written confirmation following a feedback loop request.

In addition, the final rule is relatively simple to implement as the changes to the rules primarily provide flexibility or clarity for market bodies and TNSPs in the application of the existing framework. The final rule would likely result in changes to market bodies’ and TNSPs’ processes, particularly with the introduction of exclusion-windows between the final IASR and draft ISP.³¹

The final rule includes transitional arrangements to support market bodies in implementing the proposed reforms, including providing the AER with 12 months to update its CBA guidelines to incorporate guidance on the timing of feedback loop requests. It also makes provision for any equivalent steps taken by the AER to update its guidelines in anticipation of the rule to satisfy the equivalent requirements in the Rules consultation procedures, which sets out the requirements for updating the CBA guidelines. These transitional arrangements provide clarity for TNSPs in how the guidance will be developed and provide the AER with flexibility as it implements several updates to its guidelines.³²

The transitional arrangements also provide clarity to proponents by enabling RIT-T proponents that have already submitted a request for a feedback loop assessment prior to the commencement of the rule to use the existing regulatory framework. This provides certainty for requests made before or after the commencement of the rule. The final rule is unlikely to carry significant costs or impose new material obligations on TNSPs.

Implementing the final rule now will enable the benefits of the rule change to apply to existing ISP projects that have not yet submitted a feedback loop request, which may be for a stage of an actionable ISP project if the actionable ISP project is a staged project. It would also allow time for

29 CIS, submission to draft determination, p. 3.

30 CIS, submission to draft determination, p. 3.

31 Section 3.2 explains the proposed requirements for the AER regarding exclusion windows for feedback loops and PACRs.

32 See section 3.5.

updated AER CBA guidelines to be in place prior to the publication of the key documents for the 2026 ISP process. Not proceeding with the final rule would leave workability issues with the feedback loop unresolved.

2.3.4 Promoting principles of good regulatory practice

The CIS and a private individual in their responses to the draft determination, do not consider that the draft rule meets the criterion of promoting good regulatory practice. In the submission from the CIS they state that, “the proposal to base feedback loops on a Draft ISP blatantly reduces transparency and accountability.”³³

The Commission’s considers the final rule promotes principles of good regulatory practice by providing certainty of process and flexibility where appropriate. It also improves the efficiency, predictability and transparency of the feedback loop assessment process in the regulatory framework. A clear, consistent and predictable regulatory framework is critical to safeguard consumer interests and to the timely and efficient delivery of major transmission projects.

The final rule does this by clarifying the operation of the feedback loop, including the timeframes in which it is required to be completed. This improves the timeliness of the process, the transparency regarding its application and the predictability of the timeframes for its completion.

The final rule also addresses the lack of clarity and workability issues that arise from the current requirement for the feedback loop to be assessed against the ODP identified in the most recent ISP. Allowing the feedback loop to be assessed against the ODP in the most recent ISP (draft or final) which is underpinned by the most up to date inputs, assumptions and scenarios will promote timely completion of AEMO’s assessment based on information that will be incorporated into the next ISP. It should also reduce the administrative burden on AEMO of having to maintain, refer to and draw on two sets of modelling and inputs.

Enabling the feedback loop to be assessed against the ODP in a draft ISP should improve its operation as a consumer safeguard. A draft ISP is likely to be informed by new government policies or changes to inputs contained in the latest version of the IASR that could materially affect the ODP and therefore the outcome of the feedback loop.³⁴

2.3.5 The more preferable final rule better promotes the NEO

The final rule better contributes to the NEO, rather than the proposed rule, because it provides greater clarity and certainty. The proponent has requested a rule change to improve the workability of the feedback loop and address issues that affect its performance as a consumer safeguard. This includes the need to provide further clarity, certainty and consistency for market bodies and stakeholders in the application of the regulatory framework.

The final rule responds to that request by clarifying the application of the final rule to the stages of an actionable ISP project if it is a staged project and ensuring the clear and consistent application of decision-making timeframes for market bodies. The final rule also includes a requirement for AEMO to notify TNSPs of its decision on a feedback loop assessment. A TNSP will also be required to advise the AER if AEMO decides not to provide it with written confirmation following a feedback loop request where it has used the parallel feedback loop and CPA provisions.

³³ CIS, submission to draft determination, p. 4.

³⁴ Clause 5.22.3 of the NER requires AEMO to consider the emissions reduction targets stated in the targets statement in determining power system needs and in determining how the ISP would contribute to achieving the NEO.

The final rule removes the requirement from the draft rule that the AER CBA guidelines may include guidance on the timing of a PACR publication. This responds to views put by stakeholders, including AEMO, and strikes the appropriate balance between prescription and flexibility in the regulatory framework while ensuring that the efficacy of the feedback loop as a consumer safeguard is improved. Together these amendments to the final rule provide for an improved feedback loop and a regulatory framework which balances robust assessment and timely progression of actionable ISP projects that have demonstrated benefits.

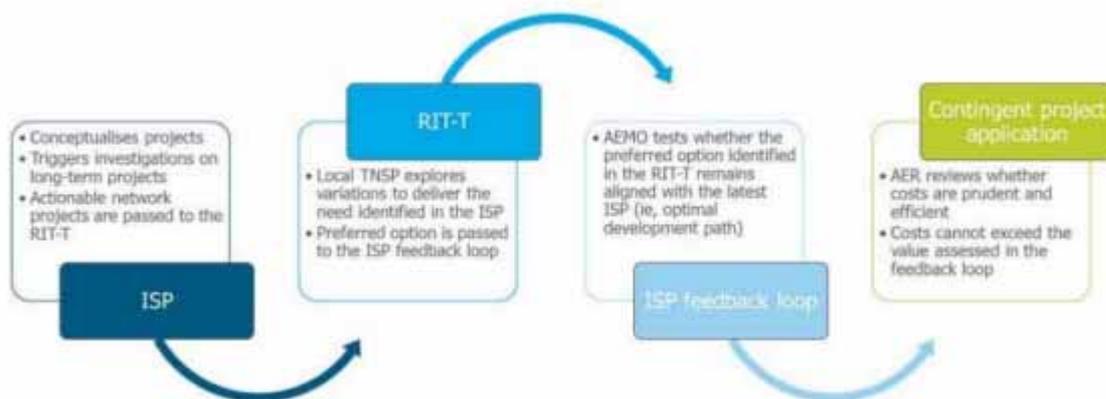
3 How the rule will operate

The feedback loop was introduced as part of the actionable ISP reforms and is designed as a safeguard for consumers. It currently requires the RIT-T proponent to obtain written confirmation from AEMO that:³⁵

- the preferred option addresses the relevant identified need specified in the most recent ISP and aligns with the ODP referred to in the most recent ISP; and
- the cost of the preferred option does not change the status of the actionable ISP project as part of the ODP as updated in accordance with clause 5.22.15 where applicable.³⁶

The feedback loop also caps the costs that can be sought by a RIT-T proponent in the CPA. It provides an important safeguard for consumers by ensuring that only investments that are in their long-term interests are eligible for regulatory funding, and that the level of regulatory funding does not exceed the efficient investment level. Figure 3.1 outlines the role of the feedback loop in the regulatory framework and its relationship to other relevant processes, such as the RIT-T and CPA.

Figure 3.1: The role of the feedback loop in the actionable ISP framework



Source: AEMC

35 Clause 5.16A.5(b) of the NER

36 ISP updates are set out in clause 5.22.15 of the NER.

3.1 Enabling a feedback loop request to be assessed against the most recent ODP in a draft or final ISP

Box 1: Final determination – Feedback loop requests to be assessed against the most recent ODP in a draft or final ISP

The final rule enables a feedback loop request to be assessed against the most recent ODP in a draft or final ISP.

The final rule will allow AEMO to undertake its feedback loop assessment to determine if the RIT-T proponent's preferred option addresses the identified need and aligns with the ODP which contains the most up to date inputs, assumptions and scenarios.

This addresses issues identified in TPIR stage 2 and by the rule change proponent in the practical application of the feedback loop and its efficacy as a consumer safeguard.

Changes from draft to final rule:

- None.

The final rule will allow AEMO to undertake its feedback loop assessment against the ODP in the most recent ISP (draft or final) which is likely to be underpinned by more up to date inputs, assumptions and scenarios included in the latest IASR.³⁷ This addresses issues with the workability of the feedback loop which affects the ability of the assessment to operate as an effective safeguard for consumers. This change will provide AEMO with the ability to undertake its assessment against the ODP which contains the most up to date information, depending on whether the RIT-T proponent's request is submitted closer to the publication of the most recent draft or final ISP.

The current rules may create misalignment between the inputs used to inform the development of the RIT-T preferred option, which requires the RIT-T proponent to use the most recent ISP parameters,³⁸ and the inputs which informed the development of the ISP. This can create practical difficulties with the feedback loop for AEMO and RIT-T proponents which were explored during the Commission's TPIR stage 2 review.

In addition, enabling the feedback loop to be assessed against the ODP in the next ISP, particularly where there are significant differences between the ISP candidate option and RIT-T preferred option, is important for the feedback loop to be an effective consumer safeguard. This is because if remodelling is required then it is critical for AEMO to be able to have regard to the most up to date information in making its assessment. This ensures the feedback loop's efficacy as a consumer safeguard and promotes a predictable and consistent regulatory framework.

The AER, AEMO, Clean Energy Investor Group (CEIG), TasNetworks and ENA all supported the position in the draft determination to enable a feedback loop request to be assessed against the most recent ODP in a draft or final ISP.³⁹ The CEIG stated that this change would help the market achieve a transition to a cleaner energy system through the timely and efficient delivery of transmission assets whilst improving investment security for stakeholders.

³⁷ Final rule, clause 5.16A.5(b)(2).

³⁸ Most recent ISP parameters include the inputs, assumptions and scenarios set out in the most recent IASR. See clause 5.10.2 of the NER.

³⁹ Submissions to draft determination: AER, p. 1; AEMO, p. 2; CEIG, p. 1; TasNetworks, p. 1; ENA, p. 1.

We received submissions from the CIS and several private individuals that objected to the proposed solution. The submissions from CIS and a private individual argued that allowing a feedback loop assessment to be assessed against the inputs underpinning a draft document that has not yet been consulted on may compromise its operation as a consumer safeguard.⁴⁰ The CIS submission states that in its opinion:

“...the premise that there is a problem with the workability of the feedback loop is, and always was, poorly founded. Increased efficiency, transparency and accountability could be achieved quite simply with trivial changes to the rules, and possibly only with clarification of interpretation of existing rules (for instance, through a Guidance Note from the AER).”⁴¹

Some of the matters raised in these submissions relate to concerns with the broader ISP framework, including the approach to developing future ISPs. The Commission considers that these matters are beyond the scope of this rule change as it is focused on improving the workability of the feedback loop.

The CIS and a private individual propose that the workability of the feedback loop can be addressed by amending the NER so that the definition of ‘ISP parameters’ refers to the IASR underpinning the most recent ISP, rather than the latest IASR published by AEMO.⁴²

The Commission considers that this proposal would not satisfactorily resolve issues with the workability of the feedback loop, as AEMO would still be required to have regard to information from a previous ISP cycle which may be outdated. It is our view that the best outcomes are achieved in the decision-making process when the regulatory framework allows for the most up to date information to be used. This is particularly relevant for the feedback loop’s efficacy as a consumer safeguard when there are material changes to inputs and assumptions and remodelling is required. AEMO is also required to consider government policy, including emissions target statements, in their updates to the ISP. It follows that failing to use the most up to date information could result in feedback loop outcomes that do not align with the current state of the National Energy Market. Similarly, the use of out of date inputs risks the misalignment of the feedback loop assessment and the RIT-T, hindering the feedback loop’s ability to act as a consumer safeguard.

The CIS submission rejects AEMO’s argument that the consultation process undertaken to finalise the methodology for the IASR is sufficient, arguing that consultation on a draft ISP is essential to ensure proper scrutiny over the inputs and assumptions underpinning a consumer safeguard.

The Commission considers that the issue raised by CIS in their submission is addressed when the feedback loop and its function as a consumer safeguard are considered in the context of the broader transmission planning and investment framework. More specifically:

- Projects that are at the feedback loop stage of the ISP framework will have appeared in at least one, but likely multiple, final ISPs and have been subjected to the required consultation processes governed through the NER and in corresponding AER guidelines or guidance.
- Before a RIT-T proponent can request a feedback loop assessment by AEMO it needs to have completed the RIT-T process to provide a more detailed technical analysis of the credible options, including the PADR, which includes a minimum six-week consultation period, and PACR, which responds to matters raised in submissions. TNSPs must also submit a CPA to

40 Submissions to draft determination: CIS, pp. 6-7; Mr Morrison, pp. 6-7.

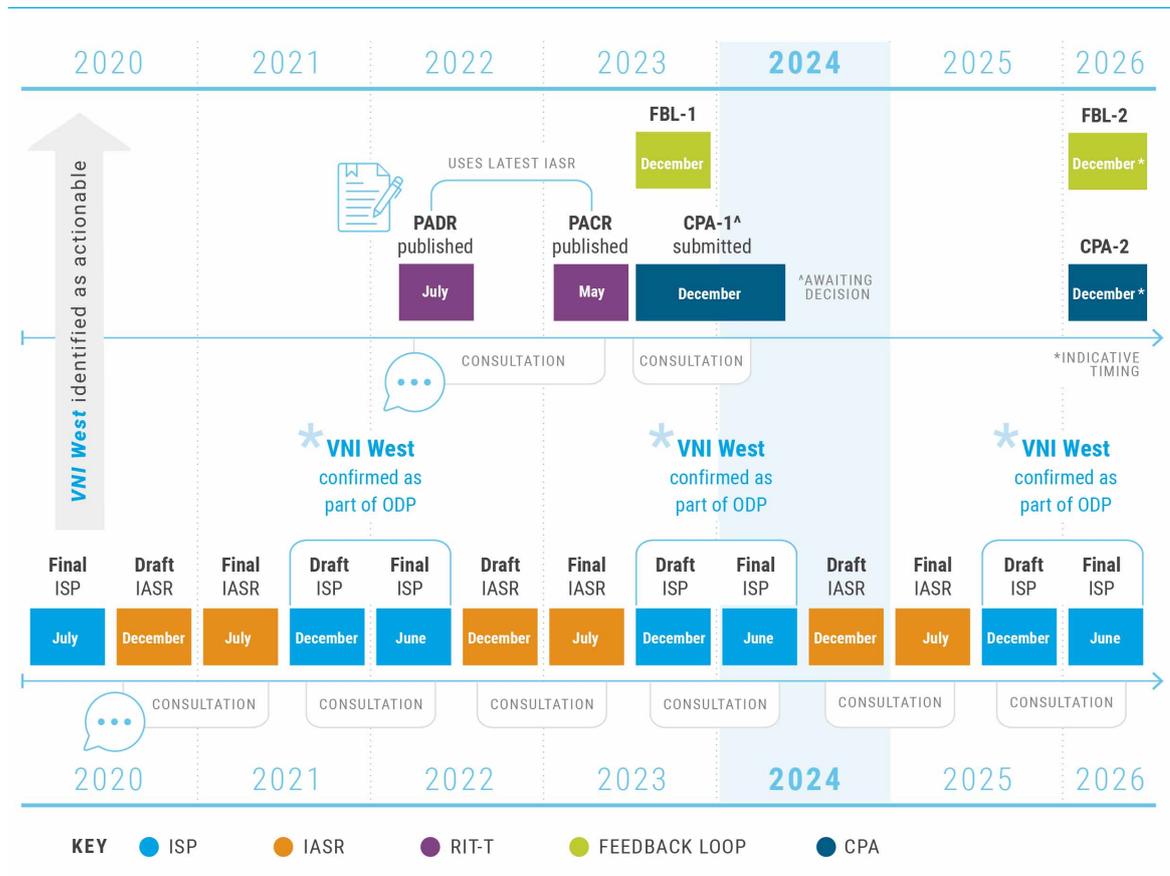
41 CIS, submission to draft determination, p. 2.

42 Submissions to draft determination: CIS, p. 8; Mr Morrison, p. 8.

the AER to assess whether the proposed expenditure is prudent and efficient which cannot be provided by the AER until the feedback loop has been completed.

One consequence of these processes is that projects seeking feedback loops are unlikely to see their status as part of the ODP change due to consultation on a draft ISP. Further, the period of concern identified in submissions would arise for only a six-month period between a draft and final ISP in the two year ISP cycle. The interaction between the ISP development process and RIT-T for actionable ISP projects is included in Figure 3.2 using VNI West as an example actionable ISP project. Appendix C outlines the ISP development requirements in detail.

Figure 3.2: Progression of VNI West through the actionable ISP framework



Source: AEMC

The Commission’s view is that for the feedback loop to act as an effective consumer safeguard it is appropriate and efficient for it to be a holistic assessment based on all available information. We consider that best practice regulatory decision-making is promoted when the latest available information is used in the decision-making process. It follows that for the feedback loop to operate as a more effective consumer safeguard AEMO should be able to use the most up to date information in the form of the latest IASR. The Commission expects this will promote confidence in AEMO’s feedback loop assessment because it accounts for the latest information that may affect the ODP and therefore the outcome of the feedback loop itself.

3.2 Requiring the AER's CBA guidelines to provide guidance on the timing of feedback loop requests

Box 2: Final determination – AER's CBA guidelines to provide guidance to RIT-T proponents on the timing of feedback loop requests

The final rule aligns the feedback loop assessment with a draft or final ISP by requiring the AER's CBA guidelines to provide guidance on the timing of any request by a RIT-T proponent.

The final rule enables the establishment of an exclusion window between the publication of the final IASR and draft ISP to narrow the scope for misalignment between a RIT-T preferred option and the feedback loop assessment. Incorporating the new guidance requirements in the AER's CBA guidelines provides flexibility for AEMO and additional clarity for TNSPs regarding the operation of the feedback loop.

The guidelines should provide AEMO with the discretion to undertake the feedback loop during the exclusion window where appropriate given the circumstances of any particular request.

Changes from draft to final rule:

- The final rule no longer includes a provision for the AER to provide guidance on a PACR exclusion window.

The final rule will require the AER to provide guidance on the timing of any request by a RIT-T proponent for a feedback loop assessment.⁴³ The intention of this reform is to allow the AER to specify a period of time - between the final IASR and the draft ISP - in which feedback loop assessments would not be undertaken. This exclusion window aims to minimise the risk of misalignment between the RIT-T and ISP, reflecting the fact that the RIT-T will have likely used the inputs and assumptions underpinning the next ISP.

The exclusion window will result in a four-to-six month period of the two-year ISP cycle where feedback loops would generally not occur. The next exclusion window will therefore come into effect in mid-2025 ahead of the 2026 draft ISP. Figure 3.3 outlines the feedback loop exclusion window in the context of the current 2024 ISP cycle. The exclusion window will be implemented through a requirement to provide guidance in the AER's CBA guidelines.

⁴³ Final rule, clause 5.16A.2(c)(5).

Figure 3.3: Aligning the feedback loop with a draft or final ISP through an exclusion window between the final IASR and draft ISP



Source: AEMC

Stakeholder views varied in their support for a feedback loop exclusion window. The AER, AEMO and CEIG supported the inclusion of a feedback loop assessment exclusion window⁴⁴ in the AER's CBA guidelines, with the AEMO stating that:

"The establishment of an exclusion window for feedback loop assessments between the publication of the final IASR and the Draft ISP will help to signal to TNSPs that feedback loop assessments requested during this period may not receive notice until the Draft ISP is finalised."⁴⁵

ENA and Transgrid do not support a feedback loop exclusion window stating that an exclusion window that prevents a TNSP from requesting a feedback loop assessment for five to six months every second year would create unnecessary administrative burden and could result in significant project delays.⁴⁶ We note that the position in TPIR and the draft determination was that AEMO should have the flexibility to undertake its assessments during the exclusion window where appropriate given the circumstances of the request. We consider that AEMO should retain the discretion to conduct assessments during the exclusion window period. This discretion will enable AEMO to flexibly manage resources and avoid unnecessary delays to assessments in some instances.

ENA and Transgrid outlined an alternative solution in their submissions.⁴⁷ Instead of a formal exclusion window for feedback loop assessments, ENA and Transgrid suggest that:

- TNSPs should be able to submit feedback loop requests at any time, with AEMO having discretion to respond to feedback loop requests at any time; and
- the timing of a feedback loop process would be better managed by agreement between the TNSP and AEMO through an exchange of letters codified in the rules.

44 Submissions to draft determination: AER, p. 1; AEMO, p. 2; and CEIG, p. 2.

45 AEMO, submission to draft determination, p. 2.

46 Submissions to draft determination: ENA, p. 2; and Transgrid, p. 1.

47 Submissions to draft determination: ENA, p. 2; and Transgrid, p. 2.

The proposal shares similarities with an option assessed as part of the TPIR, that an informal agreement between RIT-T proponents and AEMO could be used to agree when feedback loops would be submitted and assessed. The review found that, although such an approach facilitated less prescription, it would not address workability issues in the absence of formal guidance.⁴⁸

The Commission considers that timely and efficient delivery of ISP projects depends upon a clear and predictable regulatory framework – including the application of the feedback loop. The Commission’s view is that the proposal from ENA and Transgrid would likely result in ad-hoc agreements that give no clear basis for proponents to form expectations as to when a feedback loop assessment would be complete. More broadly, the introduction of a formal exchange of letters to establish feedback loop timing may ultimately slow the project because a process for negotiating completion of the feedback loop may need to be prescribed in the NER or AER guidelines.

The Commission remains of the view that enabling the establishment of an exclusion window between the publication of the final IASR and draft ISP to narrow the scope for misalignment between a RIT-T preferred option and the feedback loop assessment is the most effective way of ensuring the workability of the feedback loop.

Providing guidance in the AER’s CBA guidelines provides the necessary flexibility for AEMO to manage its obligations while ensuring the timing for submission of feedback loops is consistent and transparent. The AER is required to update its CBA guidelines in response to several regulatory changes that have either been recently completed or are underway, including the inclusion of emissions in the national energy law and rule changes resulting from TPIR. For this reason, the final rule includes transitional arrangements to support the AER during its initial implementation of the amendments to the feedback loop and associated consultation.⁴⁹

The Commission also considers that AEMO should retain the discretion to conduct assessments during the exclusion window if it determines that this is appropriate. This could apply where assessments do not require significant remodelling or where a request is submitted just prior to the commencement of the exclusion window. This balances the desired intent to better align the RIT-T and ISP and provide certainty for TNSPs navigating the regulatory process while allowing AEMO the discretion to manage its obligations and resources without creating unnecessary delay to regulatory approvals.

3.2.1 Changes from draft to final rule

The final rule no longer includes a provision for the AER to provide guidance on a PACR exclusion window.

The draft determination outlined that AEMO no longer supported an exclusion window applying to the publication of PACRs by RIT-T proponents. Submissions to the draft determination from the AER, ENA, and Transgrid supported this viewpoint, with ENA stating:

“it would be prudent to maintain flexibility and not lock in a Project Assessment Conclusions Report (PACR) exclusion window. Exclusion windows may unnecessarily delay the delivery of critical ISP projects, especially if remodelling is not required.”⁵⁰

48 AEMC, Transmission planning and investment review – stage two, Draft report, 2 June 2022, p. 55.

49 These transitional arrangements are discussed in section 3.5.

50 ENA, submission to draft determination, p. 2.

Consistent with stakeholder submissions, and following further analysis, the Commission agrees that the potential risk of delay to a project’s assessment due to an exclusion window for a PACR outweighs any benefits of proceeding with this amendment. This approach, along with the inclusion of guidance in the AER’s CBA guidelines on the timing for when a feedback loop assessment can be requested, strikes a sensible balance between the need for prescription in order to improve certainty, and the need for flexibility to address the specific circumstances of individual projects. These changes address existing barriers to the efficient operation of the feedback loop and contribute to more timely assessment of actionable ISP projects.

3.3 Providing RIT-T proponents with the flexibility to undertake concurrent feedback loop assessment and CPA processes

Box 3: Final determination – Providing flexibility in the planning and investment framework

The final rule amends the NER to allow the CPA process and feedback loop assessment to proceed concurrently.

This provides RIT-T proponents with the option to undertake the CPA process and feedback loop assessment concurrently. In addition to introducing flexibility, this change will also address the potential problem of bunching caused by the implementation of an exclusion window for the feedback loop. RIT-T proponents will be able to use the existing sequential process (feedback loop assessment followed by a CPA) if preferred.

Changes from draft to final rule:

- The final rule will require a RIT-T proponent to inform the AER within one business day of the outcome of a feedback loop assessment in the event the proponent has used the concurrent pathway and AEMO has made a decision not to provide written confirmation.

The final rule provides RIT-T proponents with the option to undertake the feedback loop assessment and CPA process concurrently. Providing the option to undertake concurrent processes introduces flexibility and encourages timely assessment of projects. It also addresses the potential for project delays due to a bunching of feedback loop assessments around the publication of a draft ISP.⁵¹

Stakeholders, including AEMO, ENA, the CEIG and TasNetworks, were broadly supportive of allowing a concurrent feedback loop and CPA process.⁵² TasNetworks noted that:

“This should improve the timeliness of delivery for some major transmission projects, while retaining flexibility to proceed under the existing rules where preferable.”⁵³

In its submission to the draft determination, the AER suggested clarifying that a feedback loop assessment must be successfully completed before a CPA can be finalised, suggesting the final rule should incorporate a requirement for the RIT-T proponent to notify the AER as soon as an assessment outcome is achieved for a feedback loop assessment.⁵⁴ We note the rules already

51 The risk of bunching arises from the introduction of an exclusion window (see section 3.2), as RIT-T proponents wait for the feedback loop assessment period to open.

52 Submissions to draft determination: AEMO, p. 3; ENA, p. 1; CEIG, p. 2; TasNetworks, p. 1.

53 TasNetworks, submission to draft determination, p. 1.

54 AER, submission to the draft determination, p. 2.

require that written confirmation of a successful feedback loop is needed before the AER can make a CPA determination.⁵⁵ The AER also requested clarity in the event AEMO has notified the RIT-T proponent that its decision is to not provide written confirmation of a feedback loop assessment. The Commission considers that providing additional clarity would be beneficial. The detail of this change is outlined in section 3.3.1.

In its submission, Transgrid highlighted that confirmation of AEMO’s feedback loop assessment is critical for stakeholders in the AER’s CPA process and that it does not support allowing the two processes to occur concurrently.⁵⁶ The Commission notes that some RIT-T proponents may value the assurance given by finalising the feedback loop assessment before initiating the CPA process in some situations. Accordingly, the final rule provides RIT-T proponents with this flexibility by not mandating that the two processes run concurrently. This balances the need for robust assessment and timely decision-making for actionable ISP projects.

The final rule is expected to promote timeliness of investment by enabling RIT-T proponents to submit CPAs without having to wait for the outcome of the feedback loop assessment.

3.3.1 Changes from draft to final rule

The final rule requires a RIT-T proponent to inform the AER within one business day of the outcome of a feedback loop assessment in the event the proponent has elected to use the concurrent pathway and AEMO has made a decision not to provide written confirmation. This addition will remove the risk of the AER being unaware of an outcome in the event AEMO does not provide written confirmation of a feedback loop assessment.⁵⁷

3.4 Supporting timely decision-making by requiring AEMO to complete its feedback loop assessment within specified timeframes

Box 4: Final determination – AEMO to complete the feedback loop assessment within specified timeframes

The final rule places a requirement on AEMO to complete the feedback loop assessment within 40 business days, with the ability to extend the period by up to a further 60 business days if the assessment is particularly complex or difficult.

A clear, consistent and predictable regulatory framework is critical to the timely and efficient delivery of major projects. The Commission considers that there is merit in placing timeframes on AEMO to complete the feedback loop assessment.

This will provide RIT-T proponents with clarity and transparency regarding when the outcome of the feedback loop will be known.

Changes from draft to final rule:

- None.

⁵⁵ Clause 6A.8.2(e) of the NER.

⁵⁶ Transgrid, submission to draft determination, p. 2.

⁵⁷ Final rule, clause 5.16A.6(b).

Consistent with the Commission’s draft rule, the final rule places timeframes on AEMO to complete the feedback loop assessment. A clear, consistent and predictable regulatory framework is critical to the timely and efficient delivery of major projects. Incorporating a timeframe for AEMO to complete the feedback loop will promote this objective by providing clarity and transparency to stakeholders regarding when the outcome of the feedback loop will be known.

The CEIG, AEMO and AER were supportive of the proposed timeframes being placed on AEMO to complete their feedback loop process⁵⁸, these being:

- AEMO must within 40 business days complete the feedback loop assessment from the later of the date it receives the request or the date it receives additional information following an information request issued by AEMO
- AEMO may extend the period by up to a further 60 business days if it considers that the feedback loop assessment is particularly complex or difficult (such as if re-modelling is required)
 - the notice of extension must be made before the 30th day of the feedback loop process (minimum 10 business days notice before the required 40 day time limit)
 - once a RIT-T proponent is notified of the extension, the RIT-T proponent will be required to notify the AER of the extension within one business day to ensure that any concurrent feedback loop and CPA process is aligned
 - a clause that automatically grants the AER an extension to their CPA process if AEMO submits an extension of the feedback loop process to the RIT-T proponent.

The CEIG, AEMO and AER agreed with the draft determination that placing timeframes on AEMO will provide greater certainty for RIT-T proponents regarding feedback loop decisions and aligns with the need for a more transparent regulatory system.⁵⁹

“CEIG believes that the proposed changes will have positive impacts on the deployment of essential infrastructure, as they align with the need for a more efficient and transparent regulatory process.”⁶⁰

ENA and Transgrid raised concerns that the timeframes outlined in the draft rule could lead to delays in the economic assessment process for critical transmission projects. Transgrid in their submission stated that the AEMC’s proposed 40-day timeframe for a feedback loop assessment will be excessive in some instances and lead to unacceptable delays if adopted by AEMO.⁶¹

The Commission is confident that the timeframes being placed on AEMO are unlikely to have a material impact in practice. AEMO’s submission to the draft determination highlights that feedback loop assessments to date that have not required the re-running of ISP modelling have been completed significantly faster than the 40 business days proposed in the final rule.⁶² The inclusion of these timeframes on AEMO will also provide clarity to stakeholders on when the outcome of a feedback loop assessment will be obtained.

58 Submissions to draft determination: CEIG, p. 2; AEMO, p. 3; and AER, p. 2.

59 Submissions to draft determination: CEIG, p. 2; AEMO, p. 3; and AER, p. 2.

60 CEIG, submission to draft determination, p. 2.

61 Transgrid, submission to draft determination, p. 1.

62 AEMO, submission to draft determination, p. 3.

The Commission’s final determination is to place timeframes on AEMO and to align these with the timeframes placed on the AER for the CPA process. This alignment should promote a clear and predictable framework that balances timeliness with prudent decision-making. The final determination balances the need for market bodies to make considered decisions in the best interest of consumers and the need for the timely delivery of actionable ISP projects.

3.5 Including transitional rules which support the timely implementation of the final rule

Box 5: Final determination – Including transitional rules for AER guidelines updates and enabling TNSPs that have already applied for a feedback loop assessment prior to the rule commencement to be assessed against the existing rules

The final rule includes transitional rules which:

- provide the AER with 12 months to update and publish its CBA guidelines in line with the proposed feedback loop amendments and allow prior consultation, in anticipation of the amending rule, to satisfy the consultation requirements to update the guideline
- apply the proposed feedback loop amendments to an existing actionable ISP project if, and only if, the RIT-T proponent has not already requested a feedback loop assessment prior to the commencement of the rule.

Changes from draft to final rule:

- Change in the date of commencement for the final rule to 14 March 2024.

The transitional provisions will work to ensure the smooth implementation of the final rule.

The final determination gives TNSPs certainty that requests submitted prior to the commencement of the rule will be assessed using the existing rules.

The proponent requested that implementation of the amendments proposed in the rule change request not adversely affect existing projects, citing changes to existing processes for market bodies and TNSPs.

We consider that the final determination is unlikely to have adverse impacts on eligible existing actionable ISP projects.⁶³ Projects that have not submitted feedback loop requests prior to the commencement of the rule would benefit from the application of the proposed reforms to their feedback loop requests, as well as benefiting from the option to undertake the CPA process in parallel. AEMO’s draft 2024 ISP has provided further guidance on the status of existing actionable ISP projects.⁶⁴

TasNetworks support the transitional provisions, noting that more clarity around how the new rules will apply to requests to reapply the feedback loop for the same stage of a project (e.g.

63 These projects include HumeLink and VNI West. Of the remaining actionable ISP projects in the 2022 ISP, Sydney Ring and the New England REZ Transmission Link are actionable projects under the NSW Electricity Infrastructure Investment Roadmap and not proceeding under the NER. See AEMO, 2022 Integrated System Plan, p. 67. Marinus Link is progressing its revenue determination through the intending TNSP framework introduced by the Commission in a 2022 rule change and therefore is subject to a modified process for making a revenue determination to include its construction costs under Chapter 6A. See AER, Marinus Link Decision: Transmission Determination Commencement and Process Paper, June 2023, <https://www.aer.gov.au/system/files/AER%20-%20Marinuslink%20-%20Notice%20of%20Decision%20and%20Commencement%20and%20Process%20Paper.pdf> and Marinus Link, Intending TNSP application for a revenue determination, submission to the AER, 31 March 2023, p. 16.

64 AEMO Draft 2024 Integrated System Plan https://aemo.com.au/-/media/files/stakeholder_consultation/consultations/nem-consultations/2023/draft-2024-isp-consultation/draft-2024-isp.pdf?la=en

following a project cost increase relative to the initial feedback loop request) is needed. The Commission considers that if a feedback loop request for an actionable ISP project (or stage of an actionable ISP project) is made prior to the commencement of the rule, the existing NER framework would apply. However, if a subsequent feedback loop request is made for an actionable ISP project, including for a subsequent stage, after the commencement date, then the amended framework under the final rule would apply.

The final rule would apply from the commencement of the rule, noting that any exclusion window resulting from the AER's guidance on timing in the CBA guidelines would be operational at a later date, not likely to have effect until mid-2025 when the next final IASR is published.

The final rule will require updates to the AER's CBA guideline. To support the AER in updating its CBA guideline, we have included the following transitional provisions in the final rule:

- The AER must update and publish on its website the CBA guidelines within 12 months after the commencement date of the rule. The AER must review its guideline to comply with the requirements to update the CBA guideline under the NER, and in doing so must comply with the Rules consultation procedures.
- If the AER undertakes consultation to update the CBA guidelines in respect of the draft rule, prior to the commencement of the rule, the consultation may satisfy the necessary requirements under the Rules consultation procedures.

The AER supported the transitional provisions in its submission to the draft determination, noting that they are reviewing and updating a number of regulatory changes in their CBA guidelines that have been recently completed or are currently underway and will be incorporating changes coming from this rule change in their upcoming consultation on the guidelines.⁶⁵

3.5.1 The final rule includes minor changes to the proposed rule

The final determination makes the following change to the transitional provisions:

- Moves the commencement date of the final rule to 14 March 2024 to align with the implementation of other rules.

⁶⁵ AER, submission to draft determination, p. 2.

A Rule making process

A fast track rule change request includes the following stages:

- a proponent submits a rule change request
- the Commission initiates the rule change process by publishing a notice which communicates the Commission’s decision to fast track the rule change
- 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.⁶⁶

A.1 Minister Bowen proposed a rule to improve the workability of the feedback loop

The proposal seeks to implement the TPIR stage 2 recommendations to improve the workability of the feedback loop by providing AEMO with the ability to undertake feedback loop assessments against the ODP in a draft or final ISP, and by improving the alignment of the feedback loop with a draft or final ISP. It also seeks to provide greater flexibility to RIT-T proponents through the use of concurrent feedback loop assessment and CPA processes as well as encouraging timely decision-making by requiring AEMO to make its decision within a specified period.

A.2 The proposal addressed the potential impact of the existing feedback loop arrangements on timely decision-making and on consumer interests

The proposal suggested that workability issues with the feedback loop undermine its ability to function as a consumer safeguard and may contribute to potential delays to major transmission projects. It stated that the lack of clarity and certainty in the regulatory framework contributes to an administrative burden on AEMO. These issues also contribute to the risk of inconsistencies between the inputs underpinning the feedback loop and the RIT-T preferred options.

The proposal also stated that the absence of a clear and consistent regulatory framework may impact the ability to efficiently deliver ISP projects and may impact on the feedback loop’s ability to operate as an effective consumer safeguard.

A.3 The proposal improves consistency and transparency for market bodies and TNSPs

The proposal suggested amendments to the NER in order to improve consistency and transparency in feedback loop assessments as well as encouraging more timely decisions.

The proposed amendments aimed to:

- enable the feedback loop assessment to be assessed against the most recent ODP in a draft or final ISP which is underpinned by the most up to date inputs, assumptions and scenarios

⁶⁶ See our website for more information on the rule change process: <https://www.aemc.gov.au/our-work/changing-energy-rules>

- Align the feedback loop assessment with a draft or final ISP by establishing an exclusion window for the feedback loop and PACRs between the publication of the final IASR and draft ISP. To be implemented through amendments to the AER's CBA guidelines with discretion for AEMO to undertake the feedback loop during the exclusion window, where appropriate, given the circumstances of that particular investment.
- allow, but not require, the feedback loop and CPA process to occur concurrently to address concerns of the potential for delay due to bunching of feedback loops around a draft or final ISP
- require AEMO to complete the feedback loop assessment within 40 business days from the later of the date the request is submitted or additional information is received following an information request issued by AEMO
- give AEMO the power to extend the assessment by 60 business days if it determines the assessment involves complexities or difficulties.

A.4 The process to date

On 16 November 2023, the Commission published a notice advising of its intention to initiate the rule making process in respect of the rule change request.⁶⁷ The Commission decided to fast-track this rule change request. This is because it concluded that the rule change request is consistent with the relevant recommendations made by the Commission in the TPIR stage 2 final report and adequate consultation with the public was undertaken during that review on the relevant recommendations.⁶⁸

Accordingly, the Commission published a draft rule determination on 7 December 2023 without first consulting on a consultation paper. The Commission received 12 submissions on the draft rule determination. Issues raised in submissions are discussed and responded to throughout this final rule determination. A summary of other issues raised in submissions and the Commission's responses is contained in appendix E.

⁶⁷ This notice was published under section 95 of the NEL.

⁶⁸ The decision to fast-track the rule change request was made under section 96A(1)(b) of the NEL.

B Regulatory impact analysis

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

B.1 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 greater clarity and consistency for market bodies and TNSPs in the application of the rule, including specific timing for transitional arrangements. These options are described in Chapter 2.

We identified who will 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. Where commensurate and feasible, the Commission has quantified the 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
Emissions reduction	Nil	Timely assessment of major projects which support the transition to net zero.	<ul style="list-style-type: none"> • AEMO • AER • TNSPs 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market bodies and TNSPs
Principles of market efficiency	Nil	Costs for major projects are allocated in a timely and efficient manner to address system needs in the ODP.	<ul style="list-style-type: none"> • AEMO • AER • TNSPs 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market bodies and TNSPs
Implementation considerations	AER and AEMO implementation	Clarity for AEMO and TNSPs in the operation of the feedback loop.	<ul style="list-style-type: none"> • AEMO • AER • TNSPs 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market bodies and TNSPs
Principles of good regulatory practice	AER and AEMO implementation	Reduction in regulatory burden, uncertainty and risk of delay.	<ul style="list-style-type: none"> • AEMO • AER • TNSPs 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market bodies and TNSPs

C Additional background and context

The following appendix outlines the consultation process associated with the regulatory steps for actionable ISP projects and how these steps map against the ISP development process. Its purpose is to contextualise the role of the feedback loop in the broader ISP framework.

C.1 The ISP cycle involves extensive consultation

The AEMO is required to publish an ISP every two years by 30 June.⁶⁹ Its purpose is to:⁷⁰

...establish a whole of system plan for the efficient development of the power system that achieves power system needs for a planning horizon of at least 20 years to contribute to achieving the national electricity objective.

In developing the ISP, AEMO is required to consult and publish a report on the inputs, assumptions and scenarios to be used for the ISP – the IASR.⁷¹ AEMO is required to:⁷²

- make an invitation to make submissions as set out in a published notice within a specified timeframe of not less than 30 days from the date of the invitation;
- must take into consideration the submissions received within the specified timeframe; and
- publish an issues summary on material issues and AEMO's response to each issue.

How this consultation process operates in practice is governed by the Forecasting Best Practice Guidelines (FBPG) administered by the AER. Specifically, AEMO is required to follow the single stage process set out in the FBPG when developing, consulting on and publishing the scenarios, inputs and assumptions in the IASR.⁷³ The single stage process places requires AEMO to:⁷⁴

- use reasonable endeavours to hold meetings with consulted persons on the matter under consultation view a view to informing and providing stakeholder confidence in the draft report;
- publish a draft report that sets out its:
 - conclusions and any determinations on the matter under consultation;
 - reasons for those conclusions or determinations;
 - procedure followed in considering the matter;
 - summary of each issue that it considers material and its response to each of these issues; and
 - invitation for submissions on the draft report within a specified timeframe of not less than 30 calendar days; and
- consider all valid submissions within a period of not more than a further 30 business days; and
- publish a final report that sets out its:
 - conclusions and any determinations on the matter under consultation;
 - reasons for those conclusions or determinations;

⁶⁹ Clause 5.22.1 of the NER.

⁷⁰ Clause 5.22.2 of the NER.

⁷¹ Clause 5.22.8(a) of the NER.

⁷² Clause 5.22.8(b) of the NER.

⁷³ AER, Forecasting best practice guidelines, August 2020, p 7.

⁷⁴ AER, Forecasting best practice guidelines, August 2020, pp 22-23.

- procedure followed in considering the matter;
- summary of each issue that it considers material and its response to each of these issues, explaining whether and how specific input from submissions has been incorporated.

Draft IASRs have typically been published six months following a final ISP, with the final IASR typically published six months after the draft.

Following the finalisation of the IASR, AEMO begins development of the draft ISP. The draft ISP is required to:⁷⁵

- (1) identify a range of development paths;
- (2) for each development path, identify the group of projects that form part of the development path;
- (3) describe how each development path performs under any sensitivities AEMO considers reasonable;
- (4) identify the optimal development path, which must be based on a quantitative assessment of the costs and benefits of various options across a range of scenarios, in accordance with the Cost Benefit Analysis Guidelines;
- (5) for the optimal development path, identify the actionable ISP projects, future ISP projects and ISP development opportunities;
- (6) for each actionable ISP project, specify:
 - (i) the date by which the project assessment draft report must be published and made available to relevant persons;
 - (ii) the relevant transmission network service provider(s) who will be the RIT-T proponent for the actionable ISP project;
 - (iii) the ISP candidate option or ISP candidate options;
 - (iv) the non-network options that were considered by AEMO as part of the ISP process in relation to that actionable ISP project (where relevant);
 - (v) the identified need related to that actionable ISP project and whether it is reliability corrective action; and
 - (vi) whether the actionable ISP project is a staged project; and
- (7) include the results of a net present value analysis for each development path for each scenario, together with an explanatory statement regarding the results; and
- (8) an invitation for written submissions on the draft ISP, which must specify the deadline for when written submissions must not be earlier than 30 business days after the publication of the draft ISP.

Where a draft ISP identifies an actionable ISP project, AEMO is required to publish a notice at the same time as it publishes the draft ISP that requests submissions for non-network options and provides sufficient detail on the technical characteristics that the non-network options must meet

⁷⁵ Clauses 5.22.6 and 5.22.11(a)(1) of the NER.

and describes the relevant technical characteristics of the identified need that the actionable ISP project (including any non-network option) is addressing.⁷⁶

Following consultation on the draft ISP, AEMO prepares the final ISP that must include:⁷⁷

- all of the matters required to be included in the draft ISP;
- an explanation of how AEMO has had regard to the consumer panel report on the draft ISP;
- the reasons for decisions made in relation to the ISP; and
- AEMO's responses to each of the stakeholders' submissions.

In the ISP cycle, a draft ISP is typically published 18 months following the publication of the most recent final ISP, with the next final ISP typically published six months after the draft.

The principal outcome of the ISP process is the identification of the optimal development path, ie, the set of candidate options for transmission investments and other electricity supply chain investments that:⁷⁸

...will meet the system's reliability and security needs and supports government emissions reduction policies in the long-term interests of consumers.

In selecting development paths, AEMO is required to have regard to:⁷⁹

- including non-network options substitutes or hybrids to a transmission network ISP project in one or more development paths, where appropriate;
- including staged projects in one or more development paths, where appropriate, such that it can assess option value; and
- re-testing all ISP projects identified as actionable in a previous ISP, and which have not yet had costs approved in a contingent project process.

Following the finalisation of the ISP AEMO may issue an ISP update. ISP updates are required if:⁸⁰

- a RIT-T proponent's preferred option for an actionable ISP project fails to satisfy the feedback loop;
- there is no credible option for an actionable ISP project that satisfies the RIT-T;
- in the course of assessing a preferred option in respect of an actionable ISP project, AEMO considers that there is a material change to the need for, or characteristics of another actionable ISP project.

Further, if following publication of the most recent ISP:⁸¹

- new information becomes available to AEMO relating to the matters set out in an ISP and, in AEMO's reasonable opinion, that information may materially change the outcome of the RIT-T for an actionable project that has either commenced or is due to commence prior to the publication of the next ISP; or
- a RIT-T proponent requests AEMO to assess an actionable ISP project or stage of an actionable ISP project under the feedback loop;

76 Clause 5.22.12 of the NER.

77 Clause 5.22.14 of the NER.

78 AEMO, Draft 2024 Integrated System Plan, December 2023, pp 7-8.

79 AER, Cost benefit analysis guidelines, August 2020, pp 16-17.

80 Clause 5.22.15 of the NER.

81 Clause 5.22.15(b) of the NER.

- the AEMO must as soon as practicable assess the impact of the new information on the ODP under that ISP.

C.2 Actionable ISP projects are subject to the RIT-T

The actionable ISP framework strongly links the ISP to the subsequent application of the RIT-T. While the ISP identifies candidate options, these are necessary characterised at a high-level and the role of the RIT-T is to provide a subsequent, more detailed technical analysis of the credible options through consultation with stakeholders.

RIT-T proponents are required under the actionable ISP framework to, amongst other things:

- quantify all classes of market benefits identified in the relevant ISP, though is permitted to consider other classes of market benefits;⁸²
- adopt the identified need set out in the relevant ISP;⁸³
- consider the ISP candidate option, non-network options identified in the ISP and any new credible options that were not previously considered in the ISP;⁸⁴
- adopt the most recent ISP parameters – including the latest IASR – unless there is a demonstrable reason to vary from those parameters;⁸⁵ and
- adopt the market modelling of the ISP as far as practicable.⁸⁶

These requirements are operationalised through the publication of two reports, being:

- the PADR, which presents an economic net present value assessment of each credible option against a base case that quantifies the costs and benefits under a set of reasonable individual and weighted scenarios, with a minimum six-week consultation period; and
- the project assessment conclusions report (PACR), which builds on the PADR by refining all matters presented in the PADR and responding to any submissions.

The timing of these reports depends on the scale and complexity of the credible options being modelled and so there is no standard timeframe in which they are completed.⁸⁷

C.3 Application of the feedback loop

The feedback loop was introduced as part of the actionable ISP reforms and is designed as a consumer safeguard. It requires the RIT-T proponent to obtain written confirmation from AEMO that:⁸⁸

- the preferred option addressed the relevant identified need specified in the most recent ISP and aligns with the ODP referred to in the most recent ISP; and
- the cost of the preferred option does not change the status of the actionable ISP project as part of the ODP as updated in accordance with an ISP update where relevant.

The feedback loop also caps the costs that can be sought by a RIT-T proponent in the contingent project application (CPA).⁸⁹

82 Clause 5.15A.3(B)(4) of the NER.

83 Clause 5.15A.3(b)(7)(ii) of the NER.

84 Clause 5.15A.3(b)(7)(iii) of the NER.

85 Clause 5.15A.3(b)(7)(iv) of the NER.

86 Clause 5.15A.3(b)(7)(vi) of the NER.

87 Clause 5.16.4(t) requires the PACR to be published as soon as practicable after the end of the consultation period on the PADR.

88 Clause 5.16A.5(b) of the NER. This reference adopts the existing drafting of the rule absent the more draft rule.

89 Clause 5.16A.5(d) of the NER.

C.4 Contingent Project Application

Contingent projects are significant network augmentation projects that may arise during a regulatory control period but the need and or timing of the project is uncertain. The AER therefore assesses forecast expenditure associated with these projects outside of the regular revenue determination process. Approved contingent project application result in an adjustment of the TNSP's revenue allowance to reflect efficient and prudent forecast expenditure associated with the contingent project.⁹⁰

TNSPs are able to submit contingent project applications for actionable ISP projects in stages to help reduce uncertainty associated with the costs and benefits of the project, as well as improving their expenditure forecasts.⁹¹

90 AER, Regulation of actionable ISP projects, Guidance note, March 2021, p. 4.

91 AER, Regulation of actionable ISP projects, Guidance note, March 2021, p. 25.

D Legal requirements to make a rule

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

D.1 Final rule determination and final rule

In accordance with section 102 of the NEL, the Commission has made this final rule determination for a more preferable final rule in relation to the rule proposed by Minister Bowen.

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

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

D.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 section 34 of the NEL as it relates to rules regulating the activities of persons (including Registered participants) participating in the national electricity market under section 34(1)(a)(iii) of the NEL.

D.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the final rule
- the rule change request
- the Commission's analysis as to the ways in which the final rule will or is likely to contribute to the achievement of the NEO
- submissions received during second round consultations
- the application of the final rule to the Northern Territory

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁹²

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 network functions.⁹³ The more preferable final electricity rule is compatible with AEMO's declared network functions because they would not affect those functions.

⁹² 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.

⁹³ Section 91(8) of the NEL.

D.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.⁹⁴ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.

As the more preferable final 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:⁹⁵

1. the national electricity system
2. one or more, or all, of the local electricity systems⁹⁶
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.⁹⁷ 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.⁹⁸

The Commission’s final 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.

D.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.

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

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

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

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

98 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.

E Summary of other issues raised in submissions

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

Stakeholder	Issue	Response
CEIG, p. 2-3	CEIG suggested further amendments to allow AEMO to estimate the highest feasible cost for addressing each actionable need in the ISP as part of its initial ISP modelling.	This suggestion was also made by CEIG during the TPIR process undertaken in 2022. This rule change process focuses on improving the workability of the feedback loop and a comprehensive examination of the ISP development process is considered outside the scope of this rule change.
CIS p. 5 Private individual p. 5	Interpretation by AEMO of 'new information' in 5.22.15(b) of the NER.	This rule change process focuses on improving the workability of the feedback loop and a comprehensive examination of the ISP development process and RIT-T is considered outside the scope of this rule change.
ENA p. 3	Application of the draft rules in the Northern Territory.	See section 2.2.2 of the final determination.

Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CBA	Cost Benefit Analysis
CEIG	Clean Energy Investor Group
Commission	See AEMC
CPA	Contingent Project Application
ENA	Energy Networks Australia
IASR	Inputs Assumptions and Scenarios Report
ISP	Integrated System Plan
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
NT Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015</i>
PACR	Project Assessment Conclusion report
PADR	Project Assessment Draft Report
Proponent	The individual / organisation who submitted the rule change request to the Commission
RIT-T	Regulatory Investment Test for Transmission
TNSP	Transmission Network Service Provider
TPIR	Transmission Planning and Investment Review